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(Business Entity Name)

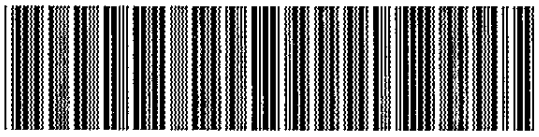
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04 MAR 23 AM 11:24  
DIVISION OF CORPORATION

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
04 MAR 23 PM 4:16

**CT CORPORATION**

March 23, 2004

Secretary of State, Florida  
409 East Gaines Street  
Tallahassee FL 32399

Re: Order #: 6064218 SO  
Customer Reference 1: 94116670  
Customer Reference 2: n/a

Dear Secretary of State, Florida:

Please file the attached:

AMLI Residential Properties Trust (MD)  
Qualification  
Florida

Please FILE FIRST and return a good standing certificate and a certified copy along with regular evidence.

Enclosed please find a check for the requisite fees. Please return evidence of filing(s) to my attention.

If for any reason the enclosed cannot be filed upon receipt, please contact me immediately at (850) 222-1092. Thank you very much for your help.

Sincerely,

Jeffrey J Netherton  
Sr. Fulfillment Specialist  
Jeff\_Netherton@cch-lis.com

660 East Jefferson Street  
Tallahassee, FL 32301  
Tel. 850 222 1092  
Fax 850 222 7615

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY**

AMLI RESIDENTIAL PROPERTIES TRUST

A Maryland Real Estate Investment  
**TRUST**

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 AMLI Residential Properties Trust, a Maryland real estate investment <sup>(Name of Trust)</sup> Trust hereby affirms in order to file or qualify <sup>(State)</sup> AMLI Residential Properties Trust in the State of Florida. <sup>(Name of Trust)</sup>

1. Two or more persons are named in the Trust.
2. The principal address is 125 South Wacker Drive, Suite 3100  
Chicago, Illinois 60606
3. The registered agent and street address in the State of Florida is:  
Corporation Service Company  
1201 Hays Street, Tallahassee, Florida 32301
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.

Mia D. Wintersmith Mia Wintersmith, Asst. Secretary  
(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.

NOTARY

John E. Allen  
Name: John E. Allen  
Title: Trustee

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

CR2E063(3/00)

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
04 MAR 23 PM 4:16

2

**RESOLUTION TO CHANGE PRINCIPAL OFFICE OR RESIDENT AGENT**

The directors/stockholders/general partner/authorized person of \_\_\_\_\_

AMLI RESIDENTIAL PROPERTIES TRUST  
(Name of Entity)

organized under the laws of Maryland, passed the following resolution:  
(State)

[CHECK APPLICABLE BOX(ES)]

The principal office is changed from: (old address)

711 Mayton Court  
Bel Air, MD 21014

to: (new address)

c/o CSC-Lawyers Incorporating Service Company ✓  
11 East Chase Street, Baltimore, MD 21202

The name and address of the resident agent is changed from:

Ken Kramer  
711 Mayton Court, Bel Air, MD 21014

to:

CSC-Lawyers Incorporating Service Company ✓  
11 East Chase Street, Baltimore, MD 21202

I certify under penalties of perjury the foregoing is true.

[Signature]  
Secretary or Assistant Secretary  
General Partner  
Authorized Person

I hereby consent to my designation in this document as resident agent for this entity.

CSC-Lawyers Incorporating Service Company  
SIGNED BY: Carla Lohi  
Resident Agent

Carla Lohi  
Asst. Vice President

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
04 MAR 23 PM 4:16

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 2  
page document on file in this office. DATED: 3-16-2004

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: [Signature], Custodian

This stamp replaces our previous certification system. Effective: 6/95

560 35

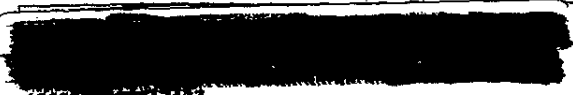


# CORPORATE CHARTER APPROVAL SHEET

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 80 BUSINESS CODE \_\_\_\_\_

# D03790276



Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

1000361968817403

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

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

ID # D03790276 ACK # 1000361968817403  
LIBER: 800580 FOLIO: 0035 PAGES: 0002  
ANLI RESIDENTIAL PROPERTIES TRUST

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

08/10/2003 AT 01:19 P M O N 0000785735

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 25  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: \_\_\_\_\_  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies \_\_\_\_\_  
Copy Fee: \_\_\_\_\_  
Certificates \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Other: \_\_\_\_\_  
TOTAL FEES: 525.00

