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**CENTURION APARTMENT REAL ESTATE INVESTMENT TRUST**



**AMENDED AND RESTATED  
DECLARATION OF TRUST**

Made as of 19<sup>th</sup> day of September, 2017



**CASELS BROCK**  
LAWYERS

## TABLE OF CONTENTS

	Page No.
<b>ARTICLE 1 INTERPRETATION .....</b>	<b>2</b>
1.1 DEFINITIONS .....	2
1.2 REFERENCES TO ACTS PERFORMED BY THE TRUST .....	13
1.3 TAX ACT .....	13
1.4 NUMBER AND GENDER .....	13
1.5 HEADINGS FOR REFERENCE ONLY .....	13
1.6 DAY NOT A BUSINESS DAY .....	13
1.7 TIME OF THE ESSENCE .....	13
1.8 GOVERNING LAW .....	14
1.9 CURRENCY .....	14
<b>ARTICLE 2 DECLARATION OF TRUST .....</b>	<b>14</b>
2.1 ESTABLISHMENT OF THE TRUST .....	14
2.2 INITIAL CONTRIBUTION .....	14
2.3 NAME OF THE TRUST .....	14
2.4 HEAD OFFICE .....	15
2.5 NATURE OF THE TRUST .....	15
2.6 RIGHTS OF TRUST UNITHOLDERS .....	15
2.7 LIABILITY OF UNITHOLDERS AND OTHERS .....	16
<b>ARTICLE 3 ISSUE AND SALE OF UNITS .....</b>	<b>16</b>
3.1 NATURE OF TRUST UNITS AND SPECIAL VOTING UNITS .....	16
3.2 RE-DESIGNATION OF CLASS M TRUST UNITS .....	19
3.3 AUTHORIZED NUMBER OF TRUST UNITS .....	19
3.4 TRUST UNITS NON-ASSESSABLE .....	19
3.5 FRACTIONAL UNITS .....	20
3.6 ALLOTMENT AND ISSUE .....	20
3.7 RIGHTS, WARRANTS, OPTIONS, CONVERTIBLE INDEBTEDNESS AND OTHER SECURITIES .....	20
3.8 COMMISSIONS AND DISCOUNTS .....	20
3.9 TRANSFERABILITY .....	20
3.10 TRANSFER OF TRUST UNITS .....	21
3.11 SUCCESSORS IN INTEREST TO UNITHOLDERS .....	21
3.12 UNITS HELD JOINTLY OR IN FIDUCIARY CAPACITY .....	22
3.13 PERFORMANCE OF TRUSTS .....	22
3.14 DEATH OF UNITHOLDERS .....	22
3.15 UNCLAIMED DISTRIBUTIONS .....	22
3.16 REPURCHASE OF TRUST UNITS .....	23
3.17 RE-PURCHASE OF INITIAL UNIT BY THE TRUST .....	23
3.18 CONSOLIDATION OF TRUST UNITS .....	23
3.19 NO PRE-EMPTIVE RIGHTS .....	23
<b>ARTICLE 4 INVESTMENT GUIDELINES AND OPERATING POLICIES .....</b>	<b>24</b>
4.1 INVESTMENT GUIDELINES .....	24
4.2 OPERATING POLICIES .....	27
4.3 MUTUAL FUND TRUST STATUS .....	30

4.4	APPLICATION OF INVESTMENT RESTRICTIONS AND OPERATING GUIDELINES.....	30
4.5	REGULATORY MATTERS .....	30
4.6	UNITED STATES TAXATION MATTERS .....	30
<b>ARTICLE 5 DISTRIBUTIONS .....</b>		<b>31</b>
5.1	COMPUTATION OF DISTRIBUTABLE INCOME .....	31
5.2	CLASS ENTITLEMENT .....	31
5.3	DISTRIBUTION OF DISTRIBUTABLE INCOME.....	32
5.4	YEAR END DISTRIBUTION OF NET INCOME .....	32
5.5	YEAR END DISTRIBUTION OF NET REALIZED CAPITAL GAINS .....	32
5.6	PAYMENT OF DISTRIBUTIONS .....	32
5.7	WITHHOLDING TAXES.....	34
5.8	REINVESTMENT .....	35
5.9	INCOME TAX MATTERS.....	35
5.10	ALLOCATIONS OF NET INCOME AND NET REALIZED CAPITAL GAINS FOR TAX PURPOSES .....	35
5.11	DEFINITIONS .....	35
<b>ARTICLE 6 REDEMPTION OF TRUST UNITS.....</b>		<b>35</b>
6.1	RIGHT OF REDEMPTION .....	35
6.2	EXERCISE OF REDEMPTION RIGHT .....	35
6.3	CASH REDEMPTION.....	36
6.4	NO CASH REDEMPTION IN CERTAIN CIRCUMSTANCES.....	36
6.5	IN SPECIE REDEMPTION .....	37
6.6	CAPITAL GAINS AND INCOME ON IN SPECIE DISTRIBUTION.....	38
<b>ARTICLE 7 REDEMPTION OF SPECIAL VOTING UNITS.....</b>		<b>38</b>
7.1	REDEMPTION OF SPECIAL VOTING UNITS .....	38
<b>ARTICLE 8 TRUSTEES .....</b>		<b>39</b>
8.1	NUMBER OF TRUSTEES .....	39
8.2	CALLING AND NOTICE OF MEETINGS.....	39
8.3	PLACE OF MEETINGS .....	39
8.4	MEETINGS BY TELEPHONE .....	39
8.5	QUORUM .....	40
8.6	CHAIRMAN .....	40
8.7	ACTION BY THE TRUSTEES.....	40
8.8	ADJOURNED MEETING.....	40
8.9	REMUNERATION AND EXPENSES .....	40
8.10	OFFICERS.....	40
8.11	RESIDENCY OF TRUSTEES.....	41
8.12	INDEPENDENT TRUSTEES .....	41
<b>ARTICLE 9 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES.....</b>		<b>41</b>
9.1	QUALIFICATION OF TRUSTEES.....	41
9.2	APPOINTMENT OF TRUSTEES.....	42
9.3	CONSENT TO ACT .....	42
9.4	FAILURE TO ELECT MINIMUM NUMBER OF TRUSTEES.....	43
9.5	CEASING TO HOLD OFFICE .....	43
9.6	REMOVAL OF TRUSTEES .....	44

9.7	FILLING VACANCIES.....	44
9.8	VALIDITY OF ACTS.....	45
<b>ARTICLE 10 CONCERNING THE TRUSTEES.....</b>		<b>45</b>
10.1	POWERS OF THE TRUSTEES .....	45
10.2	SPECIFIC POWERS AND AUTHORITIES .....	45
10.3	FURTHER POWERS OF THE TRUSTEES .....	49
10.4	LIMITATIONS ON POWERS .....	50
10.5	BANKING.....	50
10.6	STANDARD OF CARE AND DUTIES .....	50
10.7	RELIANCE UPON TRUSTEES AND OFFICERS .....	51
10.8	FEES AND EXPENSES.....	51
10.9	DETERMINATIONS OF TRUSTEES BINDING .....	51
10.10	LIMITATIONS ON LIABILITY OF TRUSTEES .....	51
10.11	INDEMNIFICATIONS .....	52
10.12	CONTRACTUAL OBLIGATIONS OF THE TRUST .....	53
10.13	CONFLICTS OF INTEREST .....	53
10.14	CONDITIONS PRECEDENT.....	55
10.15	INDEPENDENT TRUSTEE MATTERS .....	55
<b>ARTICLE 11 COMMITTEES OF TRUSTEES.....</b>		<b>56</b>
11.1	DELEGATION .....	56
11.2	AUDIT COMMITTEE.....	56
11.3	PROCEDURE .....	56
<b>ARTICLE 12 AMENDMENT.....</b>		<b>56</b>
12.1	AMENDMENT .....	56
12.2	SPECIAL RESOLUTION VOTE .....	58
12.3	VARIATION OF RIGHTS.....	58
12.4	CHANGES TO OTHER DOCUMENTS .....	59
12.5	NO TERMINATION .....	59
<b>ARTICLE 13 MEETINGS OF UNITHOLDERS.....</b>		<b>59</b>
13.1	ANNUAL AND SPECIAL MEETINGS OF UNITHOLDERS.....	59
13.2	NOTICE OF MEETINGS .....	59
13.3	QUORUM .....	60
13.4	VOTING RIGHTS OF UNITHOLDERS.....	60
13.5	CERTAIN MATTERS ON WHICH UNITHOLDERS MUST VOTE .....	60
13.6	MEANING OF "SPECIAL RESOLUTION" .....	61
13.7	MEANING OF "OUTSTANDING" .....	62
13.8	RECORD DATE FOR VOTING .....	62
13.9	PROXIES .....	63
13.10	PERSONAL REPRESENTATIVES .....	63
13.11	APPOINTMENT OF INSPECTOR .....	63
13.12	CONDUCT OF MEETINGS .....	64
13.13	BINDING EFFECT OF RESOLUTIONS.....	64
13.14	RESOLUTION IN LIEU OF MEETING .....	64
13.15	ACTIONS BY UNITHOLDERS .....	64

<b>ARTICLE 14 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS .....</b>	<b>64</b>
14.1 NO ALTERATION.....	64
14.2 UNIT CERTIFICATES .....	64
14.3 CONTENTS OF UNIT CERTIFICATES .....	65
14.4 REGISTER OF UNITHOLDERS .....	66
14.5 LIMITATION OF NON-RESIDENT OWNERSHIP .....	66
14.6 LOST CERTIFICATES .....	68
14.7 TAKE-OVER BID .....	68
<b>ARTICLE 15 TERMINATION.....</b>	<b>71</b>
15.1 TERM OF THE TRUST .....	71
15.2 TERMINATION WITH THE APPROVAL OF UNITHOLDERS.....	72
15.3 PROCEDURE UPON TERMINATION.....	72
15.4 POWERS OF THE TRUSTEES UPON TERMINATION.....	72
15.5 SALE OF INVESTMENTS .....	72
15.6 DISTRIBUTION OF PROCEEDS OR ASSETS .....	72
15.7 FURTHER NOTICE TO UNITHOLDERS.....	72
15.8 RESPONSIBILITY OF THE TRUSTEES AFTER SALE AND CONVERSION.....	73
<b>ARTICLE 16 SUPPLEMENTAL INDENTURES .....</b>	<b>73</b>
16.1 PROVISION FOR SUPPLEMENTAL INDENTURES FOR CERTAIN PURPOSES.....	73
<b>ARTICLE 17 GENERAL .....</b>	<b>73</b>
17.1 NOTICES.....	73
17.2 FAILURE TO GIVE NOTICE .....	74
17.3 JOINT HOLDERS.....	74
17.4 SERVICE OF NOTICE.....	74
17.5 INFORMATION AVAILABLE TO UNITHOLDERS.....	74
17.6 FISCAL YEAR AND TAXATION YEAR.....	75
17.7 REPORTS TO UNITHOLDERS.....	75
17.8 TAXATION INFORMATION .....	75
17.9 TRUST PROPERTY TO BE KEPT SEPARATE .....	75
17.10 POWER OF ATTORNEY .....	75
17.11 ELECTRONIC DOCUMENTS .....	75
17.12 TRUST RECORDS.....	75
17.13 INCOME TAX ELECTION .....	76
17.14 CONSOLIDATIONS .....	76
<b>ARTICLE 18 AUDITORS .....</b>	<b>76</b>
18.1 QUALIFICATION OF AUDITORS .....	76
18.2 APPOINTMENT OF AUDITORS .....	76
18.3 CHANGE OF AUDITORS .....	76
18.4 REPORT OF AUDITORS .....	76
<b>ARTICLE 19 MISCELLANEOUS .....</b>	<b>77</b>
19.1 COUNTERPARTS .....	77
19.2 SEVERABILITY.....	77
19.3 LANGUAGE.....	77

## CENTURION APARTMENT REAL ESTATE INVESTMENT TRUST

### AMENDED AND RESTATED DECLARATION OF TRUST

**THIS AMENDED AND RESTATED DECLARATION OF TRUST** made in Toronto, Ontario as of the 19<sup>th</sup> day of September, 2017.

#### RECITALS

**WHEREAS**, Gregory G. Romundt (the “**Initial Trustee**”) and Centurion Asset Management Inc., formerly Centurion Apartment REIT Management Inc. (the “**Initial Unitholder**”) entered into a declaration of trust dated as of the 31<sup>st</sup> day of August, 2009 (the “**Initial Declaration of Trust**”) pursuant to which the Trust was established;

**AND WHEREAS** for the purpose of settling the trust created hereunder, the Initial Unitholder has paid the Initial Contribution to the Initial Trustee and has received in exchange for the Initial Contribution the Initial Unit;

**AND WHEREAS** the Unitholders and the Trustees desire that the beneficiaries of the Trust shall be the holders of Trust Units;

**AND WHEREAS** it is intended that, pursuant to the Rollover Agreement, upon the happening of a Trigger Event, the Trust will indirectly through its equity holdings in COT and CAP II LP acquire all of the issued and outstanding voting Class A LP Units and will agree to hold in trust for the holders of all of the Class B LP Units that number of Special Voting Units equal to the aggregate number of outstanding Class B LP Units outstanding at any time;

**AND WHEREAS** the Unitholders and the Trustees desire that the Trust shall qualify, as soon as practical, as a “mutual fund trust” pursuant to subsection 132(6) of the Tax Act;

**AND WHEREAS** (i) certain amendments were made by the Trustees to the Initial Declaration of Trust pursuant to the discretionary powers granted to the Trustees under the Initial Declaration of Trust, (ii) certain amendments to the Declaration of Trust were approved by the Unitholders at annual and special meetings of the Unitholders held on September 25, 2012, September 18, 2013, and September 19, 2017, and (iii) certain other amendments were deemed by the Trustees to be necessary and desirable in order to implement the amendments referred to in (ii) and to reflect certain other events that have occurred since the date of the Initial Declaration of Trust;

**AND WHEREAS** this Trust Indenture sets out the currently effective provisions of the Initial Declaration of Trust, as amended and amended and restated, and replaces and supersedes the previously amended and restated Declaration of Trust;

#### DECLARATION

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

## **Article 1 INTERPRETATION**

### **1.1 Definitions**

In this Trust Indenture including the recitals hereto, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) **"2075294"** means 2075294 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario which changed its name from "Centurion Asset Management Inc." to "2075294 Ontario Inc." by filing of articles of amendment on July 31, 2013.
- (b) **"Adjusted Unitholders' Equity"** means, at any time, the aggregate of: (i) the amount of Trust Unitholders' equity; and (ii) the amount of accumulated depreciation and amortization recorded on the books and records of each of the Trust and its subsidiaries in respect of its properties, in each case calculated in accordance with IFRS.
- (c) **"affiliate"** of a person means any person or company that would be deemed to be an affiliated entity of such person within the meaning of National Instrument 45-106 – *Prospectus and Registration Exemptions* (applied, with the necessary changes being made, in respect of entities that are not companies).
- (d) **"Annuitant"** means the annuitant or beneficiary of a Deferred Income Plan or any other plan of which a Trust Unitholder acts as trustee or carrier.
- (e) **"associate"**, when used to indicate a relationship with a person or company, has the meaning ascribed thereto in the *Securities Act* (Ontario).
- (f) **"Audit Committee"** means the committee established pursuant to Section 11.2.
- (g) **"Auditors"** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, as of the date of this Declaration of Trust, means KPMG LLP.
- (h) **"Business Day"** means a day which is not a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (i) **"CAMI"** means Centurion Asset Management Inc., a corporation incorporated under the laws of the Province of Ontario which changed its name from "Centurion Apartment REIT Management Inc." to "Centurion Asset Management Inc." by filing of articles of amendment on July 31, 2013.
- (j) **"Canada Three-Year Yield"** on any date means the yield to maturity on such date (expressed as a percentage), assuming semi-annual compounding, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity of approximately three years, which Canada Three-Year Yield shall be determined by a major Canadian investment dealer selected by the Trustees.

- (k) “**CAP I GP**” means Centurion Apartment Properties GP Inc., a corporation amalgamated under the laws of the Province of Ontario, being the general partner of CAP I LP.
- (l) “**CAP I LP**” means Centurion Apartment Properties Limited Partnership, a limited partnership formed under the laws of the Province of Ontario on February 3, 2006.
- (m) “**CAP I LP Agreement**” means the limited partnership agreement dated February 3, 2006, as may be amended or amended and restated from time to time.
- (n) “**CAP I LP Grid Note**” means the grid promissory note issued by CAP I LP to the Trust, the outstanding face amount of which as at the Trigger Date shall, through a series of subscriptions as provided in the Exchange Agreement, be converted into CAP I LP Units on the Trigger Date at the fair market value of each such CAP I LP Unit.
- (o) “**CAP I LP Units**” means the limited partnership units of CAP I LP.
- (p) “**CAP II GP**” means Centurion Apartment Properties GP Inc., a corporation amalgamated under the laws of the Province of Ontario on August 31, 2009, being the general partner of CAP II LP.
- (q) “**CAP II LP**” means Centurion Apartment Properties II Limited Partnership, a limited partnership formed under the laws of the Province of Ontario on August 31, 2009.
- (r) “**CAP II LP Agreement**” means the limited partnership agreement dated August 31, 2009 between the CAP II GP, as general partner, and COT, as limited partner, as may be amended or amended and restated from time to time.
- (s) “**Class**” means a class of Units.
- (t) “**Class A LP Units**” mean the Class A limited partnership units of CAP II LP.
- (u) “**Class A Trust Unit**” means a Class A Trust Unit of the Trust and includes a fraction of a Class A Trust Unit of the Trust.
- (v) “**Class B LP Units**” means the Class B LP Units of CAP II LP, which are exchangeable for Class A Trust Units on a one-for-one basis.
- (w) “**Class F Trust Unit**” means a Class F Trust Unit of the Trust and includes a fraction of a Class F Trust Unit of the Trust.
- (x) “**Class I Trust Unit**” means a Class I Trust Unit of the Trust and includes a fraction of a Class I Trust Unit.
- (y) “**Class M Trust Unit**” means a Class M Trust Unit of the Trust and includes a fraction of a Class M Trust Unit of the Trust.
- (z) “**Class M Trust Unitholder**” means, at any time, any holder at that time of one or more Class M Trust Units, as shown on the Register of such holders maintained by the Registrar on behalf of the Trust.



