

**Do/000000014**



**INNKEEPERS USA**

May 17, 2001

Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

01 MAY 18 AM 10:44  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**FILED**

**QUALIFICATION OF  
INNKEEPERS USA TRUST**

Dear Sirs:

In connection with the qualification in Florida of Innkeepers USA Trust ("Trust"), which is a Maryland Real Estate Investment Trust, enclosed please find (i) an originally executed Affidavit to File or Qualify Innkeepers USA Trust, (ii) two true and correct copies of the Trust's Declaration of Trust, as amended and (iii) a check in the amount of \$358.75 to cover the filing fee and the optional fee for a certified copy.

Please send a certified copy to:

Mark A. Murphy  
Innkeepers USA Trust  
306 Royal Poinciana Way  
Palm Beach, FL 33480

I would appreciate it if you would return the certified copy to me in the enclosed Federal Express envelope. If you have any questions with respect to the above, please do not hesitate to call me at (561) 227-1336. Thank you for your assistance with this matter.

Very truly yours,

*Mark A. Murphy*  
Mark A. Murphy

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\*\*\*\$358.75 \*\*\*\$358.75

*JC*  
*5/25*

AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY

INNKEEPERS USA TRUST

A Maryland Real Estate Investment TRUST

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

01 MAY 18 AM 10:44

FILED

In accordance with Section 609.02 of the Florida Statutes, pertaining to  
Common Law Declarations of Trust, the undersigned, the Chairman of the  
Board of Trustees of Innkeepers USA Trust,

(Name of Trust)

Maryland Real Estate Investment Trust hereby affirms in order to file or qualify  
(State)

Innkeepers USA Trust in the State of Florida.  
(Name of Trust)

1. Two or more persons are named in the Trust.
2. The principal address is 306 Royal Poinciana Way,  
Palm Beach, FL 33480
3. The registered agent and street address in the State of Florida is:  
Jeffrey H. Fisher, Trustee  
c/o Innkeepers USA Trust  
306 Royal Poinciana Way, Palm Beach, FL 33480
4. Acceptance by the registered agent: Having been named as registered agent to accept service of process for the above named Declaration of Trust at the place designated in this affidavit, I hereby accept the appointment as registered agent and agree to act in this capacity.

  
(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of Trust under which the association proposes to conduct its business in Florida.

  
Name: Jeffrey H. Fisher  
Chairman of the Board of Trustees

NOTARY

Filing Fee: \$350.00  
Certified Copy: \$ 8.75 (optional)

**INNKEEPERS USA TRUST**

**AMENDMENT OF DECLARATION OF TRUST**

THIS IS TO CERTIFY THAT:

**FIRST:** The Amended and Restated Declaration of Trust, as amended (the "Declaration of Trust"), of Innkeepers USA Trust, a Maryland real estate investment trust (the "Company"), is hereby amended by adding to Article VII, Section 1 a new Subsection as follows:

(H) Securities Exchange Transactions. Nothing in this Article VI or this Declaration of Trust shall prohibit the settlement of any transaction entered into through the facilities of any national securities exchange registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or of the national market system of a national securities association registered under the Exchange Act. The immediately preceding sentence shall not limit the authority of the Board of Trustees to take any and all actions it deems necessary or advisable to protect the Company and the interests of its shareholders in preserving the Company's status as REIT, so long as such actions do not prohibit the settlement of any transactions entered into through the facilities of any national securities exchange registered under the Exchange Act or of the national market system of a national securities association registered under the Exchange Act.

**SECOND:** The Declaration of Trust of the Company is hereby amended by deleting Article VII, Section 3 in its entirety and substituting therefor the following:

Section 3. Remedies Not Limited. Nothing contained in this Article VII shall limit the authority of the Trust to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders by preservation of the Trust's status as a REIT and to ensure compliance with the Ownership Limit, so long as such actions do not prohibit the settlement of any transaction entered into through the facilities of any national securities exchange registered under the Exchange Act or of the national market system of a national securities association registered under the Exchange Act.

**THIRD:** The foregoing amendment to the Declaration of Trust of the Company has been duly approved by the shareholders of the Company by at least a majority vote of all votes entitled to be cast as required by the Declaration of Trust.

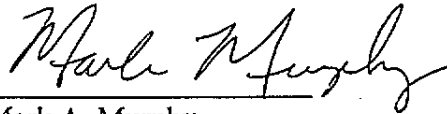
FILED  
01 MAY 18 AM 10:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

01 MAY 11 AM 10:38

**FOURTH:** The undersigned acknowledges that this amendment to be trust act of the Company and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that , to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Company has caused this amendment to be signed in its name and on its behalf by its duly authorized Secretary on this 12th day of May, 1999.

INNKEEPERS USA TRUST

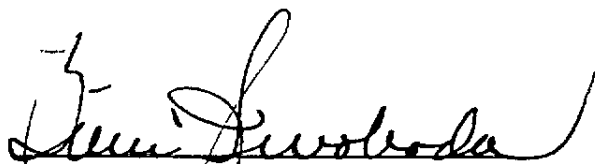


Mark A. Murphy  
Secretary

**CT CORPORATION SYSTEM**

300 East Lombard Street  
Baltimore, MD 21202  
Tel. 410 539 2837  
Fax 410 332 1178

**I hereby consent to act as resident agent in Maryland for  
the entity named in the attached instrument.**

A handwritten signature in black ink, appearing to read "Billie J. Swoboda". The signature is written in a cursive style with a large, looping initial "B".

**Billie J. Swoboda, V.P.  
The Corporation Trust Incorporated**

# STATE OF MARYLAND

631347

## STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

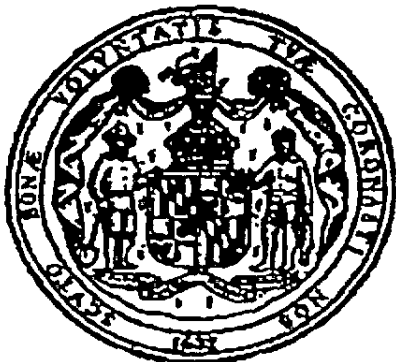
301 West Preston Street Baltimore, Maryland 21201

DATE: MAY 15, 1998

THIS IS TO ADVISE YOU THAT THE ARTICLES SUPPLEMENTARY FOR  
INNKEEPERS USA TRUST  
WERE RECEIVED AND APPROVED FOR RECORD ON MAY 15, 1998 AT 10:29 AM.

FEE PAID:

99.00



WILLIAM B MARKER  
CHARTER SPECIALIST

**INNKEEPERS USA TRUST**  
**ARTICLES SUPPLEMENTARY**

**8.625% SERIES A CUMULATIVE CONVERTIBLE PREFERRED SHARES**  
(liquidation preference \$25.00 per share)

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Innkeepers USA Trust, a Maryland real estate investment trust (the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

Under a power contained in Article VI of the Amended and Restated Declaration of Trust of the Company (the "Declaration of Trust"), the Board of Trustees of the Company (the "Board of Trustees"), by resolution duly adopted at a meeting duly called and held on May 6, 1998, classified and designated 4,880,000 Preferred Shares (as defined in the Declaration of Trust) as 8.625% Series A Cumulative Convertible Preferred Shares of Beneficial Interest, \$.01 par value per share, with the following preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption, which, upon any restatement of the Declaration of Trust, shall be deemed to be part of Article VI of the Declaration of Trust:

**8.625% SERIES A CUMULATIVE CONVERTIBLE PREFERRED SHARES**

**A. CERTAIN DEFINITIONS.**

Unless the context otherwise requires, the terms defined in this Paragraph A shall have, for all purposes of these Articles Supplementary, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

"Benefit Plan Investor" means (i) an employee benefit plan (as defined by Section 3(3) of ERISA), whether or not it is subject to Title I of ERISA; (ii) a plan as described in Section 4975 of the Code; (iii) an entity whose underlying assets include the assets of any plan described in clause (i) or (ii) by reason of the plan's investment in such entity (including but not limited to an insurance company general account); or (iv) an entity that otherwise constitutes a "benefit plan investor" within the meaning of the Plan Asset Regulation.

"Board of Trustees" shall mean the Board of Trustees of the Company or any committee authorized by such Board of Trustees to perform any of its responsibilities with respect to the Series A Preferred Shares.

"Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City, New York are authorized or required by law, regulation or executive order to close.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Common Shares" shall mean the common shares of beneficial interest, \$.01 par value per share, of the Company.

"Constituent Person" shall have the meaning set forth in subsection (c) of subparagraph (7) of paragraph B.

"Conversion Price" shall mean the conversion price per Common Share at which the Series A Preferred Shares are convertible into Common Shares, as such Conversion Price may be adjusted pursuant to subparagraph (7) of paragraph B. The initial Conversion Price shall be \$16.8794 (equivalent to a conversion rate of 1.4811 Common Shares for each Series A Preferred Share).

"Current Market Price" of publicly traded Common Shares or any other class of shares of beneficial interest or other security of the Company or any other issuer for any day shall mean the last reported sales price, regular way, on such day or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day, regular way, in either case as reported on the New York Stock Exchange ("NYSE") or, if such security is not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such security is listed or admitted for trading or, if not listed or admitted for trading on any national securities exchange, on the Nasdaq National Market or, if such security is not quoted on the Nasdaq National Market, the average of the closing bid and asked prices on such day in the over-the-counter market as reported by Nasdaq or, if bid and asked prices for such security on such day shall not have been reported through Nasdaq, the average of the bid and asked prices on such day as furnished by any NYSE member firm regularly making a market in such security and selected for such purpose by the Chief Executive Officer of the Company or the Board of Trustees or, if such security is not so listed or quoted, as determined in good faith at the sole discretion of the Chief Executive Officer of the Company or the Board of Trustees, which determination shall be final, conclusive and binding.

"Distribution Payment Date" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Distribution Period" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Dividend Ratchet Amount" shall mean for any calendar quarter, the cash distribution (exclusive of non-regular dividends such as a special capital gain distribution) payable on the number of Common Shares (or portions thereof) into which each Series A Preferred Share is then convertible (i.e., an amount equal to the number of Common Shares (or portions thereof) into which one Series A Preferred Share is convertible multiplied by the cash distribution (exclusive of non-regular dividends) declared per Common Share for such quarter).

"Fair Market Value" shall mean the fair market value as determined in good faith at the sole discretion of the Chief Executive Officer or the Board of Trustees, which determination shall be final, conclusive and binding.



"Issue Date" shall mean the first date on which Series A Preferred Shares are issued and sold.

"Junior Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Non-Electing Share" shall have the meaning set forth in subsection (c) of subparagraph (7) of paragraph B.

"Ownership Limitation" means the limitation on ownership of the Company's shares of beneficial interest (or deemed ownership by virtue of the attribution provisions of the Code) set forth in Article VII of the Declaration of Trust.

"Parity Shares" shall have the meaning set forth in subparagraph (2) of paragraph B.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include EVEREN Securities, Inc. in its capacity as initial purchaser of the Series A Preferred Shares provided that the ownership of Series A Preferred Shares by EVEREN Securities, Inc. would not result in the Company being "closely held" within the meaning of Section 856(h) of the Code or otherwise result in the Company failing to qualify as a REIT or result in the Company's assets being deemed "plan assets" as defined under the Plan Asset Regulation.