Change of Name \_\_\_\_\_  
~~X~~ Change of Principal Office \_\_\_\_\_  
~~X~~ Change of Resident Agent \_\_\_\_\_  
Change of Resident Agent Address \_\_\_\_\_  
Resignation of Resident Agent \_\_\_\_\_  
Designation of Resident Agent \_\_\_\_\_  
and Resident Agent's Address \_\_\_\_\_  
Change of Business Code \_\_\_\_\_  
Adoption of Assumed Name \_\_\_\_\_  
Other Change(s) \_\_\_\_\_

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

Code \_\_\_\_\_

Documents on \_\_\_\_\_ Checks \_\_\_\_\_

Attention: \_\_\_\_\_

Approved By: 007

CSC THE UNITED STATES CORPORATION  
CARLA E. LOHI  
1201 HAYS ST  
TALLAHASSEE

Keyed By: \_\_\_\_\_

FL 32301-2699

COMMENT(S): \_\_\_\_\_

LIST ID: 0001200115  
WORK ORDER: 0000785735  
DATE: 08-10-2003 01:19 PM  
AMT. PAID: \$500.00

(38)

Best copy available

APPROVED AND RECEIVED FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND

ORGANIZATION AND CAPITALIZATION FEE PAID RECORRING FEE PAID SPECIAL FEE PAID

TO THE CLERK OF THE COURT

IT IS HEREBY CERTIFIED THAT THE WITHIN INSTRUMENT TOGETHER WITH ALL ENDORSEMENTS HEREOF HAS BEEN RECEIVED APPROVED AND RECORDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND



STATE OF MARYLAND

I hereby certify this is a true and complete copy of the page document in my office. DATED 3/16/2004 BY: Mae Still, Custodian

12-16-93 1:43 pm

AMLI RESIDENTIAL PROPERTIES TRUST

DECLARATION OF TRUST

December 15, 1993

REC  
3 DEC 16 1993

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## AMLI RESIDENTIAL PROPERTIES TRUST

### DECLARATION OF TRUST

This Declaration of Trust of Amlf Residential Properties Trust, made in Chicago, Illinois, is created as of December 15, 1993, as follows:

#### RECITALS

I. This Trust is a real estate investment trust under the laws of the State of Maryland.

II. The Trustees desire that this Trust qualify as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as now in effect or hereafter amended (the "Code"), and under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended ("Title 8").

III. The beneficial interest in this Trust shall be divided into transferable shares ("Shares") of one or more classes evidenced by certificates.

#### DECLARATION

NOW, THEREFORE, the Trustees hereby declare that they assume the duties of Trustees hereunder and hold all assets of the Trust presently existing and hereafter to be received, and all rents, income, profits and gains therefrom, from whatever source derived, in trust, for the Shareholders in accordance with the terms and conditions hereinafter provided.

#### ARTICLE I. THE TRUST

**Section I. Name.** The Trust created by this Declaration of Trust is herein referred to as the "Trust" and shall be known by the name "Amlf Residential Properties Trust." So far as may be practicable, legal and convenient, the affairs of the Trust shall be conducted and transacted under that name, which name shall not refer to the Trustees individually or personally or to the beneficiaries or Shareholders of the Trust, or to any officers, employees or agents of the Trust.

Under circumstances in which the Trustees determine that the use of the name "Amlf Residential Properties Trust" is not practicable, legal or convenient, they may as appropriate use their names with suitable reference to their trustee status, or some other suitable designation, or they may adopt another name under which the Trust may hold property or operate in any jurisdiction which name shall not, to the knowledge of the Trustees, act as beneficiaries or Shareholders of the Trust. Legal title to all the properties subject from time to time to this

Declaration of Trust shall be transferred to, vested, and held by the Trust in its own name or by the Trustees as joint tenants with right of survivorship as Trustees of the Trust, except that the Trustees shall have the power to cause legal title to any property of the Trust to be held by and/or in the name of one or more of the Trustees, or any other person or persons, on such terms, in such manner, and with such powers as the Trustees may determine, provided that the interest of the Trust therein is appropriately protected.