(aa) **“Class M Trust Unit Percentage Interest”** means, at any particular time, that percentage interest in and to all of the income or capital of the Trust which is the percentage determined by the following formula:

$$B / (A + B)$$

where:

- (i) A is the total number of Investor Trust Units outstanding at the particular time
- (ii) B is the total number of Class M Trust Units outstanding at the particular time
- (iii) for the purposes of this definition, the total number of Class M Trust Units outstanding at the time in question shall be deemed to be equal to:

$$b = (a / 0.95) - a - c$$

where:

b = current number of Class M Trust Units deemed to be outstanding

a = largest number of Investor Trust Units ever issued and outstanding

c = the total of previously issued Class M Trust Units that have been converted into Class A Trust Units

and, for greater certainty:

- (i) where A is nil the Class M Trust Unit Percentage Interest is 100%
- (ii) no new Class M Trust Units may be included in the foregoing calculation to the extent that the deemed issue of such Class M Trust Units would cause the number of Class M Trust Units deemed to have ever been issued to exceed:

$$(a / 0.95) - a$$

- (iii) in the event that the number of Investor Trust Units at any particular time is less than the largest number of Investor Trust Units ever issued and outstanding, the number of Class M Trust Units shall not decline as a result of the foregoing but the Investor Trust Unit Percentage Interest and Class M Trust Unit Percentage Interest will change accordingly.

(bb) **“Class M Trust Unit Specified Ratio”** at any time means the ratio of (i) “b” as defined in the definition of Class M Trust Unit Percentage calculated at the time in question (being the then current number of Class M Trust Units deemed to be outstanding) divided by (ii) the actual number of Class M Trust Units outstanding prior to the conversion.

(cc) **“Class R Trust Unit”** means a Class R Trust Unit of the Trust and includes a fraction of a Class R Trust Unit of the Trust.

- (dd) “**Closing**” means the completion of the transactions contemplated by the Rollover Agreement; and “**Closing Date**” means the date on which Closing is completed.
- (ee) “**Contributed Assets**” mean all of the assets of CAP II LP including, without limitation, the CAP I LP Units and the revenue producing properties of CAP I LP, control of which are to be transferred, assigned, conveyed and set over to the Trust pursuant to the Rollover Agreement.
- (ff) “**Conversion Rights**” means the right of the Class M Trust Unitholders to cause the Trust to re-designate all or any part of their Class M Trust Units into Class A Trust Units as set forth in Section 3.2.
- (gg) “**COT**” means Centurion Operating Trust, an open ended, limited purpose trust established under the laws of the Province of Ontario pursuant to the COT Indenture and, for greater certainty, unless otherwise provided does not include any subsidiaries or affiliates thereof.
- (hh) “**COT Indenture**” means the declaration of trust dated August 31, 2009 constituting COT, as the same may be amended, supplemented or varied from time to time.
- (ii) “**COT Notes**” means promissory notes to be issued by COT pursuant to the Exchange Agreement or otherwise issued under the Note Indenture.
- (jj) “**COT Trustee**” means the trustee or trustees of COT from time to time.
- (kk) “**COT Unit**” means a trust unit of COT, each such unit representing an equal undivided beneficial interest therein.
- (ll) “**CPAI**” means Centurion Property Associates Inc.
- (mm) “**Debt Securities**” means debt securities of any subsidiary of the Trust that may be created and issued from time to time, including, without limitation, each of the COT Notes, issued to the Trust pursuant to the Exchange Agreement and the Note Indenture and CAP I LP Grid Note issued by CAP I LP, each of which shall (i) be subordinated and unsecured, (ii) have a maturity fixed by the issuer, (iii) be open for prepayment at any time at the option of the issuer prior to maturity without notice or bonus, (iv) in the case of Debt Securities issued by COT pay an annual rate of interest equal to the Canada Three Year Yield, payable monthly in arrears, and in the case of the CAP I LP Grid Note, pay an annual rate of interest equal to 10% per annum, payable monthly in arrears, (v) be held by the Trust, and (vi) in the case of Debt Securities issued by COT be designated by the Trustees as available for a distribution in specie to Trust Unitholders pursuant to Section 6.5.
- (nn) “**Declaration of Trust**” means this declaration of trust, as amended, supplemented or amended and restated from time to time.
- (oo) “**Deferred Income Plan**” means any trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, a registered disability savings plan, a tax-free savings account or a deferred profit sharing plan, each as defined in the Tax Act.

(pp) **“Deferred Sales Charge Purchase Plan”** means the purchase plan of the Trust pursuant to which a Trust Unitholder subscribes for Class A Trust Units on the following basis:

Upfront commission to broker 5%  
Trailer 50 bps per annum to broker starting in year one  
DSC Schedule if redeem:  
In 1<sup>st</sup> year – 6%  
In 2<sup>nd</sup> year – 5.5%  
In 3<sup>rd</sup> year – 5.0%  
In 4<sup>th</sup> year – 4.0%  
In 5<sup>th</sup> year – 3.0%  
Afterwards – 0%

(qq) **“Determination Event”** means the earliest to occur of the following:

- (i) a take-over bid by a person acting at arm’s length to CAMI, as the sole holder of Class M Trust Units, (or any affiliate or associate of CAMI or person acting jointly or in concert with) is made for the Investor Trust Units, provided that not less than 51% of the Investor Trust Units (other than Investor Trust Units held at the date of the take-over bid by or on behalf of the offeror or affiliates or associates of the offeror) are taken-up and paid for pursuant to the take-over bid;
- (ii) substantially all of the assets of the Trust are sold or the Trust is liquidated;  
or
- (iii) the Trust Asset Management Agreement or any of the Property Management Agreements is terminated by CAP I GP or the Trustees, as the case may be, for cause.

(rr) **“Distributable Income”** has the meaning ascribed thereto in Section 5.1.

(ss) **“Distribution Date”** means, in respect of a Distribution Period, and subject to Sections 5.4 and 5.5, no later than the 15<sup>th</sup> day of the immediately following month or, if such day is not a Business Day, the next following Business Day, and such other dates determined from time to time by the Trustees.

(tt) **“Distribution Period”** means each calendar month in each calendar year.

(uu) **“Distribution Record Date”** means, unless otherwise determined by the Trustees, the last Business Day of each month of each year, except for the month of December where the Distribution Record Date shall be December 31.

(vv) **“Early Redemption Charge”** means any charge or reduction in unit Redemption Price determined by the Trustees to apply to any Units tendered for Redemption by a Trust Unitholder during the Early Redemption Period determined as per Section 6.3 and initially this charge will be set at 10%.

- (ww) **“Early Redemption Period”** means the period during which an Early Redemption Charge may apply as determined as per Section 6.3 and initially this will be three (3) years of the purchase of the Units.
- (xx) **“Excess Distribution”** has the meaning ascribed thereto in Section 5.5.
- (yy) **“Exchangeable Security”** or **“Exchangeable Securities”** means a unit or units, a share or shares or other security or securities issued by the Trust or an affiliate of the Trust and which are convertible into or exchangeable for Trust Units or other Exchangeable Securities without the payment of additional consideration as a result of the exchange and, for greater clarity, shall include the Class B LP Units.
- (zz) **“Exchange Agreement”** means the exchange agreement between the Trust, COT, CAP I LP, CAP II LP and the holders of Class B LP Units from time to time dated August 31, 2009 providing for the indirect exchange of Class B LP Units for any Class A Trust Units.
- (aaa) **“Exchange Right”** means the right granted under the Exchange Agreement to each holder of Class B LP Units to indirectly exchange all or any part of the Class B LP Units held by such holder for any Class A Trust Units on the basis of one Class B LP Unit for one Class A Trust Unit as provided for in the Exchange Agreement.
- (bbb) **“Fair Market Value”** has the meaning ascribed thereto in Section 6.3.
- (ccc) **“Fee Based Accounts Purchase Plan”** means the purchase plan of the Trust pursuant to which a Trust Unitholder subscribes for Class A Trust Units or Class F Trust Units on the following basis:  
  
This plan shall be available to fee based and comparable accounts  
No upfront commission or trailer will be paid  
The Short Term Trading Fee is 3% if redeemed in 6 months
- (ddd) **“Focus Activities”** has the meaning ascribed thereto in Section 4.1(a).
- (eee) **“Front Load Purchase Plan”** means the purchase plan of the Trust pursuant to which a Trust Unitholder subscribes for Class A Trust Units on the following basis:  
  
Broker negotiates commission with client of 0%-5% and is paid by client  
Trailer 100 bps per annum to broker starting in year one  
Short Term Trading Fee of 3% if redeemed in 6 months
- (fff) **“IFRS”** or **“generally accepted accounting principles”** means International Financial Reporting Standards as adopted by the International Accounting Standards Board from time to time.
- (ggg) **“Gross Book Value”** means, at any time, the book value of the assets of the Trust and its consolidated subsidiaries, as shown on its then most recent consolidated balance sheet, plus the amount of accumulated depreciation and amortization on buildings shown thereon or in the notes thereto plus the amount of future income tax liability arising out of indirect acquisitions and excluding the COT Notes, the amount of any receivable reflecting interest rate subsidies on any debt assumed by

the Trust shown thereon or in the notes thereto, or if approved by a majority of the Trustees at any time, the appraised value of the assets of the Trust and its consolidated subsidiaries may be used instead of book value.

- (hhh) **“Independent Trustee”** means a Trustee who, in relation to the Trust or any of its Related Parties from and after Closing, is “independent” (within the meaning of Multilateral Instrument 52-110 – *Audit Committees*).
- (iii) **“Independent Trustee Matter”** means any one or more of the following matters occurring at any time or from time to time after Closing:
  - (i) an acquisition or disposition of a property or an investment in a property, whether by co-investment or otherwise, any other Related Parties has any direct or indirect interest;
  - (ii) the entering into, waiver of, exercise or enforcement of any rights or remedies under any agreement entered into by the Trust, or the making, directly or indirectly, of any co-investment, with any Related Party or in which any Related Party has a material interest;
  - (iii) the refinancing or renewal of any indebtedness owing by or to any Related Party or in which any Related Party has a material interest;
  - (iv) the grant of options or issuing of Units under any option or purchase plan;
  - (v) any change in the number of Trustees and the appointment of Trustees to fill any vacancies created by any increase in the number of Trustees;
  - (vi) decisions relating to compensation of Trustees or of any employee who is also an employee of a Related Party; and
  - (vii) decisions relating to any claim by or against any vendor of properties to the Trust or any of the parties to the Material Agreements.
- (jjj) **“Initial Contribution”** means the amount of \$10 paid by the Initial Unitholder to the Trustees for the purpose of settling the trust constituted by this Trust Indenture.
- (kkk) **“Initial Trustee”** has the meaning ascribed thereto in the first recital above.
- (lll) **“Initial Unit”** means the one Class A Trust Unit issued to the Initial Unitholder by the Trust.
- (mmm) **“Initial Unitholder”** has the meaning ascribed thereto in the first recital above.
- (nnn) **“Institution”** means a business organization that makes substantial investments, including but not limited to corporations and pension funds, or such other entities as the Trustees in their discretion determine appropriate.
- (ooo) **“Investor Trust Unit Percentage Interest”** means, at any particular time, that percentage interest in and to all of the income or capital of the Trust equal to 100% minus the Class M Trust Unit Percentage Interest.

- (ppp) **“Investor Trust Units”** means the Class A Trust Units, the Class F Trust Units, Class I Trust Units, and any New Class of Trust Units.
- (qqq) **“Liquidated Net Assets”** has the meaning ascribed thereto in Section 15.6.
- (rrr) **“Low Load Purchase Plan”** means the purchase plan of the Trust pursuant to which a Trust Unitholder subscribes for Class A Trust Units on the following basis:  
  
Upfront Commission of 3.0% to broker  
Trailer 75 bps per annum to broker starting in year two  
Short Term Trading Fee if redeemed:  
In 1st 18 months – 3.5%  
In 2nd 18 months – 3.0%  
Afterwards - 0%
- (sss) **“Mandatory Conversion Event”** means any of the events described in paragraphs (ii) and (iii) of the definition of “Determination Event”.
- (ttt) **“Material Contracts”** means the Trust Indenture, the COT Indenture, the CAP I LP Agreement, the CAP II LP Agreement, the Rollover Agreement, the Exchange Agreement, the Note Indenture, the Property Management Agreements and the Trust Asset Management Agreement.
- (uuu) **“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.
- (vvv) **“Net Income”** or **“Net Loss”** for any taxation year of the Trust means the net income or loss of the Trust for such 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 Trust Units in specie and designated by the Trust as income payable to the redeeming Trust Unitholders) and taking into account such other adjustments as may be determined in the discretion of the Trustees (provided that the Trustees exercise their discretion in this regard before the end of the Taxation Year); provided, however, that capital gains and capital losses shall be excluded from the computation of net income; and provided further that, if such calculation results in income there shall be deducted the amount of any non-capital losses (as defined in the Tax Act) of the Trust for any preceding years; and Net Income or Net Loss for any period means the income or loss of the Trust for such period computed in accordance with the foregoing as if that period were the taxation year of the Trust.
- (www) **“Net Realized Capital Gains”** for any Taxation Year means the amount, if any, by which the amount of the realized capital gains of the Trust for the year exceeds the aggregate of (i) any capital gains realized by the Trust in the year (including any capital gains realized by the Trust in the year on the redemption of Trust Units in specie) and designated by the Trust as payable to the redeeming Trust Unitholders pursuant to Section 6.5, (ii) the amount of any realized capital losses of the Trust for the year determined in accordance with the Tax Act; (iii) the amount determined

by the Trustees in respect of any net capital losses of the Trust carried forward from a previous year to the extent not previously deducted from realized capital gains of the Trust determined in accordance with the Tax Act, (iv) the amount determined by the Trustees of “non-capital losses” of the Trust for the year or carried forward from a previous year to the extent not previously deducted from income or realized capital gains of the Trust determined in accordance with the Tax Act, and (v) the 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 any realized capital losses of the Trust for the year and/or without subtracting the full amount in respect of any net capital losses of the Trust carried forward from prior years and/or without subtracting the full amount of non-capital losses for the year or carried forward from prior year and/or without considering the Trust’s entitlement to a capital gains refund.

- (xxx) **“New Class of Trust Units”** means the additional class or classes of trust units of the Trust which may be created by the Trust pursuant to Section 3.1(a).
- (yyy) **“Non-Resident”** means a person who is not a Resident within the meaning of the Tax Act.
- (zzz) **“Note Indenture”** means the indenture to be entered into on August 31, 2009 between COT and the Note Trustee providing for the issuance of the COT Notes.
- (aaaa) **“Note Trustee”** means the trustee under the Note Indenture, including any successor trustee thereunder.
- (bbbb) **“Outstanding”** has the meaning ascribed thereto in Section 13.7.
- (cccc) **“person”** means and includes any individual, general partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, joint stock company, association, trust, trust company, bank, pension fund, fund, investment fund, investment vehicle, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or other organization or entity, whether or not a legal entity, however designated or constituted.
- (dddd) **“Property Management Agreements”** means each of the agreements from time to time to which CPAI and CAP I LP are parties relating to the management of one or more of the properties owned directly or indirectly by CAP I LP pursuant to which CPAI provides property management services to CAP I LP, and the agreement between CPAI and Kingswood Drive Kitchener Limited Partnership.
- (eeee) **“Purchase Plans”** means the Deferred Sales Charge Purchase Plan, the Fee Based Accounts Purchase Plan, the Front Load Purchase Plan and the Low Load Purchase Plan.
- (ffff) **“real property”** means property which in law is real property and includes, whether or not the same would in law be real property, leaseholds, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and

securities of corporations, trusts or partnerships the sole or principal purpose and activity of which is to invest in, hold and/or deal in real property.

- (gggg) “**Redemption Date**” has the meaning ascribed thereto in Section 6.1.
- (hhhh) “**Redemption Price**” has the meaning ascribed thereto in Section 6.3 or Section 6.5, as the case may be.
- (iiii) “**Register**” has the meaning ascribed thereto in Section 14.4.
- (jjjj) “**Registrar**” means initially Gregory G. Romundt and can mean any such company as may from time to time be appointed by the Trust to act as registrar of the Trust Units.
- (kkkk) “**Related Party**” means, with respect to any person, a person who is a “related party” as that term is defined in Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, as amended from time to time (including any successor rule or policy thereto) and, for greater certainty, a person who is a Related Party to any one of the Trust, COT, CAP I LP, CAP II LP, 2075294 or CAMI is a Related Party to each of them provided that COT, CAP I LP and CAP II LP are affiliates of the Trust.
- (llll) “**Resident**” means a resident of Canada within the meaning of the Tax Act.
- (mmmm) “**Rollover**” means the acquisition on a tax deferred basis of all or substantially all of the issued and outstanding CAP I LP Units by CAP II LP.
- (nnnn) “**Rollover Agreement**” means the rollover agreement between the Trust, CAP I LP, CAP II LP, the holders of CAP I LP units as at, and dated, August 31, 2009 providing, in part, for the acquisition on a tax deferred basis of all or substantially all of the issued and outstanding CAP I LP Units by CAP II LP.
- (oooo) “**Securities Laws**” means, collectively, the applicable securities laws in all of the provinces and territories of Canada and the respective regulations, rules, blanket orders and blanket rulings made under those securities laws together with applicable published policies, policy statements and notices, and shall include all discretionary orders or rulings, if any, of Canadian securities commissions granted in connection with the transactions contemplated by this Trust Indenture.
- (pppp) “**Special Resolution**” has the meaning ascribed thereto in Section 13.6.
- (qqqq) “**Special Voting Unitholders**” mean at any time the holders at that time of one or more Special Voting Units, as shown on the Register of such holders maintained by the on behalf of the Trust.
- (rrrr) “**Special Voting Unit**” means a special voting unit of the Trust referred to in Section 3.1(a) and includes a fraction thereof.
- (ssss) “**subsidiary**” and “**subsidiaries**” of a person means any person that would be deemed to be a subsidiary entity of such person under the *Securities Act* (Ontario)



as it exists on the date hereof (with the necessary changes being made to apply, in addition to its application to companies, to “persons” as defined herein).