"Plan Asset Regulation" means the plan asset regulation promulgated by the Department of Labor under ERISA at 29 C.F.R. 2510.3-101.

"Plan Assets" means "plan assets" as defined in the Plan Asset Regulation.

"Preferred Shares" shall mean preferred shares of beneficial interest, \$.01 par value per share, of the Company.

"Record Date" shall have the meaning set forth in subparagraph (3) of paragraph B.

"Redemption Price" shall equal \$25.00 per share, plus dividends accrued and unpaid to the redemption date (whether or not declared) without interest, or such other amount referred to in subparagraph (5)(d) of paragraph B.

"REIT" shall mean a real estate investment trust under Section 856 of the Code.

"Securities" shall have the meaning set forth in subsection (d)(ii) of subparagraph (7) of paragraph B.

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"Series A Preferred Shares" shall mean the Company's 8.625% Series A Cumulative Convertible Preferred Shares of beneficial interest, \$.01 par value per share, liquidation preference \$25.00 per share.

"Series A Preferred Shares Redemption Date" shall have the meaning set forth in subsection (e) of subparagraph (5) of paragraph B hereof.

"Set apart for payment" shall be deemed to include, without any action other than the following, the recording by the Company in its accounting ledgers of any accounting or bookkeeping entry which indicates, pursuant to a declaration of distributions by the Board of Trustees, the allocation of funds to be paid on any class or series of shares of beneficial interest; provided, however, that if any funds for any class or series of Junior Shares or any Parity Shares are placed in a separate account of the Company or delivered to a disbursing, paying or other similar agent, then "set apart for payment" with respect to the Series A Preferred Shares shall mean placing such funds in a separate account or delivering such funds to a disbursing, paying or other similar agent.

"Shares-in-Trust" means the designation placed upon shares of beneficial interest of the Company as set forth in Article VII of the Declaration of Trust.

"Trading Day" shall mean any day on which the securities in question are traded on the NYSE, or if such securities are not listed or admitted for trading on the NYSE, on the principal national securities exchange on which such securities are listed or admitted, or if not listed or admitted for trading on any national securities exchange, on the Nasdaq National Market, or if such securities are not quoted on such Nasdaq National Market, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in subsection (e) of subparagraph (7) of paragraph B hereof.

"Transfer Agent" means Harris Trust and Savings Bank, Chicago, Illinois or such other agent or agents of the Company as may be designated by the Board of Trustees or their designee as the transfer agent for the Series A Preferred Shares.

"25% Threshold" means ownership by Benefit Plan Investors, in the aggregate, of 25% or more of the value of any class of equity interest in the Company (calculated by excluding the value of any interest held by any person, other than a Benefit Plan Investor, who has discretionary authority or control with respect to the assets of the Company or any person who provides investment advice to the Company for a fee (direct or indirect) with respect to such assets, or any affiliate of such person).

## B. SERIES A PREFERRED SHARES

### (1) Number.

The maximum number of shares of the Series A Preferred Shares shall be 4,880,000.

### (2) Relative Seniority.

In respect of rights to receive distributions and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Company, the Series A Preferred Shares shall rank *pari passu* with any other preferred shares of beneficial interest of the Company (the "Parity Shares"), and will rank senior to the Common Shares and any other class or series of shares of beneficial interest of the Company ranking, as to distributions and upon liquidation, junior to the Parity Shares (collectively, the "Junior Shares").

### (3) Distributions.

The holders of the then outstanding Series A Preferred Shares shall be entitled to receive, when, and as authorized and declared by the Board of Trustees out of any funds legally available therefor, cumulative cash distributions in an amount per share equal to the greater of (i) \$0.53906 per quarter (equal to a rate of 8.625% of the \$25.00 liquidation preference (the "Liquidation Preference") per annum) or (ii) the Dividend Ratchet Amount. Quarterly dividends on the Series A Preferred Shares are payable as authorized by the Board of Trustees, or if not authorized, on the fourth Tuesday of January, April, July and October of each year, commencing on or about July 28, 1998 (each such day being hereinafter called a "Distribution Payment Date" and each period ending on a Distribution Payment Date being hereinafter called a "Distribution Period"), with respect to each Distribution Period, to shareholders of record as they appear on the share transfer records of the Company at the close of business on the dividend record dates authorized by the Board of Trustees, or if none are authorized, on the last Friday of December, March, June and September (each, a "Record Date"). The amount of any distribution payable for the initial Distribution Period and for any other Distribution Period greater or less than a full calendar quarter shall be prorated and computed on the basis of a 360-day year of twelve 30-day months. Distributions on each Series A Preferred Share shall accrue and be cumulative from and including the date of original issue thereof, whether or not (i) distributions on such shares are earned or declared or (ii) on any Distribution Payment Date there shall be funds legally available for the payment of distributions. Distributions paid on the Series A Preferred Shares in an amount less than the total amount of such distributions at the time accrued and payable on such shares shall be allocated pro rata on a per share basis among all such shares at the time outstanding. Distributions on account of any arrearage for any past Distribution Periods may be declared and paid at any time, without reference to any regular distribution, as may be fixed by the Board of Trustees.

The amount of any distributions accrued on any Series A Preferred Shares at any Distribution Payment Date shall be the amount of any unpaid distributions accumulated thereon

through and during such Distribution Period, to and including such Distribution Payment Date, whether or not earned or declared, and the amount of distributions accrued on any Series A Preferred Shares at any date other than a Distribution Payment Date shall be equal to the sum of the amount of any unpaid distributions accumulated thereon, to and including the last preceding Distribution Payment Date, whether or not earned or declared. Accrued but unpaid distributions will not bear interest and the holders of the Series A Preferred Shares will not be entitled to any distributions in excess of full cumulative distributions as described herein.

If any Series A Preferred Shares are outstanding, no full distributions shall be declared or paid or set apart for payment on any other class or series of Parity Shares or Junior Shares for any period unless full cumulative distributions have been declared and paid or declared and a sum sufficient for the payment thereof has been set apart for payment on the Series A Preferred Shares for all past distribution periods and the then current distribution period. If distributions are not paid in full, or not declared in full and a sum sufficient for such full payment is not set apart for payment thereof, upon the Series A Preferred Shares and any class or series of Parity Shares, no distributions may be paid on Junior Shares and all distributions declared upon Series A Preferred Shares and upon any other class or series of Parity Shares shall be paid or declared pro rata so that in all cases the amount of distributions paid or declared per share on the Series A Preferred Shares and Parity Shares shall bear to each other the same ratio that accumulated distributions per share, including distributions accrued or in arrears, if any, on the Series A Preferred Shares and Parity Shares bear to each other. Except as provided in the preceding sentence, unless full cumulative distributions on the Series A Preferred Shares have been paid or declared and a sum sufficient for such full payment set apart for payment for all past distribution periods and the then current distribution period, no distributions (other than distributions in shares of Common Shares or in any other Junior Shares) shall be declared or paid or set apart for payment or other distribution upon the Company's Common Shares, or, except as provided above, on any other Junior Shares or Parity Shares, nor shall any Common Shares or any other Junior Shares or Parity Shares be redeemed, purchased or otherwise acquired for any consideration (or any payment made to or available for a sinking fund for the redemption of any such shares) by the Company or any subsidiary of the Company (except by conversion into or exchange for Junior Shares and except in connection with any redemption of units of partnership interest of subsidiary partnerships which units are redeemable for Common Shares, cash, or other securities of the Company). Holders of the Series A Preferred Shares shall not be entitled to any distributions, whether payable in cash, property or shares of beneficial interest, in excess of full accrued and cumulative distributions as herein provided. No interest or sum of money in lieu of interest shall be payable in respect of any distribution payment or payments on the Series A Preferred Shares that may be in arrears.

Except as provided in these Articles Supplementary, the Series A Preferred Shares shall not be entitled to participate in the earnings or assets of the Company.

**(4) Liquidation Preference.**

- (a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the Series A Preferred Shares then outstanding shall be entitled to receive and to be paid out of the assets of the Company legally available

prior to the business day that immediately precedes the date fixed for redemption, or (ii) cash. Fractional shares will not be issued upon redemption of the Series A Preferred Shares, but, in lieu thereof, the Company will pay a cash adjustment based on the average of the closing prices of the Common Shares on the ten (10) Trading Days prior to the business day immediately preceding the date fixed for redemption.

- (c) If fewer than all of the outstanding Series A Preferred Shares are to be redeemed, the shares to be redeemed will be determined pro rata or by lot or in such other manner as prescribed by the Company's Board of Trustees in its sole discretion. In the event that such redemption is to be by lot, if as a result of such redemption any holder of Series A Preferred Shares would own shares of beneficial interest in excess of the Ownership Limitation, because such holder's Series A Preferred Shares were not redeemed, or were only redeemed in part, then, except in certain instances, the Company will redeem the requisite number of Series A Preferred Shares of such holder such that he will not own shares of beneficial interest in excess of the Ownership Limitation subsequent to such redemption. A new certificate shall be issued representing any unredeemed Series A Preferred Shares without cost to the holder thereof.
- (d) At any time prior to such time, if ever, as the Series A Preferred Shares qualify as a "publicly offered security" under the Plan Asset Regulation, or qualify for another exception from the "look-through" rule (i.e., the provisions of paragraph (a)(2) of the Plan Asset Regulation), if the Company determines that, as a result of transfers, conversions or otherwise, Benefit Plan Investors own 20% of the aggregate number of outstanding Series A Preferred Shares (excluding for this purpose any shares held by persons exercising investment management authority over the assets of the Company or providing investment advice for a fee with respect to such assets and any affiliates of such persons), the Company will have the right to cause any number of Series A Preferred Shares that are held by Benefit Plan Investors to be redeemed so that following such redemption Benefit Plan Investors own less than 25% of the outstanding Series A Preferred Shares (but in no event may such redemptions reduce Benefit Plan Investor ownership to less than 20% of the Series A Preferred Shares) (excluding for this purpose any shares held by persons exercising investment management authority over the assets of the Company or providing investment advice for a fee with respect to such assets and any affiliates of such persons). Any such redemption will follow the redemption procedures set forth herein, except that the Redemption Date may be fewer than 30 days after the first notice of redemption to the extent necessary to prevent the Company's assets from being deemed Plan Assets and the Redemption Price shall be the Fair Market Value of such Series A Preferred Shares. If fewer than all the outstanding Series A Preferred Shares that are held by Benefit Plan Investors are to be redeemed, the number of Series A Preferred Shares to be redeemed will be determined by the Board of Trustees and such shares will be redeemed on a pro-rata basis from the holders of such shares that are Benefit Plan Investors in proportion to the number of Series A Preferred Shares held by such holders or by any other method as may be determined by the Board of Trustees in its sole discretion.

- (e) Notice of redemption will be given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the date fixed for redemption. A similar notice will be mailed by the Company, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series A Preferred Shares to be redeemed at their respective addresses as they appear on the share transfer records of the Company. The notice provided shall state the Company's election to redeem such shares, stating (i) the date fixed for redemption thereof (the "Series A Preferred Shares Redemption Date"), (ii) the redemption price, (iii) the number of shares to be redeemed (and, if fewer than all the Series A Preferred Shares are to be redeemed, the number of shares to be redeemed from such holder), (iv) the place(s) where the Series A Preferred Share certificates are to be surrendered for payment, (v) that distributions on the Series A Preferred Shares will cease to accrue on the specified redemption date and (vi) the date on which such holder's conversion rights as to the Series A Preferred Shares shall terminate.
  