The Trust shall have the authority to operate under an assumed name or names in such state or states or any political subdivision thereof where it would be legal, practical or convenient to operate in the name of the Trust. The Trust shall have the authority to file such assumed name certificates or other instruments in such places as may be required by applicable law to operate under such assumed name or names.

**Section 2. Resident Agent.** The name and address of the Resident Agent of the Trust in the State of Maryland is The Prentice-Hall Corporation System, Maryland, 11 East Chase Street, Baltimore, Maryland 21202. The Trust may have such other offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

**Section 3. Nature of Trust.** The Trust is a real estate investment trust within the meaning of Title 8. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint stock association or, except as contemplated in Article 8, Section 1, a corporation. The Shareholders shall be beneficiaries in that capacity in accordance with the rights conferred upon them hereunder.

**Section 4. Purpose of the Trust.**

(a) The Trust shall have all the powers granted to real estate investment trusts generally by Title 8 or any successor statute and shall have any other and further powers as are not inconsistent with and are appropriate to promote and attain the purposes of the Trust as set forth in this Declaration of Trust. Its purpose is to invest in notes, bonds and other obligations secured by mortgages on real property and to purchase, hold, lease, manage, develop, subdivide and improve, and ultimately to sell or exchange, real property and interests in real property, and in general, to carry on any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Maryland upon real estate investment trusts formed under Title 8, and to do any or all of the things herein set forth to the same extent as natural persons might or could do. The Trust may act as registered agent for service of process in any jurisdiction here permitted on behalf of any partnership for which it is a general partner.

(b) The Board of Trustees shall use its reasonable best efforts to cause the Trust to qualify for U.S. Federal income tax treatment as a REIT under Sections 856-860 of the Code. In furtherance of the foregoing, the Board of Trustees shall use its reasonable best efforts to take such actions from time to time as are necessary, and is authorized to take such actions as in its sole judgment and discretion are desirable, to preserve the status of the Trust as a REIT.



provided, however, that if the Board of Trustees determines, with the affirmative vote of a majority of the voting power of the Trust entitled to vote approving the Board's determination, that it is no longer in the best interests of the Trust to continue to have the Trust qualify as a REIT, the Board of Trustees may revoke or otherwise terminate the Trust's REIT election pursuant to applicable U.S. Federal tax law.

## ARTICLE 2. SHARES

**Section 1. Shares, Certificates of Beneficial Interest.** The beneficial interest in the Trust shall be divided into and shall be designated as Shares. The Trust shall have authority to issue an aggregate of 150,000,000 Shares, \$0.01 par value per Share, and shall consist of common Shares and such other types or classes of securities of the Trust as the Trustees may create and authorize from time to time and designate as representing a beneficial interest in the Trust. The amount and form of consideration paid for the issuance of Shares shall be determined by the Trustees from time to time in accordance with the laws of the State of Maryland. The Trustees shall hold the money or property received for the issuance of Shares for the benefit of the owners of such Shares. Shares shall not be issued until the full amount of the consideration has been received by the Trust. The Trustees may authorize Share dividends or Share splits. All shares issued hereunder shall be, when issued, fully paid, and no assessment shall ever be made upon the Shareholders. Ownership of Shares shall be evidenced by transferable certificates in such form as shall be determined by the Trustees from time to time in accordance with the laws of the State of Maryland. The owners of such Shares, who are the beneficiaries of the Trust, shall be designated as Shareholders. The certificates shall be negotiable and title thereto shall be transferred by assignment or delivery in all respects as a stock certificate of a Maryland corporation.

The Board of Trustees may classify or reclassify any unissued Shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the Shares by filing articles supplementary pursuant to the applicable laws of the State of Maryland. The Board of Trustees is authorized to issue from the authorized but unissued Shares of the Trust preferred Shares in series and to establish from time to time the number of preferred Shares to be included in each such series and to fix the designation and any preferences, conversion and other rights, voting power, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the shares of each series. Except for Shares so classified or reclassified and any preferred Shares issued hereunder, all other Shares shall be designated as common Shares, each of which common Shares shall be equal in all respects to every other common Share. Subject to any preferential rights in favor of any class of preferred Shares, upon liquidation of the Trust, each issued and outstanding common Share shall be entitled to participate pro rata in the assets of the Trust remaining after payment of, or adequate provision for, all known debts and liabilities of the Trust.