- (tttt) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended.
- (uuuu) “**Taxation Year**” means the taxation year of the Trust for the purposes of the Tax Act.
- (vvvv) “**this Trust Indenture**”, “**this Indenture**”, “**hereto**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and similar expressions refer to this instrument and not to any particular Section or portion hereof, and include any and every instrument supplemental or ancillary hereto.
- (wwww) “**Trigger Date**” means the earlier of (a) August 31, 2014 and (b) the day on which the Trustees determine, based on the financial position of the Trust, that the arrangements provided for in the Rollover Agreement should become effective.
- (xxxx) “**Trigger Event**” means either the lapse of the 5-year period following the date of this Trust Indenture or the determination by the Trustees that based on the financial position of the Trust, the arrangements under the Rollover Agreement should become effective.
- (yyyy) “**Trust**” means Centurion Apartment Real Estate Investment Trust, constituted by this Trust Indenture and, for greater certainty, unless otherwise provided, does not include any subsidiaries or affiliates thereof.
- (zzzz) “**Trust Asset Management Agreement**” means the asset management/advisory services agreement between the Trust and CAMI dated January 1, 2013, pursuant to which CAMI provides certain advisory, management and administrative services to the Trust and CAP I LP as such agreement is amended, restated and/or supplemented from time to time.
- (aaaa) “**Trust Unit**” means, as the context may require, a Class A Trust Unit, a Class F Trust Unit, Class I Trust Unit, a Class R Trust Unit, a New Class of Trust Unit or a Class M Trust Unit and includes a fraction of a unit of the Trust, and for greater certainty excludes a Special Voting Unit.
- (bbbb) “**Trust Unitholder**” means at any time a person whose name appears on the Register as a holder of one or more Trust Units.
- (cccc) “**Trustees**” means the trustee or trustees of the Trust holding office under and in accordance with this Trust Indenture from time to time and “Trustee” means any one of them.
- (dddd) “**Trustees’ Regulations**” means the regulations adopted by the Trustees pursuant to Section 10.3.
- (eeee) “**Unit**” means a Trust Unit and/or a Special Voting Unit and includes a fraction thereof.

- (fffff) **“Unit Certificate”** means a certificate, in the form stipulated by Article 14, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof.
- (ggggg) **“Unitholder”** means a person whose name appears on the Register as a holder of one or more Units.

## 1.2 **References to Acts Performed by the Trust**

For greater certainty, where any reference is made in this Trust Indenture to an act to be performed by the Trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustees on behalf of the Trust or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where any reference is made in this Trust Indenture to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity hereunder as trustees of the Trust, and not in their other capacities, unless the context otherwise requires.

## 1.3 **Tax Act**

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

## 1.4 **Number and Gender**

In this Trust Indenture, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa; words importing a gender shall include the feminine, masculine and neuter genders; and words importing persons include an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative.

## 1.5 **Headings for Reference Only**

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

## 1.6 **Day Not a Business Day**

Except as otherwise provided herein, on the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

## 1.7 **Time of the Essence**

Time shall be of the essence in this Trust Indenture.

## 1.8 **Governing Law**

This Trust Indenture and the Unit Certificates shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. Any and all disputes arising under this Trust Indenture, 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.

## 1.9 **Currency**

Unless otherwise specified, all references to money amounts are to lawful currency of Canada.

## **Article 2 DECLARATION OF TRUST**

### 2.1 **Establishment of the Trust**

The Trustees declare and agree to hold and administer the 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 the Trust or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom in trust for the use and benefit of the Trust Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

### 2.2 **Initial Contribution**

The Initial Unitholder has paid, concurrently with the execution of the Initial Declaration of Trust, the Initial Contribution to the Trustees for the purpose of establishing the Trust. The Trustees hereby acknowledge and confirm receipt of the Initial Contribution and confirm that the Initial Unitholder was issued one Class A Trust Unit having a value of \$10 concurrently with the execution of the Initial Declaration of Trust.

### 2.3 **Name of the Trust**

- (a) The Trust shall be known and designated in English as “**Centurion Apartment Real Estate Investment Trust**” and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust, including the execution of all documents and the taking of any legal proceedings, shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

## 2.4 Head Office

The head office of the Trust hereby created shall be located at 25 Sheppard Avenue West, Suite 710, Toronto, Ontario M2N 6S6 or such other place or places in Canada as the Trustees may from time to time designate. The Trust may have such other offices or places in Canada for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

## 2.5 Nature of the Trust

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

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

Without limiting the generality of the foregoing and, insofar as possible, the terms of this Trust Indenture, insofar as they are inconsistent with the provisions of the *Trustee Act* (Ontario), shall prevail.

The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or Annuitants or any of them or any officers or other employees of the Trust or any one of them or any person for any purpose be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustees nor any officer or other employee of the Trust shall be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Trust Indenture.

## 2.6 Rights of Trust Unitholders

The beneficial interests and rights of a holder of any Trust Unit shall be limited to the right to participate pro rata on a class basis in distributions payable to Trust Unitholders when and as declared by the Trustees as contemplated by Article 5 and distributions payable to Trust Unitholders upon the termination of the Trust as contemplated in Article 15 and to the right of redemption as contemplated in Article 6 and Article 7.

The rights of each Trust Unitholder to call for a redemption, distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Trust Unitholder shall be entitled to call for any partition or division of the Trust's property or for a distribution of any particular asset forming part of the Trust's property or of any particular monies or funds received by the Trustees. The legal ownership of the property of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Trust Unitholder has or is deemed to have any right of ownership in any of the property of the Trust, except as specifically provided herein. Except as specifically provided herein, no Trust Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in

connection with the exercise of any powers or authorities conferred upon the Trustees under this Trust Indenture. The Trust Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Trust Indenture.

## 2.7 Liability of Unitholders and Others

No Unitholder or Annuitant or any officer, employee or agent of the Trust shall be held to have any personal liability as such, and no resort shall be had to his private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or Annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for such satisfaction. Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease or mortgage or which is, in the judgment of the Trustees, a material obligation, shall contain a provision to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the Trust) of any of the Unitholders or Annuitant or officers, employees and agents of the Trust, but the property of the Trust or a specific portion thereof only shall be bound. If the Trust acquires any real property investment subject to existing contractual obligations, the Trustees shall use their reasonable efforts to have any such obligations under material contracts (including mortgages), other than leases, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, as far as reasonably possible, any material risk of liability on the Unitholders or Annuitant for claims against the Trust, and shall, to the extent which they determine to be possible and reasonable, including in the cost or premiums, to cause the Trust to carry insurance for the benefit of such persons in such amounts as they consider adequate to cover any foreseeable non-contractual or non-excluded contractual liability. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the provisions of Sections 10.7, 10.10 and 10.11. Nothing in this Declaration will preclude the Trustees from exercising any rights granted to them under the Tax Act or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes that the Trustees have paid on behalf of Unitholders.

## Article 3 ISSUE AND SALE OF UNITS

### 3.1 Nature of Trust Units and Special Voting Units

- (a) The beneficial interests in the Trust shall be divided into interests of different classes, described and designated as “**Class A Trust Units**”, “**Class F Trust Units**”, “**Class I Trust Units**”, “**Class R Trust Units**”, “**Class M Trust Units**”, “**Special Voting Units**” and such other classes of trust units of the Trust which may be created by the Trustees in their discretion (collectively, the “**New Class of Trust Units**”), which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein and as classes. The interest of each Trust Unitholder shall be determined by the number of Trust Units registered in the name of the Trust Unitholder. The interest of each Special Voting Unitholder shall be determined by

the number of Special Voting Units registered in the name of the Special Voting Unitholder.

- (b) For the purpose of facilitating the distribution of the Class A Trust Units via different distribution channels, the Trust may accept subscriptions by Trust Unitholders for Class A Trust Units pursuant to each of the Purchase Plans. For the purpose of facilitating the distribution of the Class F Trust Units, the Trust may accept subscriptions by Trust Unitholders for Class F Trust Units pursuant to the Fee Based Accounts Purchase Plan. For the purpose of facilitating the distribution of the Class I Trust Units, the Trust may accept subscriptions by Trust Unitholders for Class I Trust Units provided the subscriber is an Institution.
- (c) The issued and outstanding Class A Trust Units, Class F Trust Units, Class I Trust Units, Class R Trust Units, Class M Trust Units, any New Class of Trust Units or Special Voting Units may be, respectively, subdivided or consolidated from time to time by the Trustees without notice to the Unitholders.
- (d) So long as there are any Class M Trust Units issued, each Investor Trust Unit shall represent an equal undivided beneficial interest in and to that portion of the Investor Trust Unit Percentage Interest of any distributions from 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 and to that portion that is the Investor Trust Unit Percentage Interest of the net assets of the Trust remaining after satisfaction of all liabilities, provided that the Trustees may, in their discretion, allocate distributions among the classes of Investor Trust Units to adjust for the commissions, trailers and other costs attributable to the sales channels relating to each class of Investor Trust Unit. If no Class M Trust Units are issued, each Investor Trust Unit represents an equal undivided beneficial interest in and to all distributions of the Trust, whether of Net Income, net realized capital gains or other amounts, and in the event of the termination or winding-up of the Trust, in and to all of the net assets of the Trust remaining after satisfaction of all liabilities, provided that the Trustees may, in their discretion, allocate distributions among the classes of Investor Trust Units to adjust for the commissions, trailers and other costs attributable to the sales channels relating to each class of Investor Trust Unit.
- (e) So long as there are any Investor Trust Units issued, each Class M Trust Unit shall represent an equal undivided beneficial interest in and to that portion that is the Class M Trust Unit Percentage Interest of any distributions from 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 and to that portion that is the Class M Trust Unit Percentage Interest of the net assets of the Trust remaining after satisfaction of all liabilities. If no Investor Trust Units are issued, each Class M Trust Unit represents an equal undivided beneficial interest in and to all distributions of the Trust, whether of Net Income, net realized capital gains or other amounts, and in the event of the termination or winding-up of the Trust, in and to all of the net assets of the Trust remaining after satisfaction of all liabilities.
- (f) Each Investor Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders.

- (g) The Trustees shall not accept a subscription for Class M Trust Units from any person other than CAMI. Apart from those circumstances where the holder of Class M Trust Units is not entitled to vote, the holders of Class M Trust Units, in the aggregate, shall be entitled to that percentage of all Unitholder votes equal to the Class M Trust Unit Percentage Interest.
- (h) Special Voting Units shall have no economic entitlement in the Trust. Special Voting Units may only be issued in connection with or in relation to Exchangeable Securities for the purpose of providing voting rights with respect to the Trust to the holders of such securities.
- (i) Each Special Voting Unit shall entitle the holder of record thereof to a number of votes at all meetings of Unitholders or in respect of any written resolution of Unitholders equal to the number of Trust Units into which the Exchangeable Securities to which such Special Voting Unit relates are exchangeable, exercisable or convertible.
- (j) Special Voting Units may be issued in series and shall only be issued to holders of record of Exchangeable Securities and shall only be issued at the time of issue of such Exchangeable Securities. Each Special Voting Unit shall be redeemable by the Trust. In the event of an offer by any person to purchase Exchangeable Securities which is made on identical terms to the holders of all outstanding Trust Units, the related Special Voting Units may be transferred pursuant to such offer without permission of the Trustees. No registered holder of Special Voting Units shall be entitled to a certificate representing or evidencing such Special Voting Units and shall be entitled only to be entered on the Register as a Special Voting Unitholder and the Register shall be conclusive as to the Special Voting Unitholders and the voting entitlement of each Special Voting Unitholder.
- (k) Concurrently with the issuance of any Exchangeable Securities, the Trust shall enter into such agreements (including the Exchange Agreement) as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, the voting rights attached to any Special Voting Units issued to the holder of such Exchangeable Securities and the direct or indirect conversion, exercise, redemption or exchange of such Exchangeable Securities for Trust Units or for other Exchangeable Securities including, without limitation, consolidation and subdivision provisions that provide for concurrent consolidation or subdivision, as the case may be, upon the consolidation or subdivision of the Trust Units, and the conditional and automatic conversion, exercise, redemption or exchange of such Exchangeable Securities in the event of a take-over bid for the Trust Units as provided in Section 14.7, provided that the Trust shall not enter into any agreement that would cause the Trust not to qualify as a "mutual fund trust" for purposes of the Tax Act.
- (l) Upon the exchange or surrender of an Exchangeable Security for a Trust Unit, the Special Voting Unit attached to such Exchangeable Security will automatically be redeemed and cancelled for no consideration without any further action of the Trustees, and the former holder of such Special Voting Unit will cease to have any rights with respect thereto.

### **3.2 Re-designation of Class M Trust Units**

- (a) The Class M Trust Unitholders as a group shall have the right, at any time, to exercise the Conversion Rights in respect of some or all of the Class M Trust Units, provided that:
  - (i) the Trust is legally entitled to comply with its obligations in connection with the exercise of the Conversion Rights; and
  - (ii) the Class M Trust Unitholder who exercises the Conversion Rights complies with all applicable securities laws.
  
- (b) At any time prior to a Mandatory Conversion Event, any Class M Trust Unitholder who wishes to exercise the Conversion Rights shall deliver execute and deliver to the Trustees notice of such exercise that they have elected to cause the Trust to re-designate all or any part of their Class M Trust Units into Class A Trust Units. Upon receipt of such notice, the Trust shall cause the Class M Trust Units referred to therein to be re-designated into that number of Class A Trust Units which is equal to the Class M Trust Unit Specified Ratio at the time of Conversion multiplied by the number of outstanding Class M Trust Units so specified on and as of the date set out in such notice, and thereafter the subject Class M Trust Units shall exist for all purposes as Class A Trust Units. The Trust shall, as soon as practicable after such delivery of an original copy of the instrument of conversion, issue and deliver or cause to be issued and delivered to the Class M Trust Unitholders, a certificate or certificates for the number of Class A Trust Units to which the Class M Trust Unitholder shall be entitled and shall surrender for cancellation a certificate or certificates for the number of Class M Trust Units so converted. No fractional Class A Trust Units shall be issued upon any Conversion. The Class M Trust Unitholders entitled to receive the Class A Trust Units issuable upon any such re-designation shall be treated for all purposes as the record holder or holders of such Class A Trust Units.

### **3.3 Authorized Number of Trust Units**

The aggregate number of Trust Units and Special Voting Units which is authorized and may be issued hereunder is unlimited.

### **3.4 Trust Units Non-Assessable**

No Trust Units shall be issued other than as fully paid and non-assessable. A Trust 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 Trust Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Trust Unit had been issued for money as determined by the Trustees, in their discretion. In determining whether property or past services are the fair equivalent of a money consideration, 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. Notwithstanding the foregoing, Trust Units may be issued and sold on an instalment receipt basis, in which event beneficial ownership of such Trust Units may be represented by the instalments receipts, but shall otherwise be non-assessable.



### **3.5 Fractional Units**

If as a result of any act of the Trustees hereunder or otherwise any person becomes entitled to a fraction of a Unit, such person is not 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 Unitholders. Subject to the foregoing and Section 3.10(a), 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.

### **3.6 Allotment and Issue**

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

### **3.7 Rights, Warrants, Options, Convertible Indebtedness and Other Securities**

The Trustees may create and issue rights, warrants or options or other instruments or securities to subscribe for fully paid Trust Units which rights, warrants, options, instruments or securities may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or security shall not be a Trust Unit and a holder thereof shall not be a Trust Unitholder.

Subject to the provisions of Article 4 hereof, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Trust Units, or which indebtedness, by its terms, may be convertible into Trust Units at such time and for such prices as the Trustees may determine. Any indebtedness so created shall not be a Trust Unit and a holder thereof shall not be a Trust Unitholder unless and until fully paid Trust Units are issued in accordance with the terms of such indebtedness.

### **3.8 Commissions and Discounts**

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

### **3.9 Transferability**

- (a) Trust Units shall only be transferred with the prior written consent of the Trustees. No transfer of Trust Units shall be effective as against the Trust or the Trustees or shall be in any way binding upon the Trust or the Trustees until the transfer has been recorded on the Register maintained by the Registrar.

- (b) Special Voting Units shall only be transferable together with the related Exchangeable Securities and with the prior written consent of the Trustees. No transfer of Special Voting Units shall be effective as against the Trust or the Trustees or shall be in any way binding upon the Trust or the Trustees until the transfer has been recorded on the Register maintained by the Registrar. Subject to the provisions of Article 14, Special Voting Units shall be transferable on the Register or one of the branch transfer registers only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Registrar of all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such authorization and other matters that may reasonably be required by the Trustees or the Registrar. Upon such delivery the transfer shall be recorded on the Register.

### **3.10 Transfer of Trust Units**

- (a) Subject to the provisions of Section 3.9 and Article 14, the Trust Units shall be, for all purposes of the Trust and this Trust Indenture, personal and moveable property, and shall be fully transferable without charge as between persons, but no transfer of Trust Units shall be effective as against the Trust or the Trustees or shall be in any way binding upon the Trust or the Trustees until the transfer has been recorded on the Register or one of the branch transfer registers maintained by the Trustees, the Trust or the Registrar. No transfer of a Trust Unit shall be recognized unless such transfer is of a whole Trust Unit.
- (b) Subject to the provisions of Section 3.9 and Article 14, Trust Units shall be transferable on the Register or one of the branch transfer registers only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Registrar of the Unit Certificate, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by-law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Registrar, if applicable. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit Certificate for the Trust Units shall be issued to the transferee and a new Unit Certificate for the balance of Trust Units not transferred shall be issued to the transferor.
- (c) Unit Certificates representing any number of Trust Units may be exchanged without charge for Unit Certificates representing an equivalent number of Trust Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Registrar where registers are maintained for Unit Certificates pursuant to the provisions of Article 14. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Registrar and then shall be cancelled.