- (f) On or after the Series A Preferred Shares Redemption Date, each holder of Series A Preferred Shares to be redeemed must present and surrender his Series A Preferred Share certificate(s) to the Company at the place designated in such notice and thereupon the redemption price of such shares will be paid to or on the order of the person whose name appears on such Series A Preferred Share certificate(s) as the owner thereof and each such Series A Preferred Share certificate(s) surrendered will be canceled. From and after the Series A Preferred Shares Redemption Date (unless the Company defaults in payment of the redemption price), all distributions on the Series A Preferred Shares designated for redemption in such notice will cease to accrue and all rights of the holders thereof (including conversion rights), except the right to receive the redemption price thereof (including all accrued and unpaid distributions up to the Series A Preferred Shares Redemption Date), will cease and terminate and such shares will not thereafter be transferred (except with the consent of the Company) in the share transfer records of the Company, and such shares shall not be deemed to be outstanding for any purpose whatsoever. At its election, the Company, prior to the Series A Preferred Shares Redemption Date, may irrevocably deposit the Redemption Price of the Series A Preferred Shares so called for redemption in trust for the holders thereof with a bank or trust company, in which case such notice to holders of the Series A Preferred Shares to be redeemed will (i) state the date of such deposit, (ii) specify the office of such bank or trust company as the place of payment of the Redemption Price and (iii) call upon such holders to surrender the Series A Preferred Share certificates representing such shares at such place on or about the date fixed in such redemption notice (which may not be later than the Series A Preferred Shares Redemption Date) against payment of the Redemption Price. Any monies so deposited which remain unclaimed by the holders of the Series A Preferred Shares at the end of two years after the Series A Preferred Shares Redemption Date will be returned by such bank or trust company to the Company.

(g) Notwithstanding the foregoing, unless full cumulative distributions on all outstanding Series A Preferred Shares for all past Distribution Periods and the then current Distribution Period have been paid, or declared and a sum sufficient for the payment thereof set apart for payment, (i) no Series A Preferred Shares shall be redeemed unless all outstanding Series A Preferred Shares are simultaneously redeemed; provided, however, that the foregoing shall not prevent the purchase or acquisition of Series A Preferred Shares (A) pursuant to subparagraphs (5)(d) and (9) of paragraph B or (B) pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series A Preferred Shares, and, (ii) the Company shall not purchase or otherwise acquire directly or indirectly any Series A Preferred Shares (except by conversion into or exchange for shares of beneficial interest of the Company ranking junior to the Series A Preferred Shares as to distribution rights and liquidation preference).

(h) The holders of Series A Preferred Shares at the close of business on a Record Date will be entitled to receive the distribution payable with respect to such Series A Preferred Shares on the corresponding Distribution Payment Date notwithstanding the redemption thereof between such Record Date and the corresponding Distribution Payment Date or the Company's default in the payment of the distribution due. Except as provided above, the Company will make no payment or allowance for unpaid distributions, whether or not in arrears, on Series A Preferred Shares which have been called for redemption.

(i) The Company covenants that any Common Shares issued upon redemption of the Series A Preferred Shares shall be validly issued, fully paid and nonassessable. The Company shall use its reasonable best efforts to list the Common Shares required to be delivered upon redemption of the Series A Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

(j) The Series A Preferred Shares have no stated maturity date and are not subject to any sinking fund or mandatory redemption provisions.

**(6) Reclassification of Converted Shares; Shares to be Retired.**

(a) All Series A Preferred Shares which shall have been converted pursuant to paragraph B(7) herein shall automatically be reclassified as Common Shares. The number of Common Shares issuable upon conversion shall be determined in accordance with paragraph B(7) hereof.

(b) All Series A Preferred Shares which shall have been issued and reacquired in any manner by the Company shall be restored to the status of authorized but unissued Preferred Shares, without designation as to series.

**(7) Conversion.**

Holders of Series A Preferred Shares shall have the right to convert all or a portion of such shares into Common Shares, as follows:

(a) Subject to and upon compliance with the provisions of this subparagraph (7), a holder of Series A Preferred Shares shall have the right, at his option, at any time to convert such shares into the number of fully paid and nonassessable Common Shares obtained by dividing the aggregate Liquidation Preference of such shares by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of subsection (b) of this subparagraph (7)) by surrendering such shares to be converted, such surrender to be made in the manner provided in subsection (b) of this subparagraph (7); provided, however, that the right to convert shares called for redemption pursuant to subparagraph (5) shall terminate at the close of business on the Series A Preferred Shares Redemption Date fixed for such redemption, unless the Company shall default in making payment of any amounts payable upon such redemption under subparagraph (5) hereof.

(b) In order to exercise the conversion right, the holder of each Series A Preferred Share to be converted shall surrender the certificate evidencing such share, duly endorsed or assigned to the Company or in blank, at the office of the Transfer Agent, accompanied by written notice to the Company that the holder thereof elects to convert such Series A Preferred Share. Unless the shares issuable on conversion are to be issued in the same name as the name in which such Series A Preferred Share is registered, each share surrendered for conversion shall be accompanied by instruments of transfer, in form satisfactory to the Company, duly executed by the holder or such holder's duly authorized agent and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Company demonstrating that such taxes have been paid).

Holders of Series A Preferred Shares at the close of business on a Record Date shall be entitled to receive the distribution payable on such shares on the corresponding Distribution Payment Date notwithstanding the conversion thereof following such Record Date and prior to such Distribution Payment Date. However, Series A Preferred Shares surrendered for conversion during the period between the close of business on any Record Date and the opening of business on the corresponding Distribution Payment Date (except shares converted after the issuance of a notice of redemption with respect to a Series A Preferred Shares Redemption Date during such period or coinciding with such Distribution Payment Date, such Series A Preferred Shares being entitled to such distribution on the Distribution Payment Date) must be accompanied by payment of an amount equal to the distribution payable on such shares on such Distribution Payment Date. A holder of Series A Preferred Shares on a Record Date who (or whose transferee) tenders any such shares for conversion into Common Shares on such Distribution Payment Date will receive the distribution payable by the Company on such Series A Preferred Shares on such date, and the converting holder need not include payment of the amount of such distribution upon surrender of Series A Preferred Shares for conversion. The Company shall make further payment or allowance for, and a converting holder shall be entitled to, unpaid



distributions in arrears (excluding the then-current quarter) on converted shares and for distributions on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates for Series A Preferred Shares as aforesaid, the Company shall issue and shall deliver at such office to such holder, or on his written order, a certificate or certificates for the number of full Common Shares issuable upon the conversion of such shares in accordance with the provisions of this subparagraph (7), and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in subsection (c) of this subparagraph (7). Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for Series A Preferred Shares shall have been surrendered and such notice (and if applicable, payment of an amount equal to the distribution payable on such shares) received by the Company as aforesaid, and the person or persons in whose name or names any certificate or certificates for Common Shares shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date, unless the share transfer books of the Company shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the opening of business on the next succeeding day on which such share transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such certificates for Series A Preferred Shares have been surrendered and such notice received by the Company.

(c) No fractional shares or scrip representing fractions of Common Shares shall be issued upon conversion of the Series A Preferred Shares. Instead of any fractional interest in a Common Share that would otherwise be deliverable upon the conversion of a share of Series A Preferred Shares, the Company shall pay to the holder of such share an amount in cash based upon the Current Market Price of Common Shares on the Trading Day immediately preceding the date of conversion. If more than one Series A Preferred Share shall be surrendered for conversion at one time by the same holder, the number of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of Series A Preferred Shares so surrendered.

(d) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Company shall after the Issue Date (A) make a distribution to holders of any class of shares of beneficial interest of the Company in Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares, (C) combine its outstanding Common Shares into a smaller number of shares or (D) issue any shares of beneficial interest by reclassification of its Common Shares, the Conversion Price shall be adjusted so that the holder of any Series A Preferred Shares thereafter surrendered for conversion shall be entitled to receive the number of Common Shares that such holder would have owned or have been

entitled to receive after the happening of any of the events described above had such shares been converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in paragraph (h) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification. Such adjustment(s) shall be made successively whenever any of the events listed above shall occur.

- (ii) If the Company shall issue after the Issue Date rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date fixed for such issuance) to subscribe for or purchase Common Shares (or securities convertible into or exchangeable for Common Shares) at a price per share less than the Fair Market Value per Common Share on the record date for the determination of shareholders entitled to receive such rights, options or warrants, then the Conversion Price shall be adjusted to equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the opening of business on the Business Day next following the date fixed for such determination by (B) a fraction, the numerator of which shall be the sum of (I) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (II) the number of Common Shares that could be purchased at the Current Market Price on the date fixed for such determination with the aggregate proceeds to the Company from the exercise of such rights, options or warrants, and the denominator of which shall be the sum of (x) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (y) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall be made successively whenever any such rights, options or warrants are issued, and shall become effective immediately after the opening of business on the day next following the record date for any such rights, options, or warrants issued (except as provided in subsection (h) below). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than the Current Market Price, there shall be taken into account any consideration received by the Company upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined by the Chief Executive Officer of the Company or the Board of Trustees whose decision is final, conclusive, and binding. Any adjustment(s) made pursuant to this subsection (ii) shall become effective immediately after the opening of business on the Business Day next following such record date. Such adjustment(s) shall be made successively whenever any of the events listed above shall occur.

(iii) If the Company shall distribute to all holders of its Common Shares any shares of beneficial interest of the Company (other than Common Shares) or evidence of its indebtedness or assets (including securities or cash, but excluding cash distributions paid out of the total equity applicable to Common Shares, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual or quarterly consolidated cost basis and current value basis and consolidated balance sheets of the Company and its consolidated subsidiaries available at the time of the declaration of the distribution) or rights or warrants to subscribe for or purchase any of its securities (excluding those rights and warrants issued to all holders of Common Shares entitling them for a period expiring within 45 days after the record date referred to in subsection (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subsection (ii) above) (any of the foregoing being hereinafter in this subsection (iii) called the "Securities"), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by (B) a fraction, the numerator of which shall be the Current Market Price per Common Share on the record date described in the immediately following paragraph less the then Fair Market Value of the shares of beneficial interest or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one Common Share, and the denominator of which shall be the Current Market Price per Common Share on the record date described in the immediately following paragraph.

Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in subsection (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this subsection (iii), the distribution of a Security which is distributed not only to the holders of the Common Shares on the date fixed for the determination of shareholders entitled to such distribution of such Security, but also is distributed with each Common Share delivered to a Person converting a Series A Preferred Share after such determination date, shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a Person converting a Series A Preferred Share would no longer be entitled to receive such Security with a Common Share (other than as a result of the termination of all such Securities), a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be "the date fixed for the determination of the shareholders entitled to receive such distribution" and "the record date" within the meaning of the two preceding sentences). Such adjustment(s) shall be made successively whenever any of the events listed above shall occur.