Subject to the immediately succeeding paragraph and to the provisions in Section 8 of this Article 2 regarding Excess Shares, the authority of the Board of Trustees with respect to each unissued series shall include, but not be limited to, determination of the following:

(a) The number of Shares constituting that series and the distinctive designation of that series;

(b) The rate of dividend on such series, if any, and whether (and if so, on what terms and conditions) dividends shall be cumulative (and, if so, whether unpaid dividends shall compound or accrue interest) or shall be payable in preference or in any other relation to the dividends payable on any other class or classes of Shares or any other series of the preferred Shares;

(c) Whether that series shall have voting rights in addition to the voting rights provided by law and, if so, the terms and extent of such voting rights;

(d) Whether the Shares shall be issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange (including, without limitation, the price or prices or the rate or rates of conversion or exchange or any terms for adjustment thereof);

(e) Whether the Shares may be redeemed and, if so, the terms and conditions on which they may be redeemed (including, without limitation, the dates upon or after which they may be redeemed and the price or prices at which they may be redeemed, which price or prices may be different in different circumstances or at different redemption dates);

(f) The amounts, if any, payable upon the Shares in the event of voluntary liquidation, dissolution or winding up of the Trust in preference of Shares of any other class or series and whether the Shares shall be entitled to participate generally in distributions on the common Shares under such circumstances;

(g) The amounts, if any, payable under the Shares thereof in the event of involuntary liquidation, dissolution or winding up of the Trust in preference of Shares of any other class or series and whether the Shares shall be entitled to participate generally in distributions on the common Shares under such circumstances;

(h) Sinking fund provisions, if any, for the redemption or purchase of the Shares (the term "sinking fund" being understood to include any similar fund, however designated); and

(i) Any other relative rights, preferences, limitations and powers of that series.

Notwithstanding anything to the contrary in this Declaration of Trust, no determination shall be made by the Trustees nor shall any transaction be entered into with respect to any

Shares or series thereof which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(e) of the Code.

**Section 2. Sale of Shares.** The Trustees, in their discretion, may from time to time issue or sell or contract to issue or sell, Shares, including Shares held in the treasury, to such party or parties and for money or property actually received, as allowed by the laws of the State of Maryland, at such time or times, and on such terms as the Trustees may deem appropriate. In connection with any issuance of Shares, the Trustees, in their discretion, may provide for the issuance of fractional Shares or may provide for the issuance of scrip for fractions of Shares and determine the terms of such scrip including, without limiting the generality of the foregoing, the time within which any such scrip must be surrendered in exchange for Shares and the right, if any, of holders of scrip upon the expiration of the time so fixed, the right, if any, to receive proportional distributions, and the right, if any, to redeem scrip for cash, or the Trustees may, in their discretion, or if they see fit at the option of each holder, provide in lieu of scrip for the adjustment of fractions in cash. The Shareholders shall have no preemptive rights of any kind whatsoever (preemptive rights hereby defined as including, but not limited to, the right to purchase or subscribe for or otherwise acquire any Shares of the Trust of any class, whether now or hereafter authorized, or any securities or obligations convertible into or exchangeable for, or any right, warrant or option to purchase such Shares whether or not such Shares are issued and/or disposed of for cash, property, or other consideration of any kind).

**Section 3. Offering of Shares.** The Trustees are authorized to cause to be made from time to time offerings of the Shares of the Trust in private offerings or to the public at offering prices deemed appropriate by the Trustees. For this purpose, the Trustees are authorized to enter into a contract with an underwriter or placement agent, which shall be granted such commissions for its services as may be agreed upon by the parties.

**Section 4. Treasury Shares.** The Trust may repurchase or otherwise acquire its own Shares at the prevailing market price and for this purpose the Trust may create and maintain such reserves as are deemed necessary and proper. Shares issued hereunder and purchased or otherwise acquired for the account of the Trust shall not, so long as they belong to the Trust, either receive distributions (except that they shall be entitled to receive distributions payable in Shares of the Trust) or be voted at any meeting of the Shareholders. Such Shares may, in the discretion of the Trustees, be held in the treasury and be disposed of by the Trustees at such time or times, to such party or parties, and for such consideration, as the Trustees may deem appropriate.