### **3.11 Successors in Interest to Unitholders**

Subject to the provisions of Article 14, any person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new Unit

Certificate therefor upon production of evidence thereof satisfactory to the Trustee and delivery of the existing Unit Certificate to the Trustee or the Registrar to the Trust, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustee or the Registrar or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event.

### **3.12 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 their ownership is expressly otherwise recorded on the register of the Trust, 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 as a holder of any Unit may, subject to the provisions herein contained, be described in the register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **3.13 Performance of Trusts**

The Trustees, the officers of the Trust, the Unitholders, any transfer agent or other agent of the Trust or the Trustees, shall not 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 any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interest therein by any such Unitholder or his personal representative is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded on the Register as Unitholder.

### **3.14 Death of Unitholders**

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give such Unitholder's legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees or the property of the Trust, but shall only entitle the legal representatives of the deceased Unitholder, subject to the provisions of Article 14, to the rights described in Section 3.11, at which time such legal representative shall, subject to the provisions of Article 14, succeed to all rights of the deceased Unitholder under this Trust Indenture.

### **3.15 Unclaimed Distributions**

In the event that the Trustees hold amounts to be paid to Trust Unitholders under Article 5, Article 6 and Article 15 or otherwise which are unclaimed or which cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may any time prior to such required time, pay all or part of the distributions so held to a court in the province in which 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 in which the Trust has its principal office) whose receipt shall be a good and sufficient discharge of the obligations of the Trustees.

### 3.16 Repurchase of Trust Units

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

### 3.17 Re-Purchase of Initial Unit by the Trust

Immediately after Closing or at such other time as may be determined by the Trustees, the Trust will purchase the Initial Unit from the Initial Unitholder, and the Initial Unitholder shall sell the Initial Unit to the Trust, for a purchase price of \$10 and, upon the completion of such purchase and sale, the Initial Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Trust Indenture.

### 3.18 Consolidation of Trust Units

Unless the Trustees determine otherwise, immediately after any pro rata distribution of additional Trust Units to all Trust Unitholders pursuant to Section **Error! Reference source not found.**, the number of the outstanding Trust Units will automatically be consolidated such that each Trust Unitholder will hold after the consolidation the same number of Trust Units as the Trust Unitholder held before the distribution of additional Trust Units. In this case, each Unit Certificate representing a number of Trust Units prior to the distribution of additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

Notwithstanding the foregoing, where tax is required to be withheld from a Trust Unitholder's share of the distribution, the consolidation will result in such Trust Unitholder holding that number of Trust Units equal to (i) the number of Trust Units held by such Trust Unitholder prior to the distribution plus the number of Trust Units received by such Trust Unitholder in connection with the distribution (net of the number of whole and part Trust Units withheld on account of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Trust Units outstanding prior to the distribution by the aggregate number of Trust Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Trust Unitholder. Such Trust Unitholder will be required to surrender the Unit Certificates, if any, representing such Trust Unitholder's original Trust Units, in exchange for a Unit Certificate representing such Trust Unitholder's post consolidation Trust Units.

### 3.19 No Pre-Emptive Rights

Other than under the Exchange Agreement and pursuant to the terms of any Exchangeable Securities, no person shall be entitled, as a matter of right, to subscribe for or purchase any Trust Unit.

**Article 4**  
**INVESTMENT GUIDELINES AND OPERATING POLICIES**

**4.1 Investment Guidelines**

After Closing, the assets of the Trust may be invested only, and the Trust shall not permit the assets of any subsidiary to be invested otherwise, than in accordance with the following investment guidelines:

- (a) the Trust shall focus its activities primarily on the acquisition, holding, maintaining, improving, leasing or managing of multi-unit residential revenue producing properties and ancillary real estate ventures ("**Focus Activities**") in Canada and the United States of America;
- (b) notwithstanding anything herein contained to the contrary, no investment shall be made that would result in:
  - (i) Units of the Trust being disqualified for any class of Deferred Income Plan; or
  - (ii) the Trust ceasing to qualify as a "mutual fund trust" for purposes of the Tax Act;
- (c) no single asset (except as provided for in the Trust Indenture) shall be acquired if the cost of such acquisition (net of the amount of debt secured by such asset) will exceed 15% of Gross Book Value, provided that where such asset is the securities of or an interest in an entity, the foregoing tests shall be applied individually to each asset of such entity;
- (d) investments may be made in a joint venture arrangement only if:
  - (i) the arrangement is in connection with a Focus Activity;
  - (ii) the arrangement is with others ("**joint venturers**") either directly or through the ownership of securities of or an interest in an entity ("**joint venture entity**");
  - (iii) the interest in the joint venture entity is an interest of not less than 10% and is not subject to any restriction on transfer other than a right of first refusal or right of first offer, if any, in favour of the joint venturers;
  - (iv) the Trust or an entity controlled by it has a right of first offer or a right of first refusal to buy the interests of the joint venturers in the joint venture entity;
  - (v) the Trust has the ability to provide input in the management decisions of the joint venture entity; and
  - (vi) without limitation, any joint venture arrangement with a Related Party for the purposes of the related party provisions of the Trust Indenture has been entered into in accordance with such provisions;

- (e) unless otherwise permitted in this Section 4.1 and except for temporary investments held in cash, deposits with a Canadian or U.S. chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities or in money market instruments of, or guaranteed by, a schedule I Canadian chartered bank maturing prior to one year from the date of issue, the Trust, directly or indirectly, may not hold securities other than (i) currency, commodity or interest rate futures contracts for hedging purposes to the extent that such hedging activity complies with the Canadian Securities Administrator's National Instrument 81-102 or any successor instrument or rule; (ii) securities of a joint venture entity, or any entity formed and operated solely for the purpose of carrying on ancillary activities to any real estate owned, directly or indirectly, by the Trust, or an entity wholly-owned, directly or indirectly, by the Trust formed and operated solely for the purpose of holding a particular real property or real properties; and (iii) securities of another issuer provided either (A) such securities derive their value, directly or indirectly, principally from real property, or (B) the principal business of the issuer of the securities is the owning or operating directly or indirectly, of real property, and provided in either case the entity whose securities are being acquired are engaged in a Focus Activity;
- (f) no investment will be made, directly or indirectly, in operating businesses unless such investment is incidental to a transaction:
  - (i) where revenue will be derived, directly or indirectly, principally from a Focus Activity; or
  - (ii) which principally involves the ownership, maintenance, improvement, leasing or management, directly or indirectly, of real property;
- (g) notwithstanding any other provisions of this Section 4.1, the securities of a reporting issuer in Canada may be acquired provided that:
  - (i) the activities of the issuer are focused on Focus Activities; and
  - (ii) in the case of any proposed investment or acquisition which would result in the beneficial ownership of more than 10% of the outstanding equity securities of the securities issuer, the investment or acquisition is of strategic interest to the Trust as determined by the Trustees in their discretion;
- (h) no investments will be made in rights to or interests in mineral or other natural resources, including oil or gas, except as incidental to an investment in real property;
- (i) investments may be made in a mortgage, mortgage bonds, notes (except as provided for in the Trust Indenture) or debentures ("**Debt Instruments**") (including participating or convertible) only if:
  - (i) the real property which is security thereof is real property;
  - (ii) the security therefore includes a mortgage registered on title to the real property which is security thereof; and

- (iii) the amount of the investment (not including any mortgage insurance fees incurred in connection therewith) does not exceed 85% of the market value of the real property which is the security thereof;
- (j) notwithstanding subsection (i), the Trust may also invest in mortgages where:
  - (i) the mortgage is a “vendor take-back” mortgage granted to the Trust in connection with the sale by it of existing real property and as a means of financing the purchaser’s acquisition of such property from the Trust;
  - (ii) the mortgage is interest bearing;
  - (iii) the mortgage is registered on title to the real property which is security thereof;
  - (iv) the mortgage has a maturity not exceeding five years;
  - (v) the amount of the mortgage loan is not in excess of 85% of the selling price of the property securing the mortgage; and
  - (vi) the aggregate value of these mortgages (including mortgages and mortgage bonds in which the Trust is permitted to invest by virtue of this Section 4.1, after giving effect to the proposed investment, will not exceed 15% of Gross Book Value of the Trust calculated at the time of such investment;
- (k) notwithstanding subsection (i) and (j), the Trust may invest in mortgages of related entities that do not deal at arm’s length to the Trust provided that:
  - (i) the purpose of the mortgage is to finance the redevelopment of a property that when complete, would be within the Investment Restrictions of the Trust;
  - (ii) the Trust has a right of first refusal to purchase the property at less than or equal to its fair market value as determined by an independent third party appraiser;
  - (iii) the mortgage bears interest at a commercial rate of interest;
  - (iv) the amount of the mortgage loan is not in excess of 90% of the selling price of the property securing the mortgage;
  - (v) the mortgage has a maturity not exceeding five years;
  - (vi) the mortgage is approved by the Trustees; and
  - (vii) the aggregate value of these mortgages, after giving effect to the proposed investment, will not exceed 15% of Gross Book Value of the Trust calculated at the time of such investment; and
- (l) no investment shall be made in raw land (except for the acquisition of properties adjacent to Existing Properties of the Trust for the purpose of renovation or

expansion of existing facilities where the total cost of all such investments does not exceed 5% of Gross Book Value); and notwithstanding any other provisions hereof, investments may be made which do not comply with the provisions of this Section 4.1 provided (i) the aggregate cost thereof (which, in the case of an amount invested to acquire real property, is the purchase price less the amount of any indebtedness assumed or incurred in connection with the acquisition and secured by a mortgage on such property) does not exceed 15% of the Adjusted Unitholders' Equity of the Trust and (ii) the making of such investment would not contravene subsection (b).

For the purpose of the foregoing guidelines, the assets, liabilities and transactions of a corporation, trust or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis. In addition, any references in the foregoing to investment in real property will be deemed to include an investment in a joint venture arrangement or a limited partnership, the whole subject to Section 4.1(a). Except as specifically set forth in this Trust Indenture to the contrary, all of the foregoing prohibitions, limitations or requirements for investment shall be determined as at the date of investment by the Trust, but always subject to Section 4.1(a).

For greater certainty, Sections 4.1(a) through (l) are intended to set out generally the parameters under which subsidiaries in which the Trust is permitted to invest will be empowered under their constating documents to re-invest. References to the Trust in those paragraphs shall be read as applying to such subsidiary where the actual activity that is the subject of the policy is carried on by such subsidiary. Further, any determinations in respect of the investment restrictions that are determinations reserved to the Trustees, where the actual activity is carried on by a subsidiary, will be made by the trustees or directors of the relevant subsidiary. Nothing in Section 4.1 and paragraphs (a) through (l) empowers or entitles the Trust or the Trustees to carry on business or to otherwise undertake any activity that would violate Section 4.3.

#### 4.2 Operating Policies

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

- (a) the construction or development of real property may be engaged in order to maintain the real properties in which it has a direct or indirect interest in good repair or to enhance the revenue-producing potential of real properties in which it has an interest;
- (b) title to each real property shall be held by and registered in the name of CAP I LP, CAP II LP, CAP II GP or a corporation or other entity wholly-owned directly or indirectly by the Trust or jointly owned directly or indirectly by the Trust with joint venturers; provided, that where land tenure will not provide fee simple title, CAP I LP, CAP II LP, CAP I GP, CAP II GP or a corporation or other entity wholly-owned, directly or indirectly by CAP I LP, CAP II LP or jointly owned, directly or indirectly, by the Trust with joint venturers shall hold a land lease as appropriate under the land tenure system in the relevant jurisdiction;
- (c) no indebtedness shall be incurred or assumed if, after giving effect to the incurring or assumption thereof of the indebtedness, the total indebtedness as a percentage



of Gross Book Value would be more than 75% for indebtedness, including amounts drawn under an acquisition facility;

- (d) except for any indebtedness existing at Closing, no new indebtedness (otherwise than by the assumption of existing indebtedness) will be incurred or renewed or refinanced or secured by a mortgage on any of the real property of the Trust unless, at the date of the proposed incurring of the indebtedness, the aggregate of (i) the amount of all indebtedness secured by such real property, and (ii) the amount of additional indebtedness proposed to be incurred, does not exceed 75% of the market value of such real property, on or after that date which is 12 months from the acquisition date thereof, in either case not including mortgage insurance fees incurred in connection with the incurrence or assumption of such indebtedness, which amount shall be added to the amount of the permitted indebtedness;
- (e) except for guarantees existing on the date of this Trust Indenture, the Trust shall not, directly or indirectly, guarantee any indebtedness or liabilities of any kind of a third party, except indebtedness, liabilities or other obligations of (i) any subsidiary of the Trust or other entity wholly-owned by the Trust, or (ii) other entity jointly owned by the Trust with joint venturers and operated solely for the purpose of holding a particular property or properties where such indebtedness, liabilities or other obligation, if granted, incurred or assumed by the Trust directly, would not cause the Trust to otherwise contravene the restrictions set out in Section 4.1 of this Trust Indenture and, where such indebtedness, liabilities or other obligation is granted, incurred or assumed by a joint venture entity, subject to a joint venturer being required to give up its interest in a property owned by the joint venture entity as a result of another joint venturer's failure to honour its proportionate share of the obligations relating to such property, and, except with the prior approval of the Trustees and subject always to (b) under Section 4.1, the liability of the Trust is limited strictly to the proportion of the indebtedness, liabilities or other obligation equal to the Trust's proportionate ownership interest in the joint venture entity, or (iii) with the prior approval of the Trustees and subject always to (b) under Section 4.1, the indebtedness, liabilities or other obligations of joint venturers in circumstances where any such guarantee may also be given in respect of the associated joint venture entity. In addition, the Trust will not directly or indirectly guarantee any indebtedness, liabilities or other obligations of any Person if doing so would contravene (b) under Section 4.1;
- (f) except for the Contributed Assets acquired pursuant to the Rollover Agreement, an engineering survey or physical review by an experienced third party consultant will be obtained for each real property intended to be acquired with respect to the physical condition thereof;
- (g) at all times insurance coverage will be obtained and maintained in respect of potential liabilities of the Trust and the accidental loss of value of the assets of the Trust from risks, in amounts and with such insurers, in each case as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties;
- (h) except for the Contributed Assets acquired pursuant to the Rollover Agreement, a Phase I environmental audit shall be conducted for each real property to be acquired and, if the Phase I environmental audit report recommends that further

environmental audits be conducted, such further environmental audits shall be conducted, in each case by an independent and experienced environmental consultant;

- (i) at least 8.5% of gross consolidated annual rental revenues generated from properties where the associated mortgage financing is insured by the Canadian Mortgage and Housing Corporation (“**insured properties**”) as determined pursuant to IFRS shall be expended annually on sustaining capital expenditures, repairs and maintenance, all determined on a portfolio basis for all insured properties. For this purpose, capital expenditures and repairs and maintenance include all onsite labour costs and other expenses and items associated with such capital expenditures, repairs and maintenance; and
- (j) the Trust may engage asset managers under terms and conditions acceptable to the Trustees. As at the date hereof, the Trust and CAP I LP have engaged CAMI by the terms of the Trust Asset Management Agreement, which agreement shall remain in full force and effect until terminated by a party thereto in accordance with its terms. It is intended that the fees payable by CAP I LP and the Trust under the Trust Asset Management Agreement shall not be duplicative and the Trustees shall take such steps to ensure that the terms of the Trust Asset Management Agreement is honoured in accordance with the foregoing provisions of this Section 4.2(a).

For greater certainty Sections 4.2(a) through (i) are intended to set out generally the parameters under which the Trust (and subsidiaries in which the Trust is permitted to invest) will operate. References to the Trust in those paragraphs shall be read as applying to such subsidiary where the actual activity that is the subject of the policy is carried on by such subsidiary (with the exception of Section 4.2(c) which is only intended to apply to the Trust). Further, any determinations in respect of the operating policies that are determinations reserved to the Trustees, where the actual activity is carried on by a subsidiary, will be made by the trustees or directors of the relevant subsidiary. Nothing in Sections 4.2(a) through (i) empowers or entitles the Trust or the Trustees to carry on business or otherwise undertake any activity that would violate Section 4.3.

For the purposes of the foregoing investment guidelines and operating policies, the assets, indebtedness, liabilities and transactions of a corporation, partnership or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate, consolidated basis. In addition, any references in the foregoing investment guidelines and operating policies to investment in real property will be deemed to include an investment in a joint venture arrangement. In addition, the term “**indebtedness**” means (without duplication):

- (i) any obligation of the Trust for borrowed money;
- (ii) any obligation of the Trust incurred in connection with the acquisition of property, assets or business other than the amount of future income tax liability arising out of indirect acquisitions;
- (iii) any obligation of the Trust issued or assumed as the deferred purchase price of property;
- (iv) any capital lease obligation of the Trust; and

- (v) any obligation of the type referred to in clauses (i) through (iv) of another person, the payment of which the Trust has guaranteed or for which the Trust is responsible for or liable;

provided that (A) for the purposes of (i) through (iv), an obligation will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with generally accepted accounting principles; (B) obligations referred to in clauses (i) through (iii) exclude trade accounts payable, distributions payable to Trust Unitholders and accrued liabilities arising in the ordinary course of business.

#### **4.3 Mutual Fund Trust Status**

The Trustees have caused the Trust to elect, in respect of the first taxation year of the Trust following the date on which the Trust qualifies therefor, 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 from the date it is established. Notwithstanding anything else contained in this Trust Indenture, the Trust shall not make any investment, take any action or omit to take any action that would result in the Trust failing or ceasing to qualify as a “mutual fund trust” within the meaning of the Tax Act; that would result in the Trust Units being disqualified for investment by Deferred Income Plans; or that would result in COT being liable to pay tax imposed under Part XII.2 of the Tax Act.