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price;

provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this subparagraph (7) (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Shares. Notwithstanding any other provisions of this subparagraph (7), the Company shall not be required to make any adjustment to the Conversion Price for the issuance of any Common Shares pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Company and the investment of additional optional amounts in Common Shares under such plan. All calculations under this subparagraph (7) shall be made to the nearest cent (with \$.005 being rounded upward) or to the nearest one-tenth of a share (with .05 of a share being rounded upward), as the case may be.

- (e) If the Company shall be a party to any transaction (including without limitation a merger, consolidation, statutory share exchange, self tender offer for all or substantially all of the Common Shares, sale of all or substantially all of the Company's assets or recapitalization of the Common Shares and excluding any transaction as to which subsection (d)(i) of this subparagraph (7) applies (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares shall be converted into the right to receive shares, stock, securities or other property (including cash or any combination thereof), each Series A Preferred Share which is not converted into the right to receive shares, stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Shares into which one Series A Preferred Share was convertible immediately prior to such Transaction, assuming such holder of Common Shares (i) is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his or her rights of election, if any, as to the kind or amount of shares, stock, securities and other property (including cash) receivable upon consummation of such Transaction (each a "Non-Electing Share") (provided that if the kind or amount of shares, stock, securities and other property (including cash) receivable upon consummation of such Transaction by each Non-Electing Share is not the same for each Non-Electing Share, then the kind and amount of shares, stock, securities and other property (including cash) receivable upon consummation of such Transaction for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). The Company shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (e), and it shall not consent or agree to the occurrence of any Transaction until the Company has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series A Preferred Shares, that will require such successor or purchasing entity, as the

case may be, to make provision in its certificate or articles of incorporation or other constituent documents to the end that the provisions of this subsection (e) shall thereafter correspondingly be made applicable as nearly as may reasonably be, in relation to any shares of stock or other securities or property thereafter deliverable upon conversion of the Series A Preferred Shares. The provisions of this subsection (e) shall similarly apply to successive Transactions.

(f) If:

- (i) the Company shall declare a distribution on the Common Shares other than in cash out of the total equity applicable to Common Shares, less the amount of stated capital attributable to Common Shares, determined on the basis of the most recent annual or quarterly consolidated cost basis and current value basis and consolidated balance sheets of the Company and its consolidated subsidiaries available at the time of the declaration of the distribution; or
- (ii) the Company shall authorize the granting to the holders of the Common Shares of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or
- (iii) there shall be any reclassifications of the Common Shares (other than an event to which subsection (d)(i) of this subparagraph (7) applied) or any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required, or a statutory share exchange involving the conversion or exchange of Common Shares into securities or other property, or a self tender offer by the Company for all or substantially all of its outstanding Common Shares, or the sale or transfer of all or substantially all of the assets of the Company as an entity and for which approval of any shareholder of the Company is required; or
- (iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Company;

then the Company shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of the Series A Preferred Shares at their addresses as shown on the share records of the Company, as promptly as possible, but at least 15 days prior to the applicable date hereinafter specified, a notice stating (A) the record date as of which the holders of Common Shares of record to be entitled to such distribution or grant of rights or warrants are to be determined, provided, however, that no such notification need be made in respect of a record date for a distribution or grant of rights unless the corresponding adjustment in the Conversion Price would be an increase or decrease of at least 1%, or (B) the date on which such reclassification, consolidation, merger, statutory share exchange, sale, transfer, liquidation, dissolution or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, statutory

share exchange, sale, transfer, liquidation, dissolution or winding up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this subparagraph (7).

- (g) Whenever the Conversion Price is adjusted as herein provided, the Company shall promptly file with the Transfer Agent an officer's certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date on which such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series A Preferred Share at such holder's last address as shown on the share records of the Company.
- (h) In any case in which subsection (d) of this subparagraph (7) provides that an adjustment shall become effective on the date next following the record date for an event, the Company may defer until the occurrence of such event (I) issuing to the holder of any Series A Preferred Shares converted after such record date and before the occurrence of such event the additional Common Shares issuable upon such conversion by reason of the adjustment required by such event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (II) fractionalizing any Series A Preferred Share and/or paying to such holder any amount of cash in lieu of any fraction pursuant to subsection (c) of this subparagraph (7).
- (i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of beneficial interest of the Company in a reorganization, acquisition or other similar transaction except as specifically set forth in this subparagraph (7). If any action or transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this subparagraph (7), only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.
- (j) If the Company shall take any action affecting the Common Shares, other than an action described in this subparagraph (7), that in the opinion of the Board of Trustees would materially and adversely affect the conversion rights of the holders of the Series A Preferred Shares, the Conversion Price for the Series A Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Trustees, in its sole discretion, may determine to be equitable in the circumstances.
- (k) The Company covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Common Shares, for the purpose of effecting conversion of the Series A Preferred Shares, the full number of Common Shares deliverable upon the conversion of all outstanding Series A Preferred Shares not theretofore converted. For purposes of this subsection (k), the number of Common Shares that shall be deliverable upon the conversion of all outstanding Series A

Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

The Company covenants that any Common Shares issued upon conversion of the Series A Preferred Shares shall be validly issued, fully paid and nonassessable. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the Common Shares deliverable upon conversion of the Series A Preferred Shares, the Company will take any action that, in the opinion of its counsel, may be necessary in order that the Company may validly and legally issue fully paid and nonassessable Common Shares at such adjusted Conversion Price.

The Company shall use its reasonable best efforts to list the Common Shares required to be delivered upon conversion of the Series A Preferred Shares, prior to such delivery, upon each national securities exchange, if any, upon which the outstanding Common Shares are listed at the time of such delivery.

Prior to the delivery of any securities that the Company shall be obligated to deliver upon conversion of the Series A Preferred Shares, the Company shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

- (l) The Company will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Shares or other securities or property on conversion of the Series A Preferred Shares pursuant hereto; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Shares or other securities or property in a name other than that of the holder of the Series A Preferred Shares to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Company the amount of any such tax or has established, to the reasonable satisfaction of the Company, that such tax has been paid.

In addition to the foregoing adjustments, the Company shall be entitled to make such reductions in the Conversion Price, in addition to those required herein, as it in its discretion considers to be advisable in order that any share distributions, subdivisions of shares, reclassification or combination of shares, distribution of rights, options, warrants to purchase shares or securities, or a distribution of other assets (other than cash distributions) will not be taxable or, if that is not possible, to diminish any income taxes that are otherwise payable because of such event.

#### (8) Voting Rights.

Except as provided below, the holders of the Series A Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of trustees or for any other purpose or

otherwise to participate in any action taken by the Company or the shareholders thereof, or to receive notice of any meeting of shareholders.

- (a) In any matter in which the Series A Preferred Shares are entitled to vote (as expressly provided herein), including any action by written consent, each Series A Preferred Share shall be entitled to one vote.
- (b) Whenever distributions on any Series A Preferred Shares or any other Parity Shares shall be in arrears, whether or not earned or declared, for six or more quarterly periods, the holders of the Series A Preferred Shares, voting separately as a class with all other series of Parity Shares upon which like voting rights have been conferred and are exercisable, will be entitled to vote for the election of two additional Trustees of the Company at a special meeting called by the holders of record of at least ten percent (10%) of any series of Parity Shares, or ten percent (10%) of the outstanding Series A Preferred Shares, so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders) or at the next annual or special meeting of shareholders. In such case, the entire Board of Trustees of the Company will be increased by two Trustees. Voting rights of the holders of the Series A Preferred Shares shall continue at each subsequent annual meeting until all distributions accumulated on such Series A Preferred Shares for the past Distribution Periods and the then current Distribution Period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment, at which time the term of the two Trustees elected pursuant to this paragraph shall terminate.
- (c) As long as any Series A Preferred Shares remain outstanding, the Company will not, without the affirmative vote or consent of the holders of at least two-thirds of the Series A Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of shares of beneficial interest ranking prior to the Series A Preferred Shares with respect to the payment of distributions or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized shares of beneficial interest of the Company into such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares; or (ii) amend, alter or repeal the provisions of the Company's Declaration of Trust or these Articles Supplementary for the Series A Preferred Shares whether by merger, consolidation or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series A Preferred Shares (as determined by the Board of Trustees); provided, however, with respect to the occurrence of any of the Events set forth in (ii) above, so long as the Series A Preferred Shares (or shares into which the Series A Preferred Shares have been converted in any successor entity to the Company) remain outstanding or, if the Company is not the surviving entity, are converted into a security with substantially identical rights, preferences, privileges and voting power, then the occurrence of any such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of the Series A Preferred Shares; and provided further that (x) any increase in the amount of the authorized Preferred Shares or the designation or issuance of any additional



Series A Preferred Shares or Parity Shares, or (y) any increase in the amount of authorized Series A Preferred Shares or any other Preferred Shares, in each case ranking on a parity with or junior to the Series A Preferred Shares with respect to payment of distributions or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series A Preferred Shares shall have been redeemed or called for redemption and sufficient funds to effect such redemption shall have been deposited in accordance with paragraph 5.

**(9) Ownership and Transfer Limitations**

- (a) REIT-Related Restrictions. The Ownership and transfer of the Series A Preferred Shares shall be restricted as provided in the Declaration of Trust.
- (b) ERISA-Related Restrictions. No Benefit Plan Investor may acquire Series A Preferred Shares without the Company's prior written consent (which consent may be withheld in the Company's sole and absolute discretion). Prior to the Series A Preferred Shares qualifying as a "publicly-offered security" or the availability of another exception to the "look-through" rule (i.e., the provisions of paragraph (a)(2) of the Plan Asset Regulation), transfers of Series A Preferred Shares to Benefit Plan Investors that would increase aggregate Benefit Plan Investor ownership of the Series A Preferred Shares above the 25% Threshold will be void *ab initio*. In addition, in the event that the aggregate number of Series A Preferred Shares owned by Benefit Plan Investors, but for the operation of this sentence, would meet or exceed the 25% Threshold, (i) the Series A Preferred Shares held by Benefit Plan Investors shall be deemed to be Shares-in-Trust, pro-rata, to the extent necessary to reduce aggregate Benefit Plan Investor ownership of the Series A Preferred Shares below the 25% Threshold, and (ii) such number of Series A Preferred Shares (rounded up, in the case of each holder, to the nearest whole share) shall be transferred automatically and by operation of law to the Share Trust (as described in Article VII of the Declaration of Trust) to be held in accordance with this subparagraph (9)(b) and otherwise in accordance with Article VII, Section 2 of the Declaration of Trust and (iii) the Benefit Plan Investors previously owning such Shares-in-Trust shall submit such number of Series A Preferred Shares for registration in the name of the Share Trust. Such transfer to a Share Trust and the designation of Series A Preferred Shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the event that otherwise would have caused aggregate Benefit Plan Investor ownership of Series A Preferred Shares to meet or exceed the 25% Threshold.

Prior to the discovery of the existence of the Share Trust, any transfer of Series A Preferred Shares by a Benefit Plan Investor to a non-Benefit Plan Investor shall reduce the number of Shares-in-Trust on a one-for-one basis, and to that extent such shares shall cease to be designated as Shares-in-Trust and shall be returned, effective at exactly the

time of the transfer to the non-Benefit Plan Investor, automatically and without further action by the Company or the Benefit Plan Investor, to all Benefit Plan Investors (or the transferee, if applicable) pro rata in accordance with the Benefit Plan Investors' prior holdings. After the discovery of the existence of the Share Trust, but prior to the redemption of all discovered Shares-in-Trust and/or the submission of all discovered Shares-in-Trust for registration in the name of the Share Trust, any transfer of Series A Preferred Shares by a Benefit Plan Investor to a non-Benefit Plan Investor shall reduce the number of Shares-in-Trust on a one-for-one basis, and to that extent such shares shall cease to be designated as Shares-in-Trust and shall be returned, automatically without further action by the Company or the Benefit Plan Investor, to the transferring Benefit Plan Investor (or its transferee, if applicable).