**Section 5. Transferability of Shares.** Subject to Section 1 of this Article 2, shares in the Trust shall be transferable in accordance with the procedure prescribed from time to time in the Trust Bylaws. The persons in whose name the Shares are registered on the books of the Trust shall be deemed the absolute owners thereof and, until a transfer is effected on the books

of the Trust, the Trustees shall not be affected by any notice, actual or constructive, of any transfer. Any issuance, redemption or transfer of, or restriction on, Trust Shares which would operate to disqualify the Trust as a real estate investment trust for purposes of Federal income tax, is null and void ab initio.

**Section 6. Effect of Transfer of Shares or Death, Insolvency or Incapacity of Shareholders.** Neither the transfer of Shares nor the death, insolvency or incapacity of any Shareholder shall operate to dissolve or terminate the Trust, nor shall it entitle any transferee, legal representative or other person to a partition of the property of the Trust or to an accounting.

### **ARTICLE 3. RESTRICTION ON TRANSFER, ACQUISITION AND REDEMPTION OF SHARES**

**Section 1. Definitions.** For the purposes of this Article 3, the following terms shall have the following meanings:

**"Beneficial Ownership"** shall mean ownership of Equity Shares by a Person who would be treated as an owner of such Equity Shares under Section 542(a)(2) of the Code either directly or constructively 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," "Beneficially Own" and "Beneficially Owned" shall have the correlative meanings.

**"Beneficiary"** shall mean the beneficiary of the Excess Share Trust as determined pursuant to Section 18 of this Article 3.

**"Debt"** shall mean indebtedness of (a) the Trust or (b) Amlri Residential Properties, L.P., a Delaware limited partnership, or any predecessor thereof.

**"Equity Shares"** shall mean Shares that are either common Shares or preferred Shares.

**"Excess Share Trust"** shall mean the trust created pursuant to Section 15 of this Article 3.

**"Existing Holder"** shall mean (a) any Person who is, or would be upon the exchange of Units, Debt or any other security of the Trust, the Beneficial Owner of common Shares and/or preferred Shares in excess of the Ownership Limit both upon and immediately after the closing of the Initial Public Offering, so long as, but only so long as, such Person Beneficially Owns or would, upon exchange of Units, Debt or any other security of the Trust, Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit and (b) any Person to whom an Existing Holder Transfers, subject to the limitations provided in this Article 3, Beneficial Ownership of common Shares and/or preferred Shares causing such

transferee to Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit.

**"Existing Holder Limit"** (a) for any Existing Holder who is an Existing Holder by virtue of clause (a) of the definition thereof, shall mean, initially, the percentage of the outstanding Equity Shares Beneficially Owned, or which would be Beneficially Owned upon the exchange of Units, Debt or any other security of the Trust, by such Existing Holder upon and immediately after the date of the closing of the Initial Public Offering, and, after any adjustment pursuant to Section 9 of this Article 3, shall mean such percentage of the outstanding Equity Shares as so adjusted, and (b) for any Existing Holder who becomes an Existing Holder by virtue of clause (b) of the definition thereof, shall mean, initially, the percentage of the outstanding Equity Shares Beneficially Owned by such Existing Holder at the time that such Existing Holder becomes an Existing Holder, but in no event shall such percentage be greater than the Existing Holder Limit for the Existing Holder who Transferred Beneficial Ownership of the common Shares and/or preferred Shares or, in the case of more than one transferor, in no event shall such percentage be greater than the smallest Existing Holder Limit of any transferring Existing Holder, and, after any adjustment pursuant to Section 9 of this Article 3, shall mean such percentage of the outstanding Equity Shares as so adjusted. From the date of the Initial Public Offering and until the Restriction Termination Date, the Trust shall maintain and, upon request, make available to each Existing Holder, a schedule which sets forth the then current Existing Holder Limits for each Existing Holder.

**"Initial Public Offering"** shall mean 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.

**"Market Price"** shall mean the last reported sales price reported on the New York Stock Exchange of common Shares or preferred Shares, as the case may be, on the trading day immediately preceding the relevant date, or if not then traded on the New York Stock Exchange, the last reported sales price of the common Shares or preferred Shares, as the case may be, on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over or through which the common Shares or preferred Shares, as the case may be, may be traded, or if not then traded over or through any exchange or quotation system, then the market price of the common Shares and/or preferred Shares, as the case may be, on the relevant date as determined in good faith by the Board of Trustees.