#### **4.4 Application of Investment Restrictions and Operating Guidelines**

With respect to the investment restrictions and operating guidelines contained in Sections 4.1 and 4.2, where any maximum or minimum percentage limitation is specified in any of the restrictions therein contained, such restrictions shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment. Any subsequent change relative to any percentage limitation which results from a subsequent change in the book value of the assets of the Trust or the amount of Gross Book Value will not require divestiture of any investment.

#### **4.5 Regulatory Matters**

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

#### **4.6 United States Taxation Matters**

- (a) The Trustees will use their best efforts to conduct the activities of the Trust in a manner to ensure that the Trust will not be a “publicly traded partnership” that would be taxable as a corporation under Section 7704 of the Code.
- (b) The Trust may, directly or indirectly, make such investments, do all such things and carry out all such activities as are necessary or desirable in connection with the conduct of its activities provided they are not otherwise specifically prohibited by the Declaration of Trust.

- (c) Unless otherwise specifically prohibited by this Declaration of Trust, the Trust may invest in freehold, leasehold, or other interests in property (real, personal, moveable or immovable).

## **Article 5 DISTRIBUTIONS**

### **5.1 Computation of Distributable Income**

The Distributable Income of the Trust for or in respect of any period shall be based on the applicable net income of the Trust and its applicable subsidiaries for such period set out in its consolidated financial statements as determined in accordance with generally accepted accounting principles, subject to certain adjustments, including:

- (a) adding or adding back the following items, as the case may be: depreciation, amortization (except for amortization of deferred financing costs incurred after the Closing), future income tax expense, losses on dispositions of assets and amortization of any net discount on long-term debt assumed from vendors of properties at rates of interest less than fair value incurred after the Closing;
- (b) deducting the following items: future income tax credits, maintenance capital expenditures, interest on the CAP I LP Grid Note to the extent not already deducted in computing net income, gains on dispositions of assets and amortization of any net premium on long-term debt assumed from vendors of properties at rates of interest greater than fair value incurred after Closing; and
- (c) any other adjustments as determined by the Trustees in their discretion.

Distributable Income may be estimated by the Trustees whenever the actual amount has not been fully determined. Such estimates shall be adjusted as of a subsequent Distribution Date when the amount of Distributable Income has been determined by the Trustees.

Distributable Income shall be calculated for each Distribution Period or other calendar period selected by the Trustees.

### **5.2 Class Entitlement**

If there are any Class M Trust Units issued, each Investor Trust Unit shall receive an equal undivided beneficial interest in and to the Investor Trust Unit Percentage Interest of any distributions from the Trust, whether of Net Income, net realized capital gains or other amounts. If there are no Class M Trust Units issued, each Investor Trust Unit shall receive an equal undivided beneficial interest in and to all distributions from the Trust, whether of Net Income, net realized capital gains or other amounts.

If there are any Investor Trust Units issued, each Class M Trust Unit shall receive an equal undivided beneficial interest in and to the Class M Trust Unit Percentage Interest of any distributions from the Trust, whether of Net Income, net realized capital gains or other amounts. If there are no Investor Trust Units issued, each Class M Trust Unit shall receive an equal undivided beneficial interest in and to all distributions from the Trust, whether of Net income, net realized capital gains or other amounts.

### 5.3 **Distribution of Distributable Income**

The Trust may distribute to Trust Unitholders on or about each Distribution Date such percentage of the Distributable Income of the Trust for any Distribution Period or other period as the Trustees in their discretion may determine and declare. Notwithstanding the foregoing, the Trust currently intends to distribute in each year, subject to appropriate reserves as determined by the Trustees, in the range of 85% of the Distributable Income of the Trust for such year provided that the Trust receives amounts equal to such distributions from its investments. Trust Unitholders at the close of business on each Distribution Record Date shall be entitled to receive and to enforce payment of any distribution of Distributable Income declared by the Trustees for such Distribution Period. The total amount due and payable pursuant to this section on or before December 31 of any calendar year shall not be less than the amount necessary to ensure that the Trust will not be liable to pay income tax under Part I of the Tax Act for such year. The distribution for any Distribution Period will be paid on the Distribution Date for such Distribution Period. In addition to the distributions which are made payable to Trust Unitholders, the Trustees may designate and make payable any income or capital gains realized by the Trust (including any income or capital gains realized by the Trust on the redemption of Trust Units in specie) to redeeming Trust Unitholders. 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.

### 5.4 **Year End Distribution of Net Income**

On the last day of each Taxation Year an amount equal to the Net Income for such Taxation Year not previously made payable to or treated as having been paid to Trust Unitholders in the Taxation Year (including pursuant to Section 6.5) shall be payable to Trust Unitholders at the close of business on such day.

### 5.5 **Year End Distribution of Net Realized Capital Gains**

On the last day of each Taxation Year, an additional distribution equal to the Net Realized Capital Gains for such Taxation Year not previously made payable or treated as having been paid to Trust Unitholders in the Taxation Year (including pursuant to Section 6.5) shall be payable to Trust Unitholders at the close of business on such day except to the extent that the distributions previously payable or treated as having been paid to Trust Unitholders in the Taxation Year (including pursuant to Sections 5.4 and 6.5) exceed the aggregate of (A) the Net Income for such Taxation Year, and (B) any Net Realized Capital Gains previously made payable or treated as having been paid to Trust Unitholders in the Taxation Year (such excess is hereinafter referred to as an "**Excess Distribution**").

To the extent that an additional distribution of Net Realized Capital Gains is not made by reason of an Excess Distribution, pursuant to this Section 5.5, the distributions of Distributable Income made pursuant to Section 5.1 shall be deemed to have included payment of an amount of Net Realized Capital Gains equal to the lesser of the Net Realized Capital Gains for the Taxation Year and the Excess Distribution.

### 5.6 **Payment of Distributions**

- (a) Distributions paid on each Trust Unit shall be equal to that paid on each other Trust Unit, provided that the Trustees may, in their discretion, allocate distributions among the classes of Investor Trust Units to adjust for the commissions, trailers and other costs attributable to the sales channels relating to each class of Investor

Trust Unit. Cash distributions shall be made by cheque payable to or to the order of the Trust Unitholder, by electronic funds transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Trust Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Trust Unitholder at his address as it appears on the Register unless the cheque is not paid on presentation. In the case of joint registered Trust Unitholders, any cash payment required hereunder to be made to a Trust Unitholder shall be deemed to be required to be made to such Trust Unitholders jointly and shall be paid by cheque or bank draft but may also be, paid in such other manner as the joint registered Trust Unitholders or any one of the joint registered Trust Unitholders has designated to the Trustees and the Trustees have accepted. For greater certainty, a Trust Unitholder or any one of the joint Trust 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 Trust Unitholder or to a joint account of such Trust Unitholder and any other person or in the case of joint registered Trust Unitholders to an account of joint registered Trust Unitholders or to an account of any one of the joint registered Trust Unitholders. A cheque or bank draft shall, unless the joint registered Trust Unitholders otherwise direct, be made payable to the order of all of the said joint registered Trust Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unit holding, 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 Trust Unitholder in another acceptable manner of any payment not mailed or paid in accordance with this Section 5.6(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 Trust Unitholders or, in consequence of the death, bankruptcy or incapacity of a Trust Unitholder, one or several Persons are entitled so to be registered, subject to the provisions of Article 14, in accordance with this Trust Indenture, 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. A Trust Unitholder shall be entitled on the day on which a distribution is payable pursuant to Sections 5.1, 5.4 or 5.5 to enforce payment of the amount payable to the Trust Unitholder. However, no Trust Unitholder 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) Distributions under Section 5.3 shall be paid in cash or in Units (in the absolute discretion of the Trustees) as provided in Section 5.3, and may be reinvested in Units pursuant to any distribution reinvestment plan. Where the Trustees determine that the Trust does not have available cash in an amount sufficient to pay the full amount of any distribution which is payable hereunder on the due date for such

payment, or where the Trustees otherwise determine in their absolute discretion that all or a portion of such distribution should not be paid in cash, the payment may, at the option of the Trustees, include the issuance of additional Units, or fractions of Units, 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 either has been determined by the Trustees in their absolute discretion to be available, or which the Trustees have otherwise determined shall be distributed in their absolute discretion as the case may be, for the payment of such distribution. Immediately after a distribution has been made in Units in accordance with the foregoing, the Units distributed shall be reinvested in additional Units, and then the number of outstanding Units will be consolidated so that each Unitholder will hold, after the consolidation, the same number of Units as the Unitholder held before the Unit distribution. Such additional Units will be issued pursuant to applicable exemptions under applicable security laws, discretionary exemptions granted by applicable securities regulatory authorities or a prospectus or similar filing.

- (c) For greater certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount which is determined by the Trustee to be payable, or is otherwise required or deemed to be payable, to a Unitholder in accordance with this Declaration of Trust.

#### 5.7 Withholding Taxes

- (a) The Trustees may deduct or withhold from distributions payable to any Trust Unitholder all amounts required by law to be withheld from such distributions, whether such distributions are in the form of cash, additional Trust Units or otherwise. In the event of a distribution in the form of additional Trust Units, the Trustees may sell Trust Units of such Trust Unitholder to pay such withholding taxes and to pay all the Trustees' reasonable expenses with regard thereto and the Trustees shall have the power of attorney of such Trust Unitholder to do so. Upon such sale, the affected Trust Unitholder shall cease to be the holder of such Trust Units.
- (b) If (i) any of the entities in which the Trust has invested is required under U.S. federal income tax law to deduct and withhold and remit any amount to any governmental agency or body from any payment made by such entity to the Trust because of a particular Unitholder's status or for any other reason which is specifically attributable to a particular Unitholder (including, without limitation, the failure of a particular Unitholder to provide any required Form W-8BEN) (the particular Unitholder referred to herein as the "**relevant Unitholder**") and (ii) under applicable U.S. federal income tax law, such amount is required to be deducted and withheld and remitted on account of a U.S. federal income tax liability of the relevant Unitholder relating to the payment, then the Trust shall have the right to recover from each relevant Unitholder the full amount of such U.S. tax in such manner as is deemed appropriate by the Trust, including, without limitation, reducing distributions which would otherwise be made to such Unitholder until the Trust has recovered or selling Units of such Unitholder so as to recover, the amount so deducted, withheld and paid.

## 5.8 Reinvestment

The Trustees may in their sole discretion establish a distribution reinvestment plan at any time providing for the voluntary reinvestment of distributions by some or all Trust Unitholders as the Trustees determine. Such plan may entitle those Trust Unitholders that elect to participate in a bonus distribution from the Trust or otherwise be entitled to receive additional Trust Units in respect of each distribution.

## 5.9 Income Tax Matters

In computing the Net Income for income tax purposes for any year, except as the Trustees otherwise determine, the Trust shall claim the maximum amount of any discretionary deductions available to the Trust under the Tax Act.

## 5.10 Allocations of Net Income and Net Realized Capital Gains for Tax Purposes

- (a) In accordance with and to the extent permitted by the Tax Act, the Trustees shall, in each year, make such designations for Canadian income tax purposes in respect of amounts paid or payable or deemed to be paid to the Trust 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.
- (b) For U.S. federal income tax purposes, items of income, gain, loss, credits and deductions shall be allocated to Unitholders in the same proportions as distributions received by the Unitholders.

## 5.11 Definitions

Unless otherwise specified or the context otherwise requires, any term in Article 1 and this Article 5 which is defined in the Tax Act shall have for the purposes of Article 1 and this Article 5 the meaning that it has in the Tax Act.

## **Article 6 REDEMPTION OF TRUST UNITS**

### 6.1 Right of Redemption

Each Trust Unitholder shall be entitled to require the Trust to redeem on the 15<sup>th</sup> day of any month, or if the 15<sup>th</sup> day is not a Business Day, on the next Business Day after the 15<sup>th</sup> day of the month, such date being the “**Redemption Date**”, at the demand of the Trust Unitholder as set out below all or any part of the Trust Units registered in the name of the Trust Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.

### 6.2 Exercise of Redemption Right

- (a) A Trust Unitholder who desires to exercise their right to require redemption, must deliver a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, specifying the number of Trust Units to be so redeemed, such notice to be sent to the Trust at its head office along



with the Unit Certificate(s) representing the Trust Unit(s) to be redeemed. The Notice must be received 30 days before the Redemption Date to be considered for that particular Redemption Date. If 30 days notice is not given, the Trustees will not be required to consider redeeming the Unit(s) until the next subsequent Redemption Date. No form or manner of completion or execution is sufficient unless the same is in all respects satisfactory to the Trustees and is accompanied by any evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice. The Trustees shall be entitled in their sole discretion to accelerate the Redemption Date specified by the Trust Unitholder in the notice.

- (b) All notices shall be time and date stamped.
- (c) Upon receipt by the Trust of the notice to redeem Trust Units, the Trust Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Trust Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.
- (d) All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

### 6.3 Cash Redemption

Trust Unitholders whose Trust Units are redeemed will be entitled to receive a redemption price per Trust Unit (hereinafter the "**Redemption Price**") equal to:

- (a) in the case of the Investor Trust Units, 100% of their Fair Market Value reduced by any Early Redemption Charge that may apply; and
- (b) in the case of Class M Trust Units, an amount equal to the amount determined according to (a) above in respect of an Investor Trust Unit.

For the purposes of this Section 6.3, "**Fair Market Value**" shall be determined by the Trustees and is shall be determined by the Trustees, in their sole discretion, using other reasonable methods of determining fair market value.

Notwithstanding Section 6.2(a) and Section 6.2(b), the Trustees may reduce the Redemption Price by any Early Redemption Charge that may apply if the Units being redeemed are within the Early Redemption Period specific to the Units being redeemed. The initial Early Redemption Charge will be 6.0% of redemption proceeds in the first three years of the purchase of the Trust Units. This Early Redemption Charge may be increased, decreased, amended or waived at any time and from time to time at the discretion of the Trustees.

### 6.4 No Cash Redemption in Certain Circumstances

Section 6.3 shall not be applicable to Trust Units tendered for redemption by a Trust Unitholder, if the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds

\$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any particular calendar month. In the absence of such waiver, Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3 exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3 and, subject to any applicable regulatory approvals, by a distribution in specie of securities under Section 6.5 on a pro rata basis.

## 6.5 In Specie Redemption

If, pursuant to Section 6.4, Section 6.3 is not applicable to Trust Units tendered for redemption by a Trust Unitholder, the price per Trust Unit (“**Redemption Price**”) to which the Trust Unitholder is entitled shall be the fair market value thereof as determined by the Trustees and, subject to any applicable regulatory approvals, shall be paid out and satisfied by way of a distribution in specie, at the sole discretion of the Trustees by way of either of the following:

- (a) issuance and delivery of a number of the COT Notes (each in the principal amount of \$100) having an aggregate principal amount equal to the Redemption Price per Trust Unit multiplied by the number of Trust Units tendered for redemption. The Redemption Price payable pursuant to this Section 6.5(a) in respect of Trust Units tendered for redemption during any calendar month shall be paid by the issuance of the COT Notes (each in the principal amount of \$100) to or to the order of the Trust Unitholder who exercised the right of redemption, on the last day of the calendar month following the calendar month in which the Units were tendered for redemption. Payments by the Trust of the Redemption Price will conclusively be deemed to have been made upon the mailing of the relevant COT Notes by registered mail in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest in the Trust Units being redeemed. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed. No fractional COT Notes in a principal amount less than \$100 will be issued and, where the number of securities to be received by the former Trust Unitholder includes a fraction or a principal amount less than a multiple of \$100, such number shall be rounded to the next lowest number or multiple of \$100, as the case may be; or
- (b) a distribution in specie to the Trust Unitholder of a number of Debt Securities (each in the principal amount of \$100) having an aggregate principal amount equal to the Redemption Price per Trust Unit multiplied by the number of Trust Units tendered for redemption. To the extent that there are insufficient Debt Securities, the Trust may, in the Trustees’ discretion, transfer further property to a Subsidiary (in the case of COT Notes, by exercise of the Exchange Agreement) in exchange for additional Debt Securities. The Debt Securities will then be distributed in satisfaction of the Redemption Price. The Redemption Price payable pursuant to this Section 6.5(b) in respect of Trust Units tendered for redemption during any calendar month shall be paid by the transfer of the Debt Securities (each in the principal amount of \$100) to or to the order of the Trust Unitholder who exercised the right of redemption, on the last day (the “**Transfer Date**”) of the calendar month following the calendar month in which the Trust Units were tendered for redemption. The Trust shall be entitled to all interest accrued on the Debt Securities to and including the Transfer Date. Payments by the Trust of the Redemption Price will conclusively be deemed to have been made upon the mailing of the relevant Debt Securities by registered

mail in a postage prepaid envelope addressed to the former Trust Unitholder and/or any party having a security interest in the Trust Units being redeemed. Upon such payment, the Trust shall be discharged from all liability to the former Trust Unitholder and any party having a security interest in respect of the Trust Units so redeemed. No fractional Debt Securities in a principal amount less than \$100 will be distributed and, where the number of securities to be received by the former Trust Unitholder includes a fraction or a principal amount less than a multiple of \$100, such number shall be rounded to the next lowest number or multiple of \$100, as the case may be.