In the event that any Series A Preferred Shares are deemed "Shares-in-Trust" pursuant to this subparagraph (9)(b), the holder shall cease to own any right or interest with respect to such shares and the Company will have the right to redeem such Shares-in-Trust for an amount equal to their Fair Market Value, which proceeds shall be payable to the purported owner. This subparagraph (9)(b) shall cease to apply and all Shares-in-Trust shall cease to be designated as Shares-in-Trust and shall be returned, automatically and by operation of law, to their purported owners, all of which shall occur at such time as the Series A Preferred Shares qualify as a publicly offered security or if another exception to the "look-through" rule under the Plan Asset Regulation applies.

#### **C. EXCLUSION OF OTHER RIGHTS.**

Except as may otherwise be required by law, the Series A Preferred Shares shall not have any voting powers, preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles Supplementary (as such Articles Supplementary may be amended from time to time) and in the Declaration of Trust. The Series A Preferred Shares shall have no preemptive or subscription rights.

#### **D. HEADINGS OF SUBDIVISIONS.**

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

#### **E. SEVERABILITY OF PROVISIONS.**

If any voting powers, preferences or relative, participating, optional and other special rights of the Series A Preferred Shares or qualifications, limitations or restrictions thereof set forth in these Articles Supplementary (as such Articles Supplementary may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred Shares and qualifications, limitations and restrictions thereof set forth in these Articles Supplementary (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences or relative, participating, optional or other special rights of Series A Preferred Shares or qualifications, limitations and restrictions thereof shall be given such effect. None of the voting powers, preferences or relative participating, optional or other special rights of the Series A Preferred Shares or qualifications, limitations or restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences or relative, participating, optional or other special right of Series A Preferred Shares or qualifications, limitations or restrictions thereof unless so expressed herein.

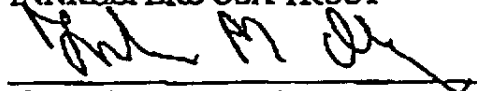
#### **F. ADOPTION.**

These Articles Supplementary were duly adopted by the Board of Trustees of the Company in the manner and by the vote required by law.

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IN WITNESS WHEREOF, I hereby certify that I, Frederic M. Shaw, am the Executive Vice President of Innkeepers USA Trust (the "Company") and that as such, I am authorized to execute and file with the State Department of Assessments and Taxation of Maryland Articles Supplementary (the "Articles Supplementary") on behalf of the Company and I further certify on behalf of the Company that these Articles Supplementary were authorized by the Board of Trustees at a meeting held by such Board of Trustees on May 6, 1998 and are still in full force and effect as of the date hereof. I further certify that my signature to this document is my free act and deed, that to the best of my knowledge, information and belief, the matters and facts set forth herein are true in all material respects and that this statement is made under penalty for perjury.

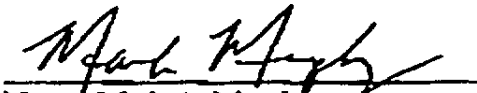
INNKEEPERS USA TRUST



Name: Frederic M. Shaw  
 Title: Executive Vice President

The undersigned, Mark A. Murphy, the General Counsel and Secretary of the Company, hereby certifies that Frederic M. Shaw is the Executive Vice President of the Company and that the signature set forth above is his genuine signature.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 15<sup>th</sup> day of May, 1998.



Name: Mark A. Murphy  
 Title: General Counsel and Secretary

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Doc #: 12113; V. 6  
Doc Name: INNKEEPERS Prof. Stock-Designating Amendment  
Author: Gerber, Andrew, 08345  
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STATE OF MARYLAND

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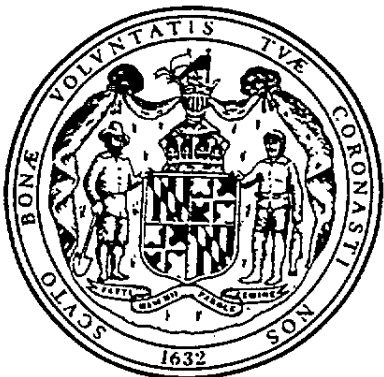
STATE DEPARTMENT OF  
ASSESSMENTS AND TAXATION

301 West Preston Street Baltimore, Maryland 21201

DATE: SEPTEMBER 19, 1996

THIS IS TO ADVISE YOU THAT THE AMENDMENT OF DECLARATION OF TRUST OF  
NNKEEPERS USA TRUST  
WERE RECEIVED AND APPROVED FOR RECORD ON SEPTEMBER 18, 1996 AT 10:14 AM.

FEE PAID: 77.00



JOSEPH V. STEWART  
CHARTER SPECIALIST

90

INNKEEPERS USA TRUST

AMENDMENT OF DECLARATION OF TRUST

THIS IS TO CERTIFY THAT:

9/18/96

10/4/96

**FIRST:** The Amended and Restated Declaration of Trust, as amended (the "Declaration of Trust"), of Innkeepers USA Trust, a Maryland real estate investment trust (the "Company"), is hereby amended by deleting the first sentence of Article XII as follows:

The Trust may not incur Indebtedness (as defined below) in an amount in excess of forty percent (40%) of the Trust's investment in hotel properties, at cost, after giving effect to the Trust's use of proceeds from any Indebtedness.

and inserting in lieu thereof the following sentence:

The Trust may not incur Indebtedness (as defined below) in an amount in excess of fifty percent (50%) of the Trust's investment in hotel properties, at cost, after giving effect to the Trust's use of proceeds from any Indebtedness.

**SECOND:** The foregoing amendment to the Declaration of Trust of the Company has been duly approved by the shareholders of the Company by at least a two-thirds vote of all votes entitled to be cast as required by the Declaration of Trust.

**THIRD:** The undersigned acknowledges this amendment to be the trust act of the Company and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

RECEIVED  
1996 SEP 14  
ASSS  
MAY

IN WITNESS WHEREOF, the Company has caused this amendment to be signed in its name and on its behalf by its duly authorized Secretary on this 11<sup>th</sup> day of September, 1996.

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER  
Governor

LLOYD W. JONES  
Director

L. B. ANDERSON  
Administrator



Department of Assessments and Taxation

CHARTER DIVISION

Room 809  
301 West Preston Street  
Baltimore, Maryland 21201

DOCUMENT CODE 289

BUSINESS CODE \_\_\_\_\_

COUNTY 74

# D3923091

P.A. \_\_\_\_\_ Religious \_\_\_\_\_ Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

CODE	AMOUNT	FEE REMITTED
10	<u>50</u>	Expedited Fee
20	<u>100</u>	Organ. & Capitalization
61	_____	Rec. Fee (Arts. of Inc.)
62	_____	Rec. Fee (Amendment)
63	_____	Rec. Fee (Merger, Consol.)
64	_____	Rec. Fee (Transfer)
_____	_____	Rec. Fee (Dissolution)
_____	_____	Rec. Fee (Revival)
_____	_____	Foreign Qualification
_____	_____	Cert. of Qual. or Reg.
_____	_____	Foreign Name Registration
_____	<u>44</u>	<u>1</u> Certified Copy <u>38</u>
_____	_____	Penalty
_____	_____	For. Supplemental Cert.
_____	_____	Foreign Resolution
_____	_____	Certificate of Conveyance

(New Name) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- \_\_\_\_\_ Change of Name
- \_\_\_\_\_ Change of Principal Office
- \_\_\_\_\_ Change of Resident Agent
- \_\_\_\_\_ Change of Resident Agent Address
- \_\_\_\_\_ Resignation of Resident Agent
- \_\_\_\_\_ Designation of Resident Agent and Resident Agent's Address
- Other Change increasing beneficial shares

_____	Special Fee
_____	For. Limited Partnership
_____	Cert. Limited Partnership
_____	Amendment to Limited Partnership
_____	Termination of Limited Partnership
_____	Recordation Tax
_____	State Transfer Tax
_____	Local Transfer Tax
_____	Corp. Good Standing
_____	Cert. Limited Liability Partnership
_____	Limited Part. Good Standing
_____	Foreign Limited Liability Partnership
_____	Returns
_____	LLP Amendment - Domestic
_____	LLP Amendment - Foreign
_____	Change of P.O., R.A. or R.A.A.
_____	Amend/Cancellation, For. Limited Part.
_____	Art. of Organization (LLC)
_____	LLC Amend, Diss, Continuation
_____	LLC Cancellation

CODE 193

ATTENTION: ABC

MAIL TO ADDRESS: \_\_\_\_\_



AMENDED AND RESTATED DECLARATION OF TRUST

Innkeepers USA Trust (the "Trust"), a Maryland real estate investment trust ("REIT") under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland ("Title 8"), desires to amend and restate its Declaration of Trust as currently in effect and as hereinafter amended and restated.

The following provisions are all the provisions of the Declaration of Trust currently in effect and as hereinafter amended and restated:

ARTICLE I

FORMATION

The Trust is a REIT within the meaning of Title 8. The Trust shall not be deemed to be a general partnership, limited partnership, joint venture, joint stock company or a corporation (but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Code).

ARTICLE II

NAME

The name of the Trust is:

Innkeepers USA Trust

Under circumstances in which the Board of Trustees of the Trust (the "Board of Trustees" or "Board") determines that the use of the name of the Trust is not practicable, the Trust may use any other designation or name for the Trust.

FILED  
01 MAY 18 AM 10:47  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

42698315

Stamp area containing a signature, date 9-29-94, and the number 39. The stamp also includes the text "DECLARATION OF TRUST" and "Effective: 10/84".

SENT BY: ANDREWS & INGERSOLL : 8-21-94 : 8:57PM :

BALLARD SPAHR-

1 410 333 7087:# 4/20

**ARTICLE III**

**PURPOSES AND POWERS**

Section 1. **PURPOSES.** The purposes for which the Trust is formed are to invest in and to acquire, hold, manage, administer, control and dispose of property, including, without limitation or obligation, engaging in business as a REIT under the Internal Revenue Code of 1986, as amended (the "Code").

Section 2. **POWERS.** The Trust shall have all of the powers granted to REITs by Title 8 and all other powers set forth in the Declaration of Trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in the Declaration of Trust.

**ARTICLE IV**

**RESIDENT AGENT**

The name of the resident agent of the Trust in the State of Maryland is James J. Hanks, Jr., whose post office address is c/o Ballard Spahr Andrews & Ingersoll, 300 East Lombard Street, Baltimore, Maryland 21202. The resident agent is a citizen of and resides in the State of Maryland. The Trust may have such offices or places of business within or outside the State of Maryland as the Board of Trustees of the Trust may from time to time determine.