**"Ownership Limit"** shall initially mean 5.0% in number of shares or value, of the outstanding Equity Shares of the Trust, and after any adjustment as set forth in Section 10 of this Article 3, shall mean such greater percentage of the outstanding Equity Shares as so adjusted. The number and value of the outstanding Equity Shares of the Trust shall be determined by the Board of Trustees in good faith, which determination shall be conclusive for all purposes hereof.

**"Person"** shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), 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, but does not include an underwriter which participated in a public offering of the common Shares and/or preferred Shares for a period of 25 days following the purchase by such underwriter of the common Shares and/or preferred Shares.

**"Purported Beneficial Transferee"** shall mean, with respect to any purported Transfer which results in Excess Shares as defined below in Section 3 of this Article 3, the purported beneficial transferee for whom the Purported Record Transferee would have acquired shares of Equity Shares, if such Transfer had been valid under Section 2 of this Article 3.

**"Purported Record Transferee"** shall mean, with respect to any purported Transfer which results in Excess Shares, the record holder of the Equity Shares if such Transfer had been valid under Section 2 of this Article 3.

**"Restriction Termination Date"** shall mean the first day after the date of the Initial Public Offering on which the Board of Trustees determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT.

**"Transfer"** shall mean any sale, transfer, gift, assignment, devise or other disposition of Equity Shares (including (a) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Shares, (b) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Shares, but excluding the exchange of Units, Debt or any other security of the Trust for Equity Shares and (c) any transfer or other disposition of any interest in Equity Shares as a result of a change in the marital status of the holder thereof), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise. The terms "Transfers" and "Transferred" shall have the correlative meanings.

**"Units"** shall mean units of limited partnership of Amh Residential Properties, L.P., a Delaware limited partnership.

#### **Section 2. Ownership Limitation.**

(A) Except as provided in Section 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, no Person (other than an Existing Holder) shall Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit and no Existing Holder shall Beneficially Own common Shares and/or preferred Shares in excess of the Existing Holder Limit for such Existing Holder.

(B) Except as provided in Sections 9 and 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in any Person (other than an Existing Holder) Beneficially Owning common Shares and/or preferred Shares in excess of the Ownership Limit shall be void *ab initio* as to the Transfer of such common Shares and/or preferred Shares which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such common Shares and/or preferred Shares.

(C) Except as provided in Sections 9 and 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in any Existing Holder Beneficially Owning common Shares and/or preferred Shares in excess of the applicable Existing Holder Limit shall be void *ab initio* as to the Transfer of such common Shares and/or preferred Shares which would be otherwise Beneficially Owned by such Existing Holder in excess of the applicable Existing Holder Limit; and such Existing Holder shall acquire no rights in such common Shares and/or preferred Shares.

(D) Except as provided in Section 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in the common Shares and/or preferred Shares being beneficially owned (as provided in Section 856(a) of the Code) by less than 100 Persons (determined without reference to any rules of attribution) shall be void *ab initio* as to the Transfer of such common Shares and/or preferred Shares which would be otherwise beneficially owned (as provided in Section 856(a) of the Code) by the transferee, and the intended transferee shall acquire no rights in such common Shares and/or preferred Shares.

(E) From the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer 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 the common Shares and/or preferred 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 common Shares and/or preferred Shares.

(F) Nothing contained in this Article 3 shall impair the settlement of transactions entered into on the facilities of the New York Stock Exchange

### **Section 3. Excess Shares.**

(A) If, notwithstanding the other provisions contained in this Article 3, at any time after the date of the Initial Public Offering and until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust (except for a change resulting from the exchange of Units for Equity Shares) such that any Person would Beneficially Own common Shares and/or preferred Shares in excess of the applicable Ownership

Limit or Existing Holder Limit, then, except as otherwise provided in Sections 9 and 12 of this Article 3, such common Shares and/or preferred Shares in excess of such Ownership Limit or Existing Holder Limit (rounded up to the nearest whole share) shall constitute "Excess Shares" and be treated as provided in this Article 3. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change in capital structure (except for a change resulting from the exchange of Units for Equity Shares).