## **6.6 Capital Gains and Income on In Specie Distribution**

Where the Trust makes a distribution in specie of a pro rata number of Debt Securities on a redemption of Trust Units pursuant to Section 6.5(b):

- (a) the Trustees may, in their sole discretion, designate as payable to the particular redeeming Trust Unitholders receiving Debt Securities portions of the amount of the value of such Debt Securities:
  - (i) not exceeding the amount of any capital gain of the Trust as a result of the distribution of such property as an amount payable out of the Net Realized Capital Gains of the Trust; and
  - (ii) not exceeding the amount of accrued interest on Debt Securities distributed on such redemption as an amount payable out of the Trust Income;
- (b) if the Trust determines to make a payment of in specie redemption proceeds to Trust Unitholders pursuant to Section 6.5(b) with Debt Securities which are COT Notes, the Trust will exercise its rights under the Exchange Agreement to transfer the Trust property, or an undivided beneficial interest in the Trust property, to COT in exchange for COT Notes, to make such payment using COT Notes; and
- (c) the amount of any capital gains or income realized in a year by the Trust as a result of any disposition of property by the Trust to COT pursuant to the Exchange Agreement, or to another Subsidiary pursuant to a transfer of property in exchange for Debt Securities, to permit the payment of in specie redemption proceeds to Trust Unitholders pursuant to Section 6.5(b), may, for purposes of computing the net income 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 Trust Unitholders redeeming Trust Units in such year proportionate to the number of Trust Units of each such Trust Unitholder redeemed by the Trust and such portion of any capital gain will be designated by the Trust to be a taxable capital gain for the year of each particular Trust Unitholder.

## **Article 7 REDEMPTION OF SPECIAL VOTING UNITS**

### **7.1 Redemption of Special Voting Units**

Upon the exchange or surrender of an Exchangeable Security for a Trust Unit, the Special Voting Unit attached to such Exchangeable Security will automatically be redeemed and cancelled for no consideration without any further action of the Trustees, and the former holder of

such Special Voting Unit will cease to have any rights with respect thereto shall be cancelled and shall no longer be outstanding and shall not be reissued.

## **Article 8 TRUSTEES**

### **8.1 Number of Trustees**

The number of Trustees shall consist of not less than five and not more than eleven Trustees, with the number of Trustees from time to time within such range being fixed by resolution of the Trustees; provided that until otherwise so determined by resolution, the number of Trustees following completion of the Rollover shall be five.

### **8.2 Calling and Notice of Meetings**

The Trustees may act with or without a meeting. Meetings of the Trustees shall be called and held at such time and at such place in Canada as the Trustees, the Chairman of the Trustees or any two Trustees may determine, and any one Trustee or officer of the trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting. A trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have waived notice of such meeting except when the Trustee attends the meeting for the purpose of objecting to the transaction of any business on the grounds 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' Resolutions and any such rules or procedures shall not be inconsistent with this Trust Indenture.

### **8.3 Place of Meetings**

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

### **8.4 Meetings by Telephone**

With the consent of the chairman of the meeting or a majority of the other Trustees present at the meeting, a Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other. A Trustee participating in such a meeting in such manner shall be considered present at the meeting and at the place of the meeting.

## **8.5 Quorum**

The quorum for the transaction of business at any meeting of the Trustees shall consist of a majority of the number of Trustees then holding office, provided that a majority of the Trustees comprising the quorum must be Residents and Independent Trustees. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

## **8.6 Chairman**

The chairman of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chairman of the Trustees or if such person is not present, the Trustees present shall choose one of their numbers to be chairman for the purposes of that meeting. The Chairman of the Trustees and the chairman of any meeting of Trustees shall be a Resident and an Independent Trustee.

## **8.7 Action by the Trustees**

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question, provided, however, that the approval required with respect to any Independent Trustee Matter shall be that of a majority of the independent Trustees who have no interest in the Independent Trustee Matter. In the case of equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees. Resolutions in writing may be signed in counterparts each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

## **8.8 Adjourned Meeting**

Any meeting of Trustees may be adjourned from time to time by the chairman of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

## **8.9 Remuneration and Expenses**

The Trustees shall be paid such compensation for their services as the Trustees may from time to time determine. The Trustees shall also be reimbursed for reasonable travel and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof, held on separate occasions, or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor. The Trustees shall be eligible to participate in any incentive plan for employees and/or officers adopted by the Trust or COT.

## **8.10 Officers**

The Trustees from time to time may appoint one or more officers of the Trust, including without limitation a Chairman of the Trustees, and, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the

Trustees and, in the absence of such determination, shall be those usually applicable to the office held. All officers so appointed shall be Residents.

#### **8.11 Residency of Trustees**

A majority of the Trustees must be Residents. If at any time a majority of the Trustees are not Residents or there are no Trustees who are Residents, the Trustee or Trustees who are Non-Residents shall be deemed, immediately before that time, to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation. If at any time the number of Trustees is less than the number required under this Trust Indenture and the remaining Trustee or Trustees fail or are unable to act in accordance with Sections 9.2 and/or 9.7 to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Unitholders shall appoint one or more Trustees so that following such appointment a majority of the Trustees are Residents and, failing such appointment, any remaining Trustee or Unitholder or officer of the Trust or the Auditors, as the case may be, may apply to the Superior Court of Ontario for an order appointing one or more Trustees so that following such appointment a majority of the Trustees are Residents, to act until the next annual meeting of Unitholders or on such other terms as the Court may order. Any Trustee who is a Resident who proposes to become a Non-Resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a Resident.

#### **8.12 Independent Trustees**

A majority of the Trustees and a majority of the members of any committee of the Trustees must be Independent Trustees, except that all members of the audit committee must be Independent Trustees. If at any time a majority of the Trustees are not Independent Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which period of time the remaining Trustees, whether or not they constitute a quorum, shall appoint a sufficient number of Independent Trustees to comply with this requirement.

### **Article 9 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES**

#### **9.1 Qualification of Trustees**

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than 18 years of age;
- (b) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual; and
- (d) a person who has the status of bankrupt.

A majority of the Trustees must be Independent Trustees, unless the absence of such a majority arises between meetings of the Unitholders by reason of any Trustee's resignation, death or failure to meet the above qualifications.

**9.2 Appointment of Trustees**

Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders, and may be appointed at a special meeting of Unitholders, in each case to hold office, subject to Section 9.6, for a 3-year term expiring at the close of the next annual meeting of Unitholders following such an appointment. Any such appointment shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in the manner set out in Section 13.14. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Trust Indenture until successors have been appointed or they cease to hold office;
- (b) CAMI shall be entitled two (2) Trustees if there are less than six (6) Trustees; three (3) Trustees if there are between seven (7) and eight (8) Trustees; four (4) Trustees if there are between nine (9) and ten (10) Trustees and five (5) Trustees if there are eleven (11) Trustees;
- (c) the Trustees may, between annual meetings of the Unitholders, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office at the expiration of the immediately preceding annual meeting of Unitholders and provided that if the appointment of an additional Trustee is to replace one of CAMI's nominees, CAMI will be entitled to appoint the Trustee; and
- (d) a majority of the Trustees holding office at any time shall be Residents.

**9.3 Consent to Act**

- (a) A person who is appointed a Trustee hereunder, other the persons appointed pursuant to Section 9.2, shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

“To: Centurion Apartment Real Estate Investment Trust (the “Trust”)

And To: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned's appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the amended and restated Declaration of Trust made as of the 19<sup>th</sup> day of September, 2017, as supplemented, amended or amended and restated from time to time, constituting the Trust, and to be bound by the obligations and liabilities of a Trustee thereunder.

Dated: \_\_\_\_\_

\_\_\_\_\_

[Signature]

\_\_\_\_\_  
[Print Name]"

- (b) Except as provided in Section 9.2, upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 9.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Trust Indenture, as supplemented, amended or amended and restated from time to time.
- (c) The right, title and interest of the Trustees to control and exclusively administer the Trust and have title in and to the property of the Trust drawn up in their names and all other rights to the Trustees at law shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification (including pursuant to Section 9.3(a)) without any further act, and they shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of Trustees hereunder, whether or not conveyancing documents have been executed and delivered pursuant to this Section 9.3(c) or otherwise.

#### 9.4 Failure to Elect Minimum Number of Trustees

If a meeting of Unitholders fails to elect the minimum number of Trustees required by this Trust Indenture by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may, subject to Sections 8.11 and 8.12, exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

#### 9.5 Ceasing to Hold Office

- (a) A Trustee ceases to hold office when:
  - (i) he or she dies or resigns;
  - (ii) he or she is removed in accordance with Section 9.6;
  - (iii) he or she ceases to be duly qualified to act as a Trustee as provided under Section 9.1;
  - (iv) at the time of his appointment he was not a Resident and his appointment would result in a majority of Trustees being non-Residents; or
  - (v) he or she ceases to be a Trustee in accordance with Section 8.11.
- (b) A Trustee may resign at any time by an instrument in writing signed by him/her and delivered or mailed to the Chairman of the Trustees or, if there is no Chairman of the Trustees, the President of the Trust. A resignation of a Trustee becomes effective at the time a written resignation is received by the Trust upon 30 days' written notice, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is



duly appointed as a Trustee, except in the case of a deemed resignation under Section 8.11 which shall be effective at the time therein prescribed.

- (c) Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Trust Indenture; provided, however, that such Trustee shall continue to be entitled to be paid any amount owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 10.11. Upon the resignation or removal of any Trustee, or his/her otherwise ceasing to be a Trustee, he or she 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 he or she holds as Trustee; and (iv) resign from all representative or other positions held by him or 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 he or she shall be discharged from his/her obligations as Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees may require as provided in this Section 9.5. In the event that a Trustee or his or 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.

#### **9.6 Removal of Trustees**

The Unitholders may remove any Trustee or Trustees from office by resolution approved by at least a majority of the votes cast at a meeting of 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. Any Trustee or Trustees may be removed from office for cause by resolution passed by not less than two-thirds of the remaining 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. A vacancy created by the removal of a Trustee may be filled at the meeting of Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 9.7.

#### **9.7 Filling Vacancies**

No vacancy among the Trustees shall operate to annul this Trust Indenture 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. A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees other than in accordance with Section 8.1 or from a failure of the Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Trust Indenture, or in the case of a vacancy created by a CAMI nominee no longer serving as Trustee, CAMI shall fill such vacancy. Trustees appointed by the Trustees or CAMI between meetings of the Unitholders or to fill a vacancy, in each case in accordance with Sections 8.1 or 9.7, 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. If there is not a quorum of Trustees, or if the vacancy has arisen from an increase in the number of Trustees other than in accordance

with Section 8.1 or from a failure by the Unitholders to elect the minimum number of Trustees required by or pursuant to this Trust Indenture, the Trustees then in office shall forthwith call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Sections 9.5 and 9.6, until the close of the next annual meeting of the Unitholders.

#### **9.8 Validity of Acts**

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

### **Article 10 CONCERNING THE TRUSTEES**

#### **10.1 Powers of the Trustees**

Subject to the terms and conditions of this Trust Indenture, the Trustees may exercise from time to time in respect of the Trust's property and the investments and affairs of the Trust any and all rights, powers and privileges that could be exercised by a legal and beneficial owner thereof.

Subject to the specific limitations contained in this Trust Indenture, the Trustees shall have, without further or other action or consent, and free from any power or control on the part of the Trust Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the assets of the Trust 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, carrying out the trust created hereunder. In construing the provisions of this Trust Indenture, the presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 10.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted 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 limited or purporting to limit investments which may be made by trustees. Without limiting the generality of the foregoing, but subject to Sections 4.1, 4.2 and 10.2 and any other express limitations contained in this Trust Indenture, 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.

#### **10.2 Specific Powers and Authorities**

Subject only to the express limitations contained in this Trust Indenture and in addition to any other powers and authorities conferred by this Trust Indenture 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 at any time and from time to time the

following powers and authorities which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as they may from time to time determine proper:

- (a) to supervise the activities and manage the investments and affairs of the Trust;
- (b) to maintain records and provide reports to Unitholders;
- (c) to collect, sue for and receive all sums of money due to the Trust;
- (d) to effect payment of distributions to the Trust Unitholders as provided in Article 5;
- (e) to invest funds of the Trust as provided in Article 4;
- (f) if the Trustees become aware by written notice that the beneficial owners of 49% or more of the Trust Units then outstanding are, or may be, Non-Residents or that such situation is imminent, the Trustees shall ensure that the limitations on non-resident ownership as provided in Section 14.5 are met;
- (g) to possess and exercise all the rights, powers and privileges pertaining to the ownership of COT Units and COT Notes held by the Trust, to the same extent that an individual might, unless otherwise limited herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;
- (h) where reasonably required, to engage or employ on behalf of the Trust any persons as agents, representatives, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers 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;
- (i) 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 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 agents, representatives, officers, employees, independent contractors or other persons, including the directors of CAP I GP and CAP II GP, without liability to the Trustees, except as provided in this Trust Indenture and without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- (j) to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;

- (k) to arrange for, out of the assets of the Trust, insurance contracts and policies insuring the Trust, its assets and/or any or all of the Trustees, the Unitholders, Annuitants or officers including 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 or Unitholders, Annuitants or officers;
- (l) to cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust's property be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (m) to issue Units for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of this Trust Indenture;
- (n) to enter into and perform the Trust's obligations under any agreement in connection with, or to facilitate, the issuance of Exchangeable Securities;
- (o) to enter into or perform the obligations of the Trust under the Material Contracts;
- (p) in addition to the mandatory indemnification provided for in Section 10.11 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, the Unitholders, Annuitants, or any escrow agent, to such extent as the Trustees shall determine;
- (q) with the approval or confirmation of Unitholders, enact and from time to time amend or repeal by-laws not inconsistent with this Trust Indenture containing provisions relating to the Trust, the Trust's property and the conduct of the affairs of the Trust, but not in conflict with any provision of this Trust Indenture;
- (r) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;
- (s) 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 Trust's property, undertaking or income of the Trust, or imposed upon or against the Trust's property, undertaking or 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 Net Income or Net Realized Capital Gains distributed to Unitholders in the year 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 the 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;

- (t) for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Trust Units or through the issuance of obligations or securities of the Trust and hold for investment, COT Units and COT Notes;
- (u) 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; to guarantee, indemnify or act as surety (subject to Section 4.2) with respect to payment or performance of obligations of wholly owned subsidiaries); to lend money or other property of the Trust, whether secured or unsecured; to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- (v) 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;
- (w) 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;
- (x) 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;

- (y) to determine conclusively the allocation to capital, income or other appropriate accounts for all receipts, expenses, disbursements and property of the Trust;
- (z) to prepare, sign and file or cause to be prepared, signed and filed any 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 Trust 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;
- (aa) 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;
- (bb) 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 Trust Units;
- (cc) to grant broad discretion to a third party, including the directors of the CAP II GP Inc., to administer and manage the day-to-day operations of the Trust and to make executive decisions which conform to the general policies and principles set forth in this Trust Indenture or otherwise established by the Trustees from time to time;
- (dd) to develop the Trust's approach to governance issues and periodically reviewing the composition and effectiveness of the Trustees and to adopt and periodically review and update the Trust's written disclosure policy (which will, among other things, articulate the legal obligations of the Trust and its subsidiaries and their respective trustees, directors, officers and employees with respect to confidential corporate information; identify spokespersons who are the only persons authorized to communicate with third parties;
- (ee) to impose, increase, decrease or waive an early redemption charge in respect of any Trust Unit tendered for redemption in a period determined, at the sole discretion of the Trustees, as a reasonable minimum investment horizon for the Trust Units that will in general encourage Trust Unitholders, for the benefit of the Trust and all Trust Unitholders to hold Trust Units for the long term and not to encourage short term trading of the Trust Units; and
- (ff) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Trust Indenture.

### 10.3 Further Powers of the Trustees

Subject to the provisions hereof, the Trustees shall have the power to prescribe any form provided for or contemplated by this Trust Indenture and the Trustees may make, adopt, amend or repeal regulations (the "**Trustees' Regulations**") containing provisions relating to the conduct of the affairs of the Trust, 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 Trust Indenture 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 contrary to this Trust Indenture which it may determine are necessary or desirable in interpreting, applying or administering this Trust Indenture or in administering, managing or operating the Trust. To the extent of any inconsistency between this Trust Indenture and any regulation, decision, designation or determination made by the Trustees, this Trust Indenture shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any Trustees' Regulations, decisions, designations or determinations made pursuant to this Section 10.3 shall be conclusive and binding upon all persons affected thereby. The Trustees shall also have such additional powers as may be approved by a resolution of the Unitholders passes at a meeting of Unitholders by a majority of the votes cast at that meeting.

#### **10.4 Limitations on Powers**

The Trustees hereby acknowledge that CAP I LP and CAP II LP are 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 COT to effect any changes or amendments to the provisions of CAP I LP and CAP II LP's investment guidelines or operating policies that are parallel to those contained in this Trust Indenture without the approval of Unitholders by Special Resolution and for any other amendment to such guidelines or policies without the approval of a majority of votes cast at a meeting of Unitholders.

#### **10.5 Banking**

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

#### **10.6 Standard of Care and Duties**

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and the Unitholders and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Trust Indenture except in cases where the Trustees fail (a) to act honestly and in good faith with a view to the best interests of the Trust and the Unitholders or (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations

hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

#### **10.7 Reliance Upon Trustees and Officers**

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 the Trust or to securities of the Trust shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustees or any officer of the Trust appointed by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust shall be bound to see the application of any funds or property passing into the hands or control of the Trustees or officers of the Trust. The receipt of the Trustees or officers of the Trust for monies or other consideration shall be binding upon the Trust.

#### **10.8 Fees and Expenses**

As part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust's property, reasonable fees, costs and expenses incurred in connection with the administration and management of the Trust, including (without limitation) real property and brokerage commissions in respect of investments and dispositions of real property made by the Trust, fees of auditors, accountants, lawyers, engineers, appraisers and other agents, consultants and professional advisors employed by or on behalf of the Trust, fees of securities administrators and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust's property.

#### **10.9 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 Trust Indenture, 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 the Annuity holders 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.

#### **10.10 Limitations on Liability of Trustees**

- (a) Subject to Section 10.6, none of the Trustees nor any officers or any agents of the Trust shall be liable to any Unitholder or holder of Exchangeable Securities or any other person in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security, for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 10.6. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Trust Indenture, the Trustees



may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Trust Indenture, including, without limitation, the standard of care, diligence and skill set out in Section 10.6 hereof, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) Subject to Section 10.6, none of the Trustees nor any officer or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with the Trust's property or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any the Trust's property, to the Trust or to the Unitholders or to any other person for anything done or permitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Trust Indenture or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Trust shall be solely liable therefor and resort shall be had solely to the Trust's property for payment or performance thereof.