**ARTICLE V**

**BOARD OF TRUSTEES**

Section 1. **POWERS.**

(A) Subject to any express limitations contained in the Declaration of Trust or in the Bylaws, (i) the business and

affairs of the Trust shall be managed under the direction of the Board of Trustees and (ii) the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust. The Board may take any action as it, in its sole judgment and discretion, deems necessary or appropriate to conduct the business and affairs of the Trust. The Declaration of Trust shall be construed with a presumption in favor of the grant of power and authority to the Board. Any construction of the Declaration of Trust or determination made in good faith by the Board concerning its powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Trustees included in the Declaration of Trust or in the Bylaws shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of the Declaration of Trust or the Bylaws or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board of Trustees under the general laws of the State of Maryland or any other applicable laws.

(B) The Board, without any action by the shareholders of the Trust, shall have and may exercise, on behalf of the Trust, without limitation, except for the provisions of Article III, Section 6(b) of the Bylaws, the power to adopt, amend and repeal Bylaws to the extent provided in Article XII of the Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of shares of beneficial interest of

the Trust; and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.

(C) It shall be the duty of the Board of Trustees to ensure that the Trust satisfies the requirements for qualification as a REIT under the Code, including, but not limited to, the ownership of outstanding shares of its beneficial interest, the nature of its assets, the sources of its income, and the amount and timing of its distributions to its shareholders. The Board of Trustees shall take no action to disqualify the Trust as a REIT or to otherwise revoke the Trust's election to be taxed as a REIT without the affirmative vote of two thirds of the number of shares of Common Shares entitled to vote on such matter at a meeting of the shareholders.

Section 2. Classification and Number. (A) The Trustees of the Trust (hereinafter the "Trustees") shall be classified, with respect to the terms for which they severally hold office, into three classes, as nearly equal in number as possible, one class ("Class I") to hold office initially for a term expiring at the first annual meeting of shareholders, another class ("Class II") to hold office initially for a term expiring at the second succeeding annual meeting of shareholders and another class ("Class III") to hold office initially for a term expiring at the third succeeding annual meeting of shareholders, with the Trustees of each class to hold office until their successors are duly elected and qualify. At each annual meeting of shareholders, the successors to the class of Trustees whose term expires at such meeting shall be elected to

hold office for a term expiring at the annual meeting of shareholders held in the third year following the year of their election. Shareholder votes to elect Trustees shall be conducted in the manner provided in the Bylaws.

(B) The number of Trustees initially shall be one (1), which number may be increased or decreased pursuant to the Bylaws of the Trust. The name, address and class of the Trustee who shall serve as the initial Trustee and until his successor is duly elected and qualifies are:

<u>Name</u>	<u>Address</u>	<u>Class</u>
Jeffrey H. Fisher	Suite 100 5525 Federal Highway Boca Raton, Florida 33487	Class III

This Trustee may increase the number of Trustees and fill any vacancy, whether resulting from an increase in the number of Trustees or otherwise, on the Board of Trustees prior to the first annual meeting of shareholders in the manner provided in the Bylaws.

Section 3. Resignation, Removal or Death. Any Trustee may resign by written notice to the Board, effective upon execution and delivery to the Trust of such written notice or upon any future date specified in the notice. A Trustee may be removed at any time, with or without cause, at a meeting of the shareholders, by the affirmative vote of the holders of not less than two thirds of the Shares then outstanding and entitled to vote generally in the election of Trustees.

Section 4. Independent Trustees. Notwithstanding anything herein to the contrary, at all times (except during a period not to exceed sixty (60) days following the death, resignation, incapacity or removal from office of a Trustee prior to expiration of the Trustee's term of office), a majority of the Board of Trustees shall be comprised of persons who are not officers or employees of the Trust or "Affiliates" of (i) any lessee of any property of the Trust, (ii) any subsidiary of the Trust or (iii) any partnership which is an Affiliate of the Trust. This section may not be amended, altered, changed or repealed without the affirmative vote of 85% of the members of the Board of Trustees or the affirmative vote of two thirds of the Shares then outstanding and entitled to vote on this matter.

Section 5. Definition of Affiliate. For purposes of the foregoing subsection, "Affiliate" of a person shall mean (i) any person that, directly or indirectly, controls or is controlled by or is under common control with such person, (ii) any other person that owns, beneficially, directly or indirectly, five percent (5%) or more of the outstanding capital shares, shares or equity interests of such person, or (iii) any officer, director, employee, partner or trustee of such person or of any person controlling, controlled by or under common control with such person (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of such person). The term "person" means and includes individuals, corporations, general and limited partnerships, stock companies or associations, joint ventures,

associations, companies, trusts, banks, trust companies, land trusts, business trusts, or other entities and governments and agencies and political subdivisions thereof. For the purposes of this definition, "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests.

#### ARTICLE VI

##### SHARES OF BENEFICIAL INTEREST

Section 1. Authorized Shares. The beneficial interest of the Trust shall be divided into shares of beneficial interest (the "Shares"). The Trust has authority to issue one hundred million (100,000,000) common shares of beneficial interest, \$.01 par value per share ("Common Shares"), and twenty million (20,000,000) preferred shares of beneficial interest, \$.01 par value per share ("Preferred Shares").

Section 2. Common Shares. Subject to the provisions of Article VII, each Common Share shall entitle the holder thereof to one vote on each matter upon which holders of Common Shares are entitled to vote. The Board of Trustees may reclassify any unissued Common Shares from time to time in one or more classes or series of Shares.

Section 3. Preferred Shares. The Board of Trustees may classify any unissued Preferred Shares and reclassify any previously classified but unissued Preferred Shares of any series from time to time, in one or more series of Shares.

Section 4. Classified or Reclassified Shares. Prior to issuance of classified or reclassified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set, subject to the provisions of Article VII and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each series; and (d) cause the Trust to file articles supplementary with the State Department of Assessments and Taxation of Maryland ("SDAT"). Any of the terms of any class or series of Shares set pursuant to clause (c) of this Section 4 may be made dependent upon facts or events ascertainable outside the Declaration of Trust (including determinations by the Board of Trustees or other facts or events within the control of the Trust) and may vary among holders thereof, provided that the manner in which such facts, events or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in articles supplementary filed with the SDAT.



Section 5. Authorization by Board of Share Issuance.

The Board of Trustees may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration (whether in cash, property, past or future services, obligation for future payment or otherwise) as the Board of Trustees may deem advisable (or without consideration in the case of a Share split or Share dividend), subject to such restrictions or limitations, if any, as may be set forth in the Declaration of Trust or the Bylaws of the Trust.

Section 6. Dividends and Distributions. The holders of

all Common Shares will participate equally in dividends payable to holders of Common Shares when and as authorized and declared by the Board of Trustees and in net assets available for distribution to holders of Common Shares upon liquidation or dissolution. The Board of Trustees may from time to time authorize and declare to shareholders such dividends or distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board of Trustees in its discretion shall determine. The Board of Trustees shall endeavor to declare and pay such dividends and distributions as shall be necessary for the Trust to qualify as a REIT under the Code; however, shareholders shall have no right to any dividend or distribution unless and until authorized and declared by the Board. The exercise of the powers and rights of the Board of Trustees pursuant to this Section shall

be subject to the provisions of any class or series of Shares at the time outstanding.

Section 7. General Nature of Shares. All Shares shall be personal property entitling the shareholders only to those rights provided in the Declaration of Trust. The shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a shareholder shall not terminate the Trust. The Trust is entitled to treat as shareholders only those persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust.

Section 8. Fractional Shares. The Trust may, without the consent or approval of any shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up or down to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it, or pay cash for the fair value of a fraction of a Share.

Section 9. Declaration of Trust and Bylaws. All shareholders are subject to the provisions of the Declaration of Trust and the Bylaws of the Trust.

#### ARTICLE VII

##### RESTRICTIONS ON TRANSFER AND SHARES-IN-TRUST

Section 1. Restrictions on Transfer.

(A) Definitions. The following terms shall have the following meanings:

(1) "Beneficial Ownership" shall mean ownership of Equity Shares by a Person who would be treated as an owner of such Equity Shares either directly or indirectly through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns," and "Beneficially Owned" shall have correlative meanings.

(2) "Beneficiary" shall mean, with respect to any Share Trust, one or more organizations described in each of Section 170(b)(1)(A) (other than clauses (vii) or (viii) thereof) and Section 170(c)(2) of the Code that are named by the Trust as the beneficiary or beneficiaries of such Share Trust, in accordance with the provisions of Section 2(A) hereof.

(3) "Board of Trustees" shall mean the Board of Trustees of the Trust.

(4) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(5) "Constructive Ownership" shall mean ownership of Equity Shares by a Person who would be treated as an owner of such Equity Shares either directly or indirectly through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns," and "Constructively Owned" shall have correlative meanings.

(6) "Equity Shares" shall mean Preferred Shares and Common Shares. The term "Equity Shares" shall include all

Preferred Shares and Common Shares that are held as Shares-in-Trust in accordance with the provisions of Section 2 hereof.

(7) "Innkeepers USA Partnership Agreement" shall mean the agreement of limited partnership of Innkeepers USA Limited Partnership, a Virginia limited partnership, as amended and restated.

(8) "Initial Public Offering" means the sale of Common Shares pursuant to the Trust's first effective registration statement for such Common Shares filed under the Securities Act of 1933, as amended.

(9) "Market Price" on any date shall mean the average of the Closing Price for the five consecutive Trading Days ending on such date. The "Closing Price" on any date shall mean the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Equity Shares are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Equity Shares are listed or admitted to trading or, if the Equity Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the

over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotations system that may then be in use or, if the Equity Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Equity Shares selected by the Board of Trustees. "Trading Day" shall mean a day on which the principal national securities exchange on which the Equity Shares are listed or admitted to trading is open for the transaction of business or, if the Equity Shares are not listed or admitted to trading on any national securities exchange, shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(10) "Non-Transfer Event" shall mean an event (other than a purported Transfer) that would cause any Person to Beneficially Own or Constructively Own Equity Shares in excess of the Ownership Limit, including, but not limited to, the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Shares or the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Shares.

(11) "Ownership Limit" shall mean, with respect to the Common Shares, 9.8% of the number of outstanding Common Shares

and, with respect to any series of Preferred Shares, 9.8% of the number of outstanding Preferred Shares of such series.

(12) "Permitted Transferee" shall mean any Person designated as a Permitted Transferee in accordance with the provisions of Section 2(E) hereof.

(13) "Person" shall mean an individual, corporation, partnership, estate, trust, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a "group" as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

(14) "Prohibited Owner" shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who, but for the provisions of Section 1(C) hereof, would own record title to Equity Shares.

(15) "Redemption Rights" shall mean the rights granted under the Innkeepers USA Partnership Agreement to the limited partners to redeem, under certain circumstances, their limited partnership interests for Common Shares (or cash at the option of the Trust).

(16) "REIT" shall mean a real estate investment trust under Section 856 of the Code.

(17) "Restriction Termination Date" shall mean the first day after the date of the Initial Public Offering on which

the Board of Trustees and the shareholders of the Trust determine, pursuant to Article V, Section 1(C), that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT.

(18) "Shares-in-Trust" shall mean any Equity Shares designated Shares-in-Trust pursuant to Section 1(C) hereof.

(19) "Share Trust" shall mean any separate trust created pursuant to Section 1(C) hereof and administered in accordance with the terms of Section 2 hereof, for the exclusive benefit of any Beneficiary.