(B) If, notwithstanding the other provisions contained in this Article 3, at any time after the date of the Initial Public Offering and until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust (except for a change resulting from the exchange of Units for Equity Shares) which, if effective, would cause the Trust to become "closely held" within the meaning of Section 856(h) of the Code, then the common Shares and/or preferred Shares being Transferred which would cause the Trust to be "closely held" within the meaning of Section 856(h) of the Code (rounded up to the nearest whole share) shall constitute Excess Shares and be treated as provided in this Article 3. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change in capital structure (except for a change resulting from the exchange of Units for Equity Shares).

**Section 4. Prevention of Transfer.** If the Board of Trustees or its designee shall at any time determine in good faith that a Transfer has taken place in violation of Section 2 of this Article 3 or that a Person intends to acquire or has attempted to acquire beneficial ownership (determined without reference to any rules of attribution) or Beneficial Ownership of any Shares of the Trust in violation of Section 2 of this Article 3, the Board of Trustees or its designee shall take such action as it deems advisable to refuse to give effect to or to prevent such transfer, 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; provided, however, that any Transfers or attempted Transfers in violation of Sections 2(B), 2(C), 2(D) and 2(E) of this Article 3 shall automatically result in the designation and treatment described in Section 3 of this Article 3, irrespective of any action (or non-action) by the Board of Trustees.

**Section 5. Notice to Trust.** Any Person who acquires or attempts to acquire Equity Shares in violation of Section 2 of this Article 3, or any Person who is a transferee such that Excess Shares results under Section 3 of this Article 3, shall immediately give written notice or, in the event of a proposed or attempted Transfer, give at least 15 days prior 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 attempted Transfer on the Trust's status as a REIT.

**Section 6. Information for Trust.** From the date of the Initial Public Offering and until the Restriction Termination Date:



(A) every Beneficial Owner of more than 5.0% (or such other percentage, between 1.2 of 1% and 5%, as provided in the income tax regulations promulgated under the Code) of the number or value of outstanding Equity Shares of the Trust shall, within 30 days after January 1 of each year, give written notice to the Trust stating the name and address of such Beneficial Owner, the number of Shares Beneficially Owned, and a description of how such Shares are held. Each such Beneficial Owner shall provide to the Trust such additional information as the Trust may reasonably request in order to determine the effect, if any, of such Beneficial Ownership on the Trust's status as a REIT.

(B) each Person who is a Beneficial Owner of common Shares and/or preferred Shares and each Person (including the Shareholder of record) who is holding common Shares and/or preferred Shares for a Beneficial Owner shall provide to the Trust such information that the Trust may reasonably request in order to determine the Trust's status as a REIT, to comply with the requirements of any taxing authority or governmental agency or to determine any such compliance.

**Section 7. Other Action by Board.** Subject to clause (F) of Section 2 of this Article 3, nothing contained in this Article 3 shall limit the authority of the Board of Trustees 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.

**Section 8. Ambiguities.** In the case of an ambiguity in the application of any of the provisions of this Article 3, including any definition contained in Section 1, the Board of Trustees shall have the power to determine the application of the provisions of this Article 3 with respect to any situation based on the facts known to it.

**Section 9. Modification of Existing Holder Limits.** The Existing Holder Limits may be modified as follows:

(A) Subject to the limitations provided in Section 11 of this Article 3, the Board of Trustees of the Trust may grant options which result in Beneficial Ownership of common Shares and/or preferred Shares by an Existing Holder pursuant to an option plan approved by the Board of Trustees and/or the Shareholders of the Trust. Any such grant shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under Section 11 to permit the Beneficial Ownership of the common Shares and/or preferred Shares issuable upon the exercise of such option.

(B) Subject to the limitations provided in Section 11 of this Article 3, an Existing Holder may elect to participate in a dividend reinvestment plan approved by the Board of Trustees which results in Beneficial Ownership of common Shares and/or preferred Shares by such participating Existing Holder and any comparable reinvestment plan of Anti Residential Properties, L.P., a Delaware limited partnership, wherein those Existing Holders holding Units are entitled to purchase additional Units. Any such participation shall increase the Existing

Holder Limit for the affected Existing Holder to the maximum extent possible under Section 11 of this Article 3 to permit Beneficial Ownership of the common Shares and/or preferred Shares acquired as a result of such participation.