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

#### 10.11 Indemnifications

- (a) Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust's property in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or former Trustee or officer or former officer in consequence of the performance of its duties hereunder, other than in respect of remuneration received by such person for the performance of such duties, and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative, investigative or other action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or any subsidiary thereof, provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust's property in respect of unpaid taxes or other governmental charges or in respect of such costs, charges and expenses that arise out of or as a result or in the course of a breach of the standard of care, diligence and skill set out in Section 10.6. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust's property, and no Trust Unitholder, Annuitant or other Trustee or officer shall

be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

- (b) In addition to any indemnification otherwise arising out of Section 10.11, each of Gregory G. Romundt, his heirs, personal representatives, executors and administrators, 2075294, CAMI, CAPI, each of their respective affiliates and each is hereby indemnified from and against all claims, actions, causes of action (including amounts paid to settle an action or satisfy a judgment) and all reasonable expenses, charges and disbursements of every kind and nature incurred by him/it, including those for the services of any experts, legal fees, charges and disbursements on an as between a solicitor and his/its own client basis incurred by him in defending any proceeding giving rise to any claim, action or judgment in respect of any guarantee or indemnity given by him/it regarding any of the obligations of the Trust or any Affiliate of the Trust to persons dealing at arm's length with him out of the Trust's property. No Trust Unitholder, Annuitant or Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

#### **10.12 Contractual Obligations of the Trust**

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include in any written instrument which is, in the judgment of the Trustees, a material obligation as a specific term of such obligations or liabilities a contractual provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon and that resort shall not be had to, nor shall recourse or satisfaction be sought from, by way of lawsuit or otherwise, 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 shall be bound. The Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of real property. The omission of such statement from any such document or instrument shall not render the Trustees or the Unitholders or Annuitants liable to any person, nor shall the Trustees or the Unitholders or Annuitants be liable for such omission. If, notwithstanding this provision, any of the Trustees or any Unitholder or Annuitant shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation, then such Trustee, Unitholder or Annuitant shall be entitled to indemnity and reimbursement out of the Trust's property to the full extent of such liability.

#### **10.13 Conflicts of Interest**

After Closing, if a Trustee or an officer of the Trust is a party to a Material Contract or transaction or proposed material contract or transaction with the Trust or its subsidiaries, or is a director or officer or employee 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 of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees or a committee of the Trustees, as the case may be, the nature and extent of such interest.

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

- (ii) if the Trustee or officer was not then interested in a proposed, contract or transaction, at the first such meeting after he or she becomes so interested;
  - (iii) if the Trustee or officer becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
  - (iv) if a person who is interested in a contract or transaction later becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (b) Notwithstanding paragraph (a), where this Section 10.13 applies to any person in respect of a Material Contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.
- (c) A Trustee referred to in this Section 10.13 shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is:
  - (i) one relating primarily to his or her remuneration as a Trustee, officer, employee or agent of the Trust; or
  - (ii) one for indemnity under Section 10.11 hereof or for the purchase of liability insurance.
- (d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 10.13 disclosing that he or she is a director, officer or employee 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 Trust Indenture or by law.
- (e) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or in which he or she has a material interest:
  - (i) the Trustee or officer, as applicable, 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 the Trustee or officer is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee or an officer disclosed his or her interest in accordance with this Section 10.13 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.

- (f) Notwithstanding anything in this Section 10.13, but without limiting the effect of paragraph (e) hereof, a Trustee or 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 holding the office of Trustee or officer, 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 the Trustee's or officer's interest therein void or voidable, where:
  - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
  - (ii) the nature and extent of the Trustee's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Trust Indenture or by-law.
- (g) Subject to paragraphs (e) and (f) hereof, where, after Closing, any Trustee or officer of the Trust fails to disclose his interest in a Material Contract or transaction in accordance with this Trust Indenture or otherwise fails to comply with this Section 10.13, 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 the Trustee or officer account to the Trust for any profit or gain realized.

#### **10.14 Conditions Precedent**

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

#### **10.15 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 regarding Independent Trustee Matters.

## **Article 11 COMMITTEES OF TRUSTEES**

### **11.1 Delegation**

Except as prohibited by law, the Trustees may appoint from their number a committee of Trustees and may delegate to the committee of Trustees such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the administration of the duties of the Trustees under this Trust Indenture, without regard to whether such authority is normally granted or delegated by Trustees, provided that a majority of the Trustees appointed to any committee shall be Residents and, subject to Section 11.2, a majority of the Trustees appointed to any committee shall be Independent Trustees.

### **11.2 Audit Committee**

The Trustees shall appoint an audit committee (the “**Audit Committee**”) to consist of not less than three Trustees all of whom shall be Independent Trustees and who shall meet any requirements imposed by applicable law, including without limitation the requirements of Multilateral Instrument 52-110 – Audit Committees, for the purpose of membership on such committee.

The Auditors 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.

### **11.3 Procedure**

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members provided that a majority of the Trustees comprising such quorum must be Residents. Each committee shall have the power to appoint its chairman who must be a Resident and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing meetings of the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

## **Article 12 AMENDMENT**

### **12.1 Amendment**

Subject to Section 12.2, the provisions of this Trust Indenture, except where specifically provided otherwise, may only be amended by the vote of a majority of the votes cast at a meeting of Unitholders duly called for that purpose; provided that the provisions of this Trust Indenture may be amended by the Trustees without the consent, approval or ratification of the Unitholders or any other person:

- (a) at any time and in any manner prior to the Closing; or
- (b) after the Closing for the purpose of:
  - (i) ensuring continuing compliance with applicable laws (including the Tax Act and maintaining the Trust's status as a "mutual fund trust" under the Tax Act), regulations, requirements or policies of any governmental or other authority, having jurisdiction over the Trustees, the Trust or over the distribution of Trust Units;
  - (ii) providing additional protection, in the opinion of the Trustees, for the Unitholders;
  - (iii) removing any conflicts or inconsistencies in this Trust Indenture or making minor corrections including the rectification of any ambiguities, defective provisions, errors, mistakes or omissions which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
  - (iv) making amendments which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Circular and this Trust Indenture;
  - (v) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in generally accepted accounting principles (including accounting guidelines) or taxation or other laws or the administration or enforcement thereof;
  - (vi) enabling the Trust to issue Units for which the purchase price is payable in instalments;
  - (vii) to create one or more additional classes of units solely to provide voting rights to holders of shares, units or other securities that are exchangeable for Units entitling the holder thereof to a number of votes not exceeding the number of Units into which the exchangeable shares, units or other securities are exchangeable or convertible but that do not otherwise entitle the holder thereof to any rights with respect to the Trust's property or income other than a return of capital; or
  - (viii) any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Trust Unitholders and is necessary or desirable,

but notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Unit or the entitlement to distributions from the Trust provided hereunder (including those provided for in Article 5 and Article 15) represented by any Unit without the consent of the Unitholders and no such amendment shall reduce the percentage of votes required to be cast at a meeting of the Unitholders for the purpose of this Section 12.1 without the consent of the holders of all of the Units then outstanding or cause the Trust to fail or cease to qualify as a "mutual fund trust" under the Tax Act..

## 12.2 Special Resolution Vote

Notwithstanding Section 12.1, no action or authorization and no amendment may be made to this Trust Indenture by the Trustees with respect to:

- (a) the termination of the Trust;
- (b) any combination, merger, amalgamation or arrangement of the Trust, COT, CAP I LP or CAP II LP, as the case may be, any sale of all or substantially all of the assets of the Trust, COT, CAP I LP or CAP II LP, as the case may be, or the liquidation or dissolution of the Trust, COT, CAP I LP, CAP II LP, as the case may be, (other than as part of an internal reorganization of the assets of the Trust, COT, CAP I LP or CAP II LP, as the case may be, as approved by the Trustees);
- (c) the provisions of Section 4.1;
- (d) the provisions of the COT Indenture concerning the computation of net income;
- (e) an exchange, reclassification or cancellation of all or part of the Units other than as specifically provided for in Section 7.1 with respect to Special Voting Units;
- (f) the addition, change or removal of the rights, privileges, restrictions or conditions attached to the Units and, including, without limiting the generality of the foregoing:
  - (i) the removal or change of rights to distributions;
  - (ii) the addition or removal of or change to conversion privileges, options, voting, transfer or pre-emptive rights; or
  - (iii) the reduction or removal of a distribution preference or liquidation preference;
- (g) the creation of new rights or privileges attaching to certain of the Units; or
- (h) the constraint on the issue, transfer or ownership of Units or the change or removal of such constraint, except as otherwise provided herein;

except in each case with the approval of Unitholders given by the affirmative vote of at least two-thirds of the votes cast at a meeting of Unitholders duly called for that purpose. The provisions of Section 4.2 maybe amended with the approval of a majority of the votes cast by Unitholders duly called for that purpose.

## 12.3 Variation of Rights

Except as otherwise provided herein, the rights and restrictions attached to Trust Units and Special Voting Units, respectively, may not be varied or abrogated without the consent of the holders of the outstanding Trust Units or Special Voting Units, as the case may be, by Special Resolution voting separately as a class. There shall not otherwise be class votes of Trust Units or Special Voting Units.

## 12.4 Changes to Other Documents

The Trust will not agree to or approve any material change to the CAP II LP Partnership Agreement, the COT Indenture or the Exchange Agreement without approval of at least a two-thirds majority of the votes cast at a meeting of the Unitholders called for that purpose.

## 12.5 No Termination

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

# Article 13 MEETINGS OF UNITHOLDERS

## 13.1 Annual and Special Meetings of Unitholders

Annual meetings of the Unitholders shall be called on a day on or before September 30 in each year, at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include (i) the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, (ii) the appointment of the Trustees for the ensuing year in accordance with Article 9, (iii) the appointment of Auditors, (iv) directing the Trustees as to the election of nominees of the Trust to serve as COT Trustees, (v) directing the Trustees as to the election of nominees of the Trust to serve as Directors of CAP II GP, and (vi) the transaction of such other business as Unitholders may be entitled to vote upon as hereinafter provided in this Article 13 or as the Trustees may determine. Special meetings of the Unitholders may be called at any time by the Trustees and, except in the circumstances contemplated by Section 105(3) of the *Business Corporations Act* (Ontario), (to be applied *mutatis mutandis* to Unitholders as if they were shareholders of a business corporation incorporated under the said Act), must be called by the Trustees upon a written request of Unitholders holding in the aggregate not less than 5% of the Units then outstanding, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chairperson of any annual or special meeting shall be the Chairman of the Trustees or any other Trustee specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chairperson of the meeting by the Unitholders present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chairperson of the meeting or by resolution passed by a majority of the votes cast by Unitholders represented at the meeting may attend meetings of the Unitholders. Unitholders shall have the right to obtain a list of Unitholders to the same extent and upon the same conditions as those which apply to shareholders of a corporation for and by the *Business Corporation Act* (Ontario).

## 13.2 Notice of Meetings

Notice of all meetings of Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Unitholder at his or her last address on the books of the Trust, mailed at least 30 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place in Canada where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 13.6(b), may be held as adjourned without further notice. The accidental omission to give notice or the non-receipt of such notice by a Unitholder shall not



invalidate any resolution passed at any such meeting. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat (unless the Unitholder or other person attends the meeting for the purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called) or those not so present or represented have waived notice. Any Unitholder (or a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 13.2, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

### **13.3 Quorum**

At any meeting of the Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the aggregate number of votes attached to all outstanding Units. 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 called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than seven days later and to such place in Canada and time as may be appointed by the chairperson 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.

### **13.4 Voting Rights of Unitholders**

Only Unitholders of record shall be entitled to vote. On a poll vote at any meeting of Unitholders, each Trust Unit shall entitle the holder or holders of that Trust Unit to one vote, and each Special Voting Unit shall entitle the holder or holders of that Special Voting Unit to the number of votes determined in accordance with Section 3.1(j). Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands, on which every person present and entitled to vote shall be entitled to one vote. At any meeting of Unitholders, any holder of Units entitled to vote thereat may vote by proxy and a proxy need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the Registrar for verification at least 24 hours prior to the commencement of such meeting. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

### **13.5 Certain Matters on which Unitholders must Vote**

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

- (a) subject to Sections 8.1, 9.2 and 9.6, a change in the number, the election or removal, of Trustees;
- (b) except as provided in Article 18, the appointment or removal of auditors of the Trust;

- (c) the appointment of an inspector as provided in Section 13.11;
- (d) the exercise by the Trust of certain voting rights attached to the COT Units held by it and the exercise by COT of the voting rights attaching to the Class A LP Units held by it as provided in Sections 10.4 and 12.4; or
- (e) any amendment to this Trust Indenture (except as provided in Section 4.5 or Section 12.1).

Nothing in this Section 13.5, however, shall prevent the Trustees from submitting to a vote of Unitholders at a meeting any matter which they deem appropriate.

### 13.6 Meaning of “Special Resolution”

- (a) The expression “**Special Resolution**” when used in this Trust Indenture means, subject to this Article 13, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this Section 13.6 at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the number of votes attached to the Units then outstanding and passed by the affirmative votes of the holders of at least two-thirds of the Units represented at the meeting and voted on a poll upon such resolution.
- (b) Notwithstanding Section 13.3, if at any meeting at which a Special Resolution is proposed to be passed the holders of 10% of the aggregate number of votes attached to all outstanding Units are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved, but in any other case it shall stand adjourned to such date, being not less than 30 nor more than 60 days later and to such place in Canada and time as may be appointed by the chairperson of the meeting. Not less than 10 days prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 13.2. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in Section 13.6(a) shall be a Special Resolution within the meaning of this Trust Indenture, notwithstanding that the holders of less than 10% of the aggregate number of Units then outstanding are present in person or by proxy at such adjourned meeting.
- (c) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.
- (d) For the purpose of a separate class vote by the holders of Trust Units or Special Voting Units as a class as provided herein, the expression “**Special Resolution**” means a resolution proposed to be passed at a separate meeting of holders of Trust

Units or Special Voting Units, as the case may be, at which meeting the provisions of this Article 13 shall apply *mutatis mutandis*.

### 13.7 Meaning of “Outstanding”

Subject to the provisions of Article 14, every Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Registrar for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding;
- (b) for the purpose of any provision of this Trust Indenture entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Trust Indenture, Units deemed not to be outstanding pursuant to Section 14.5 and Units owned directly or indirectly, legally or equitably, by the Trust, COT, CAP I LP, CAP II LP or any affiliate thereof shall be disregarded, except that:
  - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustees know are so deemed or owned shall be so disregarded; and
  - (ii) Units so owned which have been pledged in good faith other than to the Trust, COT, CAP I LP, CAP II LP or an affiliate thereof shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee’s right to vote such Units in his or her discretion free from the control of the Trust, COT, CAP I LP, CAP II LP or any affiliate thereof; and
- (c) for the purposes of Section 13.7(b), COT, CAP I LP and CAP II LP shall provide a certificate which will state the number of Units and the certificate numbers of Unit Certificates, if such certificates are issued, of the Trust, which are held by COT, CAP I LP, CAP II LP or any affiliate thereof. The Trustees shall be entitled to rely on such certificates in order to disregard the votes of any of the parties mentioned above.

### 13.8 Record Date for Voting

For the purpose of determining the Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 30 days prior to the date of any meeting of Unitholders as a record date for the determination of Unitholders entitled to vote at such meeting or any adjournment thereof, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof even though the Unitholder has since that time disposed of his or her Units, and no Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof, unless the Trustees determine otherwise. In the event that the Trustees do not fix a record date for any meeting of Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 13.2.

### **13.9 Proxies**

Whenever the vote or consent of Unitholders is required or permitted under this Trust Indenture, such vote or consent may be given either directly by the Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his or her agent duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chairman of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.

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

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

### **13.10 Personal Representatives**

Subject to the provisions of Article 14, if a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled to exercise if the Unitholder 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 13.4 relating to joint holders shall apply.

### **13.11 Appointment of Inspector**

The Trustees shall call a meeting of Unitholders upon the written request of Unitholders holding in the aggregate not less than 25% of the Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting.

### **13.12 Conduct of Meetings**

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

### **13.13 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this Article 13 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to Section 13.5, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

### **13.14 Resolution in Lieu of Meeting**

Notwithstanding any other provision of this Trust Indenture, 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.

### **13.15 Actions by Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a special resolution in lieu hereof) in accordance with this Article 13.

## **Article 14 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS**

### **14.1 No Alteration**

- (a) The provisions of this Article 14 shall not in any way alter the nature of the Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Trust Units if desirable to issue them to Trust Unitholders and the recording of all transactions in respect of Trust Units and Unit Certificates whether by the Trust, securities dealers, registrars or other persons. Trust Units may be issued in the form of the Unit Certificate;

### **14.2 Unit Certificates**

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time for Investor Trust Units or Class M Trust Units, as applicable, by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
  - (i) be in the English language;

- (ii) be dated as of the date of issue thereof; and
  - (iii) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trustees and the Registrar of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually.

#### 14.3 Contents of Unit Certificates

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
- (i) the name of the Trust and the words “A trust governed under the laws of the Province of Ontario created by an amended and restated declaration of trust made as of the 19<sup>th</sup> day of September, 2017, as supplemented, amended and amended and restated from time to time” or words of like effect;
  - (ii) the name of the person to whom the Unit Certificate is issued as Trust Unitholder;
  - (iii) the number of Trust Units represented thereby and whether or not the Trust Units represented thereby are fully paid;
  - (iv) that the Trust Units represented thereby are transferable subject to Article 14 of this Trust Indenture;
  - (v) “The Trust Units represented by this certificate are issued upon the terms and subject to the conditions of the amended and restated declaration of trust made as of 19<sup>th</sup> day of September, 2017 (the “**Declaration of Trust**”) which is binding upon all holders of Trust Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust, pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
  - (vi) “For information as to personal liability of a Trust Unitholder, see the reverse side of this certificate” or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, *inter alia*, the following:

- (i) “The Declaration of Trust provides that no Trust Unitholder or annuitant or beneficiary of a trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan or any other plan of which a Trust Unitholder acts as trustee or carrier shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
- (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Trust Units.