(20) "Share Trustee" shall mean any person or entity unaffiliated with both the Trust and any Prohibited Owner, such Share Trustee to be designated by the Trust to act as trustee of any Share Trust, or any successor trustee thereof.

(21) "Transfer" (as a noun) shall mean any sale, transfer, gift, assignment, devise or other disposition of Equity Shares, whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise. "Transfer" (as a verb) shall not have the correlative meaning.

(B) Restriction on Transfers.

(1) Except as provided in Section 1(G) hereof, from the date of the Initial Public Offering and prior to the Restriction Termination Date, (i) no Person shall Beneficially Own or Constructively Own outstanding Equity Shares in excess of the Ownership Limit and (ii) any Transfer that, if effective, would

result in any Person Beneficially Owning or Constructively Owning Equity Shares in excess of the Ownership Limit shall be void ab initio as to the Transfer of that number of Equity Shares which would be otherwise Beneficially Owned or Constructively Owned by such Person in excess of the Ownership Limit, and the intended transferee shall acquire no rights in such excess Equity Shares.

(2) Except as provided in Section 1(G) hereof, from the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Equity Shares being beneficially owned by fewer than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio as to the Transfer of that number of shares which would be otherwise beneficially owned (determined without reference to any rules of attribution) by the transferee, and the intended transferee shall acquire no rights in such excess Equity Shares.

(3) From the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer of Equity Shares that, if effective, would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code shall be void ab initio as to the Transfer of that number of Equity Shares which would cause the Trust to be "closely held" within the meaning of Section 856(h) of the Code, and the intended transferee shall acquire no rights in such excess Equity Shares.

(4) From the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer of



Equity Shares that, if effective, would cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust's real property, within the meaning of Section 856(d)(2)(B) of the Code, shall be void ab initio as to the transfer of that number of Equity Shares which would cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust's real property, within the meaning of Section 856(d)(2)(B) of the Code, and the intended transferee shall acquire no rights in such excess Equity Shares.

(C) Transfer to Share Trust.

(1) If, notwithstanding the other provisions contained in this Section 1, at any time after the date of the Initial Public Offering and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that any Person would either Beneficially Own or Constructively Own Equity Shares in excess of the Ownership Limit, then, (i) except as otherwise provided in Section 1(G) hereof, the purported transferee shall acquire no right or interest (or, in the case of a Non-Transfer Event, the person holding record title to the Equity Shares Beneficially Owned or Constructively Owned by such Beneficial Owner or Constructive Owner, shall cease to own any right or interest) in such number of Equity Shares which would cause such Beneficial Owner or Constructive Owner to Beneficially Own or Constructively Own Equity Shares in excess of the Ownership Limit, (ii) such number of Equity Shares in excess of the Ownership Limit (rounded up to the nearest whole share) shall be designated

Shares-in-Trust and, in accordance with the provisions of Section 2 hereof, transferred automatically and by operation of law to the Share Trust to be held in accordance with that Section 2 and (iii) the Prohibited Owner shall submit such number of Equity Shares to the Trust for registration into the name of the Share Trust. Such transfer to a Share Trust and the designation of shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event, as the case may be.

(2) If, notwithstanding the other provisions contained in this Section 1, at any time after the date of the Initial Public Offering and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would (i) result in the Equity Shares being beneficially owned by fewer than 100 Persons (determined without reference to any rules of attribution), (ii) result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or (iii) cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust's real property, within the meaning of Section 856(d)(2)(B) of the Code, then (x) the purported transferee shall not acquire any right or interest (or, in the case of a Non-Transfer Event, the person holding record title of the Equity Shares with respect to which such Non-Transfer Event occurred, shall cease to own any right or interest) in such number of Equity Shares, the ownership of which by such purported transferee or record holder would (A) result in the Equity Shares

being beneficially owned by fewer than 100 Persons (determined without reference to any rules of attribution), (B) result in the Trust being "closely held" within the meaning of Section 856(h) of the Code, or (C) cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust's real property, within the meaning of Section 856(d)(2)(B) of the Code, (y) such number of Equity Shares (rounded up to the nearest whole share) shall be designated Shares-in-Trust and, in accordance with the provisions of Section 2 hereof, transferred automatically and by operation of law to the Share Trust to be held in accordance with that Section 2, and (z) the Prohibited Owner shall submit such number of Equity Shares to the Trust for registration into the name of the Share Trust. Such transfer to a Share Trust and the designation of shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event, as the case may be.

(D) Remedies For Breach. If the Trust, or its designees, shall at any time determine in good faith that a Transfer has taken place in violation of Section 1(B) hereof or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Equity Shares in violation of Section 1(B) hereof, the Trust shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or acquisition, including, but not limited to, refusing to give effect to such Transfer on the books of the

Trust or instituting proceedings to enjoin such Transfer or acquisition.

(E) Notice of Restricted Transfer. Any Person who acquires or attempts to acquire Equity Shares in violation of Section 1(B) hereof, or any Person who owned Equity Shares that were transferred to the Share Trust pursuant to the provisions of Section 1(C) hereof, shall immediately give written notice to the Trust of such event and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer or Non-Transfer Event, as the case may be, on the Trust's status as a REIT.

(F) Owners Required To Provide Information. From the date of the Initial Public Offering and prior to the Restriction Termination Date:

(1) Every Beneficial Owner or Constructive Owner of more than 5%, or such lower percentages as required pursuant to regulations under the Code, of the outstanding Equity Shares of the Trust shall, within 30 days after January 1 of each year, provide to the Trust a written statement or affidavit stating the name and address of such Beneficial Owner or Constructive Owner, the number of Equity Shares Beneficially Owned or Constructively Owned, and a description of how such shares are held. Each such Beneficial Owner or Constructive Owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership or

Constructive Ownership on the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

(2) Each Person who is a Beneficial Owner or Constructive Owner of Equity Shares and each Person (including the shareholder of record) who is holding Equity Shares for a Beneficial Owner or Constructive Owner shall provide to the Trust a written statement or affidavit stating such information as the Trust may request in order to determine the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

(G) Exception. The Ownership Limit shall not apply to the acquisition of Equity Shares by an underwriter that participates in a public offering of such shares for a period of 90 days following the purchase by such underwriter of such shares provided that the restrictions contained in Section 1(B), hereof will not be violated following the distribution by such underwriter of such shares. In addition, the Board of Trustees, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel in each case to the effect that the restrictions contained in Section 1(B)(2), Section 1(B)(3), and/or Section 1(B)(4) hereof will not be violated, may exempt a Person from the Ownership Limit provided that (i) the Board of Trustees obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership or Constructive Ownership of Equity Shares will violate the Ownership Limit and (ii) such Person agrees that any violation or attempted

violation will result in a transfer to the Share Trust of Equity Shares pursuant to Section 1(C) hereof.

Section 2. Shares-in-Trust.

(A) Share Trust. Any Equity Shares transferred to a Share Trust and designated Shares-in-Trust pursuant to Section 1(C) hereof shall be held for the exclusive benefit of the Beneficiary. The Trust shall name a beneficiary of each Share Trust within five days after discovery of the existence thereof. Any transfer to a Share Trust, and subsequent designation of Equity Shares as Shares-in-Trust, pursuant to Section 1(C) hereof shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event that results in the transfer to the Share Trust. Shares-in-Trust shall remain issued and outstanding Equity Shares of the Trust and shall be entitled to the same rights and privileges on identical terms and conditions as are all other issued and outstanding Equity Shares of the same class and series. When transferred to a Permitted Transferee in accordance with the provisions of Section 2(E) hereof, such Shares-in-Trust shall cease to be designated as Shares-in-Trust.

(B) Dividend Rights. The Share Trust, as record holder of Shares-in-Trust, shall be entitled to receive all dividends and distributions as may be declared by the Board of Trustees on such Equity Shares and shall hold such dividends or distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to Shares-in-Trust shall repay to the Share Trust the amount of any dividends or distributions received by it that (i)

are attributable to any Equity Shares designated Shares-in-Trust and (ii) the record date for which was on or after the date that such shares became Shares-in-Trust. The Trust shall take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, withholding any portion of future dividends or distributions payable on Equity Shares Beneficially Owned or Constructively Owned by the Person who, but for the provisions of Section 1(C) hereof, would Constructively Own or Beneficially Own the Shares-in-Trust; and, as soon as reasonably practicable following the Trust's receipt or withholding thereof, shall pay over to the Share Trust for the benefit of the Beneficiary the dividends so received or withheld, as the case may be.

(C) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust, each holder of Shares-in-Trust shall be entitled to receive, ratably with each other holder of Equity Shares of the same class or series, that portion of the assets of the Trust which is available for distribution to the holders of such class and series of Equity Shares. The Share Trust shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, or winding up, or distribution; provided, however, that the Prohibited Owner shall not be entitled to receive amounts pursuant to this Section 2(C) in excess of, in the case of a purported Transfer in which the

Prohibited Owner gave value for Equity Shares and which Transfer resulted in the transfer of the shares to the Share Trust, the price per share, if any, such Prohibited Owner paid for the Equity Shares and, in the case of a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of shares to the Share Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer. Any remaining amount in such Share Trust shall be distributed to the Beneficiary.

(D) Voting Rights. The Share Trustee shall be entitled to vote all Shares-in-Trust. Any vote by a Prohibited Owner as a holder of Equity Shares prior to the discovery by the Trust that the Equity Shares are Shares-in-Trust shall, subject to applicable law, be rescinded and shall be void ab initio with respect to such Shares-in-Trust and the Prohibited Owner shall be deemed to have given, as of the close of business on the business day prior to the date of the purported Transfer or Non-Transfer Event that results in the transfer to the Share Trust of Equity Shares under Section 1(C) hereof, an irrevocable proxy to the Share Trustee, in its sole and absolute discretion, desires.

(E) Designation of Permitted Transferee. The Share Trustee shall have the exclusive and absolute right to designate a Permitted Transferee of any and all Shares-in-Trust. In an orderly



fashion so as not to materially adversely affect the Market Price of the Shares-in-Trust, the Share Trustee shall designate any Person as Permitted Transferee, provided, however, that (i) the Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale), at a price as set forth in Section 2(G) hereof, the Shares-in-Trust and (ii) the Permitted Transferee so designated may acquire such Shares-in-Trust without such acquisition resulting in a transfer to a Share Trust and the redesignation of such Equity Shares so acquired as Shares-in-Trust under Section 1(C) hereof. Upon the designation by the Share Trustee of a Permitted Transferee in accordance with the provisions of this Section 2(E), the Share Trustee shall (i) cause to be transferred to the Permitted Transferee that number of Shares-in-Trust acquired by the Permitted Transferee, (ii) cause to be recorded on the books of the Trust that the Permitted Transferee is the holder of record of such number of Equity Shares, (iii) cause the Shares-in-Trust to be canceled and (iv) distribute to the Beneficiary any and all amounts held with respect to the Shares-in-Trust after making the payment to the Prohibited Owner pursuant to Section 2(F) hereof.

(F) Compensation to Record Holder of Equity Shares that Become Shares-in-Trust. Any Prohibited Owner shall be entitled (following discovery of the Shares-in-Trust and subsequent designation of the Permitted Transferee in accordance with Section 2(E) hereof or following the acceptance of the offer to purchase such shares in accordance with Section 2(G) hereof) to receive from

the Share Trustee following the sale or other disposition of such Shares-in-Trust the lesser of (i) in the case of (a) a purported Transfer in which the Prohibited Owner gave value for Equity Shares and which Transfer resulted in the transfer of the shares to the Share Trust, the price per share, if any, such Prohibited Owner paid for the Equity Shares, or (b) a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of shares to the Share Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer and (ii) the price per share received by the Share Trustee from the sale or other disposition of such Shares-in-Trust in accordance with Section 2(E) hereof. Any amounts received by the Share Trustee in respect of such Shares-in-Trust and in excess of such amounts to be paid the Prohibited Owner pursuant to this Section 2(F) shall be distributed to the Beneficiary in accordance with the provisions of Section 2(E) hereof. Each Beneficiary and Prohibited Owner waive any and all claims that they may have against the Share Trustee and the Share Trust arising out of the disposition of Shares-in-Trust, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this Section 2 by such Share Trustee or the Trust.

(G) Purchase Right in Shares-in-Trust. Shares-in-Trust shall be deemed to have been offered for sale to the Trust, or its

designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such Shares-in-Trust (or, in the case of devise, gift or Non-Transfer Event, the Market Price at the time of such devise, gift or Non-Transfer Event) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust shall have the right to accept such offer for a period of ninety days after the later of (i) the date of the Non-Transfer Event or purported Transfer which resulted in such Shares-in-Trust and (ii) the date the Trust determines in good faith that a Transfer or Non-Transfer Event resulting in Shares-in-Trust has occurred, if the Trust does not receive a notice of such Transfer or Non-Transfer Event pursuant to Section 1(E) hereof.

Section 3. Remedies Not Limited. Nothing contained in this Article VII shall limit the authority of the Trust to take such other action as it deems necessary or advisable to protect the Trust and the interests of its shareholders by preservation of the Trust's status as a REIT and to ensure compliance with the Ownership Limit.

Section 4. Ambiguity. In the case of an ambiguity in the application of any of the provisions of Article VII, including any definition contained in Section 1(A) hereof, the Board of Trustees shall have the power to determine the application of the provisions of this Article VII with respect to any situation based on the facts known to it.

Section 5. Legend. Each certificate for Equity Shares shall bear the following legend:

"The [Common or Preferred] Shares represented by this certificate are subject to restrictions on transfer for the purpose of the Trust's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"). No Person may (i) Beneficially Own or Constructively Own Common Shares in excess of 9.8% of the number of outstanding Common Shares; (ii) Beneficially Own or Constructively Own Preferred Shares of any series of Preferred Shares in excess of 9.8% of the number of outstanding Preferred Shares of such series, (iii) beneficially own Equity Shares that would result in the Equity Shares being beneficially owned by fewer than 100 Persons (determined without reference to any rules of attribution), (iv) Beneficially Own Equity Shares that would result in the Trust being "closely held" under Section 856(h) of the Code, or (v) Constructively Own Equity Shares that would cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust's real property, within the meaning of Section 856(d)(2)(B) of the Code. Any Person who attempts to Beneficially Own or Constructively Own shares of Equity Shares in excess of the above limitations must immediately notify the Trust in writing. If the restrictions above are violated, the Equity Shares represented hereby will be transferred automatically and by operation of law to a Share Trust and shall be designated Shares-in-Trust. All capitalized terms in this legend have the meanings defined in the Trust's Amended and Restated Declaration of Trust, as the same may be further amended from time to time, a copy of which, including

the restrictions on transfer, will be sent without charge to each shareholder who so requests."

Section 6. Severability. If any provision of this Article VII or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

#### ARTICLE VIII

##### SHAREHOLDERS

Section 1. Meetings. There shall be an annual meeting of the shareholders, to be held on proper notice at such time (after the delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the Bylaws, for the election of the Trustees, if required, and for the transaction of any other business within the powers of the Trust. Except as otherwise provided in this Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws. If there are no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees. Any meeting may be adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

Section 2. Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, the shareholders shall be entitled to vote only on the following matters: (a) termination of REIT status as provided in Article V, Section 1(C), (b) election of Trustees as provided in Article V, Section 2(A) and the removal of Trustees as provided in Article V, Section 3; (c) amendment of the Declaration of Trust as provided in Article X; (d) termination of the Trust as provided in Article XIII, Section 2; (e) merger or consolidation of the Trust, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (f) such other matters with respect to which a vote of the shareholders is required by applicable law or the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees.

Section 3. Preemptive and Appraisal Rights. Except as may be provided by the Board of Trustees in setting the terms of classified or reclassified Shares pursuant to Article VI, Section 4, no holder of Shares shall, as such holder, (a) have any preemptive or preferential right to purchase or subscribe for any additional Shares of the Trust or any other security of the Trust which it may issue or sell or (b), except as expressly required by

Title 8, have any right to require the Trust to pay him the fair value of his Shares in an appraisal or similar proceeding.

Section 4. Extraordinary Actions. Except as specifically provided in Article V, Sections 1(C), 2(A), 3, and 4, and Article VIII, Article X, Sections 2 and 3, and Article XIII, Section 2 of this Declaration of Trust, notwithstanding any provision of law permitting or requiring any action to be taken or authorized by the affirmative vote of the holders of a greater number of votes, any such action shall be effective and valid if taken or authorized by the affirmative vote of holders of Shares entitled to cast a majority of all the votes entitled to be cast on the matter.

Section 5. Board Approval. The submission of any action to the shareholders for their consideration shall first be approved by the Board of Trustees.

#### ARTICLE IX

##### LIABILITY LIMITATION, INDEMNIFICATION

##### AND TRANSACTIONS WITH THE TRUST

Section 1. Limitation of Shareholder Liability. No shareholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Trust by reason of his being a shareholder, nor shall any shareholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the property or the affairs of the Trust by reason of his being a shareholder.

Section 2. Limitation of Trustee and Officer Liability.

To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a REIT, no Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages. Neither the amendment nor repeal of this Section, nor the adoption or amendment of any other provision of the Declaration of Trust or Bylaws of the Trust inconsistent with this section, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. In the absence of any Maryland statute limiting the liability of trustees and officers of a Maryland REIT for money damages in a suit by or on behalf of the Trust or by any shareholder, no Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages except to the extent that (a) the Trustee or officer actually received an improper benefit or profit in money, property, or services, for the amount of the benefit or profit in money, property, or services actually received; or (b) a judgment or other final adjudication adverse to the Trustee or officer is entered in a proceeding based on a finding in the proceeding that the Trustee's or officer's action or failure to act was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

Section 3. Indemnification. The Trust, to the maximum extent permitted by Maryland law in effect from time to time, shall



indemnify and pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former shareholder, Trustee or officer of the Trust or (b) any individual who, while a Trustee of the Trust and at the request of the Trust, serves or has served as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former shareholder, Trustee or officer of the Trust. The Trust shall have the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served as a predecessor of the Trust in any of the capacities described in (a) or (b) above, and to any employee or agent of the Trust or a predecessor of the Trust.

Section 4. Transactions Between the Trust and its Trustees, Officers, Employees and Agents. Subject to any express restrictions in the Declaration of Trust or adopted by the Trustees in the Bylaws or by resolution, the Trust may enter into any contract or transaction of any kind with any person, including any Trustee, officer, employee or agent of the Trust or any person affiliated with a Trustee, officer, employee or agent of the Trust, whether or not any of them has a financial interest in such transaction.

ARTICLE X

AMENDMENTS

Section 1. General. The Trust reserves the right from time to time to make any amendment to the Declaration of Trust, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in the Declaration of Trust, of any Shares. All rights and powers conferred by this Declaration of Trust on shareholders, Trustees and officers are granted subject to this reservation. An amendment to the Declaration of Trust (a) shall be signed and acknowledged by at least a majority of the Trustees, (b) shall be filed for record with SDAT as provided in Title 8 and (c) shall become effective as of the later of the time the SDAT accepts the amendment for record or the time established in the amendment, not to exceed 30 days after the amendment is accepted for record. All references to the Declaration of Trust shall include all amendments thereto.

Section 2. By Trustees. The Trustees may amend the Declaration of Trust from time to time, in the manner provided by Title 8, without any action by the shareholders, to qualify as a REIT under the Code or under Title 8.

Section 3. By Shareholders. Other than amendments pursuant to Section 2 of this Article X, any amendment to the Declaration of Trust shall be valid only if approved by the affirmative vote of at least a majority of all the votes entitled to be cast on the matter, except that any amendment to Article V, Sections 1(C), 2(A), 3 and 4, and Article VII, and Article X,

Sections 2 and 3, and Article XIII, Section 2, and Article XII of the Declaration of Trust shall be valid only if approved by the affirmative vote of two thirds of all the votes entitled to be cast on the matter.

#### ARTICLE XI

##### MERGER, CONSOLIDATION OR SALE OF TRUST PROPERTY

Subject to the provisions of any class or series of Shares at the time outstanding, the Trust may (a) merge the Trust into another entity, (b) consolidate the Trust with one or more other entities into a new entity or (c) sell, lease, exchange or otherwise transfer all or substantially all of the Trust Property. Any such action must be approved by the Board of Trustees and, after notice to all shareholders entitled to vote on the matter, by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

#### ARTICLE XII

##### LIMITATION ON INDEBTEDNESS

The Trust may not incur Indebtedness (as defined below) in an amount in excess of forty percent (40%) of the Trust's investment in hotel properties, at cost, after giving effect to the Trust's use of proceeds from any Indebtedness. For purposes of the foregoing restrictions, "Indebtedness" of the Trust shall mean all obligations of the Trust, its subsidiaries or any partnership in which the Trust serves as general partner, for borrowed money (including all notes payable and drafts accepted representing

extensions of credit) and all obligations evidenced by bonds, debentures, notes or other similar instruments on which interest charges are customarily paid, including obligations under capital leases.

ARTICLE XIII

DURATION AND TERMINATION OF TRUST

Section 1. Duration. The Trust shall continue perpetually unless terminated pursuant to Section 2 of this Article XII or pursuant to any applicable provision of Title 8.

Section 2. Termination.

(a) Subject to the provision of any class or series of Shares at the time outstanding, the Trust may be terminated at any meeting of shareholders, by the affirmative vote of two thirds of all the votes entitled to be cast on the matter. Upon the termination of the Trust:

i) The Trust shall carry on no business except for the purpose of winding up its affairs.

ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under the Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust's contracts, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining property of the Trust to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property

of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business.

iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as they deem necessary for their protection, the Trust may distribute the remaining property of the Trust among the shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled, the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the shareholders as herein provided, a majority of the Trustees shall execute and file with the Trust's records a document certifying that the Trust has been duly terminated, and the Trustees shall be discharged from all liabilities and duties hereunder, and the rights and interests of all shareholders shall cease.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Trust has been signed on this 21st day of September, 1994, by the sole Trustee of the Trust who acknowledges that this document is his free act and deed, and that to the best of his knowledge, information, and belief, the matters and facts set forth herein are true in all material respects and that the statement is made under the penalties for perjury.

The undersigned acknowledges that the shareholders of the Trust have approved this Amended and Restated Declaration of Trust as required by Maryland law.

  
Jeffrey H. Fisher, Trustee

(SEAL)