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

#### 14.4 Register of Unitholders

A register (the “**Register**”) shall be kept at the office of the Registrar in the town of Toronto, Ontario, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units and type of Units held by them, the certificate numbers of certificates representing such Units, if any, and a record of all transfers and redemptions thereof. Only Unitholders whose Units or certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including, without limitation, payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders. Subject to Sections 14.1 and 14.5, 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.

#### 14.5 Limitation of Non-Resident Ownership

- (a) Non-Residents shall not be the beneficial owners, directly or indirectly, of more than 49% of all outstanding Trust Units. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trustees become aware that the beneficial owners of 49% of the Trust Units then outstanding are, or may be, Non-Residents or that such a situation is or may be imminent, the Registrar shall not accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-Resident. If, notwithstanding the foregoing, the Trustees determine that more than 49% of the Trust Units are held or beneficially-owned by Non-Residents, the Trustees may send a notice to Non-Resident holders of Trust Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell or redeem their Trust Units or a portion thereof within a specified period of not less than 60 days. The notice shall also require such Non-Resident to notify the Trust of the sale when completed. If the Trust Unitholders receiving such notice have not sold or redeemed the specified number of Trust Units or provided the Trustees with satisfactory evidence

that they are not Non-Residents within such period, the Trust may, on behalf of such Trust Unitholders, sell or redeem such Trust Units without further notice and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units. For the purposes of such sale, the Trustees and the Registrar shall be deemed to be the agents and lawful attorney of such Non-Resident. Upon such sale or redemption, the affected holders shall cease to be holders of Trust Units and their rights shall be limited to receiving the net proceeds of sale or redemption upon surrender of the certificates representing such Trust Units, subject to the right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Unitholders. The Trustees shall have no liability for any amount received provided that the Trustees acted in good faith.

- (b) Subject to Section 10.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 14.5 by virtue of the powers conferred on them hereby. The Trustees shall not be deemed to have notice of any violation of this Section 14.5 unless and until they have been given written notice of such violation and shall act only as required by this Trust Indenture once an indemnity is provided. The Trustees shall not be required to actively monitor the holdings of Non-Residents in the Trust. The Trustees shall not be liable for any violation of the non-resident ownership restriction which may occur during the term of the Trust.
  
- (c) Special Voting Units shall not be held by or for the benefit of Non-Residents. Each Special Voting Unitholder is deemed to have represented to the Trustees that it is not and does not hold such units for behalf of a Non-Resident and will be deemed to have covenanted to maintain such representation true for as long as it continues to hold one or more Special Voting Units. If the Trustees determine that a Person has purported to become or remain, directly or indirectly, a holder of Special Voting Units in breach of the above mentioned representations or covenant, or if the Special Voting Unitholder fails to provide a declaration in form and content satisfactory to the Trustees that it is not a Non-Resident and does not hold such Units for the benefit of Non-Resident, (i) the Trustees will inform the CAP II GP (or such other Person who controls the entity which issued the Exchangeable Securities to which such Special Voting Units relate) and require such person to effect, forthwith, a transfer of such securities and units to a Person who does not contravene the above mentioned limitation on ownership ("**New Holder**") in accordance with the terms of the CAP II LP Agreement or other document governing the issue and terms of exchange of the Exchangeable Securities to which such Special Voting Units relate; and (ii) effective immediately prior to the breach, such Person shall be deemed to have ceased to be a holder of such Special Voting Units, the voting rights attached to such Special Voting Units shall be suspended and such Special Voting Units shall be deemed not to be outstanding until acquired by a Person who does not contravene the above mentioned limitation on ownership. If the CAP II GP (or such other person who controls the entity which issued the Exchangeable Securities to which such Special Voting Units relate) does not effect a transfer of such securities and units to a New Holder in accordance with the terms of the relevant agreement, the Trustees shall cause such units to be cancelled, they shall no longer be outstanding and may not be reissued, and the Trustees shall have the power of attorney of such Unitholder to do so.



- (d) Where the exercise of the Exchange Right in respect of Class B LP Units by a holder thereof would result in more than 49% of the Trust Units being held or beneficially owned by Non-Residents or otherwise jeopardize the Trust's status as a "unit trust" or "mutual fund trust" under the Tax Act, the Trust shall issue the Trust Units to be distributed by the CAP II LP to the holder of Class B LP Units in satisfaction of such holder's exercise of the Exchange Right in the name of the CAP II LP and then immediately sell such Trust Units on behalf of CAP II LP and pay the proceeds of such sale to, or to the direction of, CAP II LP in full satisfaction of the Trust's obligations in respect of the exercise of the Exchange Right by the holder of Class B LP Units in respect of such Class B LP Units. The Trustees shall have a power of attorney of CAP II GP to do so.
- (e) The Trustees shall have the sole right and authority to make all determinations necessary for the administration of the provisions of this Section 14.5 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the ownership restrictions set forth in this Section 14.5 has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. In any situation where it is unclear whether Units are held by or for the benefit of Non-Residents, the Trustees may exercise their discretion in determining whether such Units are or are not so held, and any such exercise by the Trustees of their discretion shall be binding for the purposes of this Section 14.5. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination in this respect to any officer of the Trust.

#### 14.6 Lost Certificates

In the event that any Unit Certificate for Trust Units is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new Unit Certificate for the same number of Trust Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and to require the applicant to supply to the Trust a "lost certificate bond" or a similar bond in such reasonable sum as the Trustees or the Registrar may direct indemnifying the Trust for so doing.

#### 14.7 Take-Over Bid

- (a) In this Section 14.7:
  - (i) **"Dissenting Unitholder"** means a Trust Unitholder who does not accept an Offer referred to in Section 14.7(d) and includes any assignee of the Trust Unit of a Trust Unitholder to whom such an Offer is made, whether or not such assignee is recognized under this Trust Indenture;
  - (ii) **"Offer"** means an offer to acquire Outstanding Trust Units where, as of the date of the offer to acquire, the Trust Units that are subject to the offer to

acquire, together with the Offeror's Trust Units, constitute in the aggregate 20% or more of all outstanding Trust Units;

- (iii) **"offer to acquire"** includes an acceptance of an offer to sell;
- (iv) **"Offeror"** means a person, or two or more persons acting jointly or in concert, who make an Offer;
- (v) **"Offeror's Notice"** means the notice described in Section 14.7(d); and
- (vi) **"Offeror's Trust Units"** means Trust Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.

(b) In the event an Offer for all of the outstanding Trust Units is made, any holder of Exchangeable Securities, including the Class B LP Units, may, unless prohibited by the terms and conditions of the Exchangeable Security, convert, exercise or exchange such Exchangeable Security, as applicable, for the purpose of tendering Trust Units to such Offer on the condition that such Trust Units are taken up under such Offer, unless an identical offer (in terms of price per Trust Unit issuable upon the conversion, exercise or exchange of the Exchangeable Security and percentage of outstanding securities to be taken up exclusive of securities owned immediately prior to the offer by the Offeror, or associates or affiliates of the Offeror and in all other material respects) is made concurrently by the Offeror to purchase the Exchangeable Securities, which identical offer has no condition attached other than the right not to take up and pay for securities tendered if no securities are purchased pursuant to the Offer for Trust Units. In the event that a holder of Exchangeable Securities elects to conditionally convert, exercise or exchange such Exchangeable Securities for the purpose of tendering Trust Units to such Offer, the tendering of a certificate issued by the Trust indicating that the Trust Units are issuable upon and subject to completion of the Offer shall be good delivery under such Offer and after payment of the consideration therefor to the former holder of the Exchangeable Securities such holder shall cease to have, any rights as a holder of Exchangeable Securities, Special Voting Units or Trust Units to the extent that the Trust Units issuable upon the conversion, exercise or exchange of such Exchangeable Securities have been taken up by the Offeror. For the purposes of the remainder of this Section 14.7, unless the identical Offer referred to above is made, a reference to "Trust Units" will be deemed to include Trust Units issuable upon the conversion of Exchangeable Securities.

(c) If an Offer for all of the Outstanding Trust Units (other than Trust Units held by or on behalf of the Offeror or an affiliate or associate of the Offeror) is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Section 14.7, and:

- (i) if within 120 days after the date of the Offer, the Offer is accepted by Trust Unitholders representing at least 90% of the Outstanding Trust Units, other than the Offeror's Trust Units;

- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Trust Units of the Trust Unitholders who accepted the Offer; and
- (iii) the Offeror complies with Sections 14.7(d) and 14.7(f);

the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Trust Units held by the Dissenting Unitholders for the same consideration per Trust Unit payable or paid, as the case may be, under the Offer.

- (d) Where an Offeror is entitled to acquire Trust Units held by a Dissenting Unitholder pursuant to Section 14.7(c), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the "**Offeror's Notice**") to each Dissenting Unitholder stating that:

- (i) Trust Unitholders holding at least 90% of the Trust Units of all Trust Unitholders, other than Offeror's Trust Units, have accepted the Offer,
- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Trust Units of the Trust Unitholders who accepted the Offer;
- (iii) Dissenting Unitholders must transfer their respective Trust Units to the Offeror on the terms on which the Offeror acquired the Trust Units of the Trust Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
- (iv) Dissenting Unitholders must send their respective Unit Certificate(s) (or, in the case of Exchangeable Securities, the certificates representing such Exchangeable Securities) to the Trust within 21 days after the date of the sending of the Offeror's Notice.

- (e) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to Section 14.7(d), shall, within 21 days after the sending of the Offeror's Notice, send his or her Unit Certificate(s) (or, in the case of Exchangeable Securities, the certificates representing such Exchangeable Securities) to the Trust, duly endorsed for transfer, if such certificate has been provided.

- (f) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 14.7(d), the Offeror shall pay or transfer to the Trustees, or to such other person as the Trustees may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to Section 14.7(b).

- (g) The Trustees, or the person directed by the Trustees, shall hold the cash or other consideration it receives under Section 14.7(f), but such cash or other consideration shall not form any part of the Trust's property. The Trustees, or such persons, shall deposit cash in a separate account in a Canadian chartered bank, and shall place other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.

- (h) Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 14.7(d), the Trustees, if the Offeror has complied with Section 14.7(f), shall:

- (i) do all acts and things and execute and cause to be executed all instruments as in the Trustees' opinion may be necessary or desirable to cause the transfer of the Trust Units of the Dissenting Unitholders to the Offeror and the Offeror shall be deemed to be the owner of the Trust Units of the Dissenting Unitholders referred to in Section 14.7(h) at the earlier of such transfer or the expiry of such 30 days;
- (ii) send to each Dissenting Unitholder who has complied with Section 14.7(e) the consideration to which such Dissenting Unitholder is entitled under this Section 14.7; and
- (iii) send to each Dissenting Unitholder who has not complied with Section 14.7(e) a notice stating that:
  - (A) his or her Trust Units have been transferred to the Offeror,
  - (B) the Trustees or some other person designated in such notice are holding the consideration for such Trust Units; and
  - (C) the Trustees, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Unit Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof,

and the Trustees are hereby appointed the agents and attorneys of the Dissenting Unitholders for the purposes of giving effect to the foregoing provisions.

- (i) For greater certainty, the Exchangeable Securities of the Dissenting Unitholders will be deemed to have been exchanged into Trust Units and transferred concurrently to the Offeror with the transfer of the balance of the Trust Units under Section 14.7(h).
- (j) Subject to applicable law, an Offeror cannot make an Offer for Trust Units unless, concurrent with the communication of the Offer to any Unitholder, a copy of the Offer is provided to the Trust.

The Trust shall cause the terms, conditions, restrictions, rights and obligations of Exchangeable Securities to contain corresponding provisions as may be reasonably necessary or desirable to give effect to this Section 14.7 with respect to holders of Exchangeable Securities, including, without limitation, provisions to effect the automatic conversion, exercise or exchange of Exchangeable Securities by a non-tendering Offeree holder thereof or redemption by the issuer of such Exchangeable Securities.

## **Article 15 TERMINATION**

### **15.1 Term of the Trust**

Subject to the other provisions of this Trust Indenture, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on August 31, 2009. For the purpose of terminating the Trust by such date, the Trustees

shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

#### **15.2 Termination with the Approval of Unitholders**

The Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust as soon as may be reasonably practicable. Such Special Resolution may contain such directions to the Trustees as the Unitholders determine, including a direction to distribute the property of the Trust in specie.

#### **15.3 Procedure Upon Termination**

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

#### **15.4 Powers of the Trustees Upon Termination**

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

#### **15.5 Sale of Investments**

After the date referred to in Section 15.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 15.2, sell and convert into money all the Trust's property in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a termination authorized under Section 15.2). If the Trustees are unable to sell all or any of the assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares or other assets directly to the Unitholders in accordance with their pro rata interests.

#### **15.6 Distribution of Proceeds or Assets**

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of the Trust's property together with any cash forming part of the Trust's property ("**Liquidated Net Assets**") among the Unitholders in accordance with their pro rata interests on a class basis.

#### **15.7 Further Notice to Unitholders**

In the event that less than all of the Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in Section 15.3, the

Trustees shall give further notice to the remaining Unitholders to surrender their Trust Units (or convert their Exchangeable Securities and surrender their Trust Units) for cancellation and if, within one year after the further notice, all the Exchangeable Securities have not been converted and all the Trust Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their pro rata share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

#### **15.8 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust's property after the date referred to in Section 15.3 and, after such sale, the sole obligation of the Trustees under this Trust Indenture shall be to hold such proceeds or assets in trust for distribution under Section 15.6.

### **Article 16 SUPPLEMENTAL INDENTURES**

#### **16.1 Provision for Supplemental Indentures for Certain Purposes**

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

- (a) modifying or amending any provisions of this Trust Indenture in the circumstances set forth in Section 12.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Trust Indenture where the modification or amendment has been approved by a majority of the votes cast by Unitholders or by two-thirds of the votes cast by Unitholders, as the case may be.

### **Article 17 GENERAL**

#### **17.1 Notices**

- (a) Any notice or other document required to be given or sent to Unitholders under this Trust Indenture shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the register; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated

newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.

- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.

## **17.2 Failure to Give Notice**

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

## **17.3 Joint Holders**

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

## **17.4 Service of Notice**

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Section 17.4 shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

## **17.5 Information Available to Unitholders**

Each Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Trust Indenture and any amendments thereto relating to the Units held by that Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Trust Unitholders and, if the person is a body corporate, the address for service thereof, and that the, list will not be used except in connection with:

- (a) an effort to influence the voting of the holders of Units;
- (b) an offer to acquire Units; or
- (c) any other matter relating to the Units or the affairs of the Trust, obtain a list of the Unitholders for the aforesaid purposes.

#### **17.6 Fiscal Year and Taxation Year**

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

#### **17.7 Reports to Unitholders**

The Trust will furnish to Unitholders such financial statements (including quarterly and annual financial statements) and other reports as are from time to time required by this Trust Indenture and by applicable law.

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

#### **17.8 Taxation Information**

On or before March 31 in each year, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year or on or before January 15 of the current calendar year, such information regarding the Trust as required by Canadian law to be submitted to such Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

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

The Trustees shall maintain the Trust's property separate from all other property in their possession and from the property of all other persons. For greater certainty, the Trust's property shall not form part of or include the assets of COT, CAP I LP or CAP II LP or any other person, except to the extent that legal title to such property is held by the Trustees on behalf of the Trust.

#### **17.10 Power of Attorney**

The Trustees hereby grant to the General Partner a power of attorney constituting the General Partner with full power of substitution, as their true and lawful attorney to act on behalf of the Trust with full power and authority in their name, place and stead, and, to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, any instrument, deed, agreement or document in connection with carrying out the activities of the Trust.

#### **17.11 Electronic Documents**

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

#### **17.12 Trust Records**

The Trustees shall prepare and maintain, at the principal office of the Trust or at any other place in Canada designated by the Trustees, records containing: (i) the Trust Indenture; 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 in Canada as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

#### **17.13 Income Tax Election**

In respect of the first taxation year of the Trust, the Trust has elected 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.

#### **17.14 Consolidations**

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

### **Article 18 AUDITORS**

#### **18.1 Qualification of Auditors**

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

#### **18.2 Appointment of Auditors**

KPMG LLP are confirmed as the Auditors of the Trust, to hold such office until new auditors (if any) are selected at an annual meeting of the Unitholders. The Auditors will be selected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees. If at any time a vacancy occurs in the position of Auditors of the Trust, the Trustees may appoint new auditors to act as the Auditors of the Trust until the next annual meeting of the Unitholders.

#### **18.3 Change of Auditors**

The Auditors may at any time be removed by the Trustees with the approval of a majority of the votes cast by Unitholders, at a meeting of Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by a majority of votes cast by Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

#### **18.4 Report of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Unitholder with the annual financial statements referred to in Section 17.7.

**Article 19**  
**MISCELLANEOUS**

**19.1 Counterparts**

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

**19.2 Severability**

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

**19.3 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 Trust Indenture and all documents and notices resulting herefrom be drawn up in English.

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

**IN WITNESS WHEREOF** this Trust Indenture has been executed by the Trustees as of the date referenced above.

**SIGNED, SEALED & DELIVERED**

In the presence of:

(Signed) Laura Salvatore

}

(Signed) Gregory G. Romundt

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**GREGORY G. ROMUNDT**

(Signed) Laura Salvatore

}

(Signed) Robert Orr

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**ROBERT ORR**

(Signed) Laura Salvatore

}

(Signed) Ross Amos

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**ROSS AMOS**

(Signed) Laura Salvatore

}

(Signed) Martin Bernholtz

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**MARTIN BERNHOLTZ**

(Signed) Laura Salvatore

}

(Signed) John F. Mills

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**JOHN F. MILLS**