(C) The Board of Trustees will reduce the Existing Holder Limit for any Existing Holder after any Transfer permitted in this Article 3 by such Existing Holder by the percentage of the outstanding Equity Shares so Transferred or after the lapse (without exercise) of an option described in Section 9(A) of this Article 3 by the percentage of the Equity Shares that the option, if exercised, would have represented, but in either case no Existing Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

**Section 10. Increase or Decrease in Ownership Limit.** Subject to the limitations provided in Section 11 of this Article 3 and Section 4 of Article 1, the Board of Trustees may from time to time increase or decrease the Ownership Limit; provided, however, that any decrease may only be made prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law, in which case such decrease shall be effective immediately).

**Section 11. Limitations on Changes in Existing Holder and Ownership Limits.**

(A) Neither the Ownership Limit nor any Existing Holder Limit may be increased (nor may any additional Existing Holder Limit be created) if, after giving effect to such increase (or creation), five Beneficial Owners of common Shares (including all of the then Existing Holders) could Beneficially Own, in the aggregate, more than 50.0% in number or value of the outstanding Equity Shares.

(B) Prior to the modification of any Existing Holder Limit or Ownership Limit pursuant to Sections 9 or 10 of this Article 3, the Board of Trustees may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT.

(C) No Existing Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

**Section 12. Waivers by Board.** The Board of Trustees, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence satisfactory to the Board of Trustees and upon at least 15 days written notice from a transferee prior to the proposed Transfer which, if consummated, would result in the intended transferee owning shares in excess of Ownership Limit or Existing Holder Limit, as the case may be, and upon such other conditions as the Board of Trustees may direct, may waive the Ownership Limit or the Existing Holder Limit, as the case may be, with respect to such transferee.

**Section 13. Legend.** Each certificate for common Shares and/or preferred Shares shall bear substantially the following legend:

The securities 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. Except as otherwise provided pursuant to the Declaration of Trust of the Trust, no Person may Beneficially Own Shares of common Shares and/or preferred Shares in excess of 5.0% (or such greater percentage as may be determined by the Board of Trustees of the Trust) of the number or value of the outstanding Equity Shares of the Trust (unless such Person is an Existing Holder). Any Person who attempts or proposes to Beneficially Own common Shares and/or preferred Shares in excess of the above limitations must notify the Trust in writing at least 15 days prior to such proposed or attempted Transfer. All capitalized terms in this legend have the meanings defined in the Declaration of Trust of the Trust, a copy of which, including the restrictions on transfer, will be sent without charge to each Shareholder who so requests. If the restrictions on transfer are violated, the securities represented hereby will be designated and treated as Excess Shares which will be held in trust by the Trust.

**Section 14. Severability.** If any provision of this Article 3 or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions shall be affected only to the extent necessary to comply with the determination of such court.

**Section 15. Trust for Excess Shares.** Upon any purported Transfer that results in Excess Shares pursuant to Section 3 of this Article 3, such Excess Shares shall be deemed to have been transferred to the Trust, as trustee of an "Excess Share Trust" for the benefit of such Beneficiary or Beneficiaries to whom an interest in such Excess Shares may later be transferred pursuant to Section 18 of this Article 3. Excess Shares so held in trust shall be issued and outstanding Shares of the Trust. The Purported Record Transferee shall have no rights in such Excess Shares except the right to designate a Beneficiary of an interest in the Excess Share Trust (representing the number of shares of Excess Shares held by the Trust attributable to a purported Transfer that resulted in the Excess Shares) upon the terms specified in Section 18. The Purported Beneficial Transferee shall have no rights in such Excess Shares except as provided in Section 18.

**Section 16. No Distributions for Excess Shares.** Excess Shares shall not be entitled to any distributions (whether as dividends or as distributions upon liquidation, dissolution

or winding up). Any dividend or distribution paid prior to the discovery by the Trust that the common Shares and/or preferred Shares have been Transferred so as to be deemed Excess Shares shall be repaid to the Trust upon demand.

**Section 17. No Voting Rights for Excess Shares.** The holders of Excess Shares shall not be entitled to vote on any matter.

**Section 18. Non-Transferability of Excess Shares.** Excess Shares in the Excess Share Trust shall not be transferable. The Purported Record Transferee may freely designate a Beneficiary of an interest in the Excess Share Trust (representing the number of Excess Shares held by the Trust attributable to a purported Transfer that resulted in the Excess Shares), if (a) the Excess Shares held in the Excess Share Trust would not be Excess Shares in the hands of such Beneficiary and (b) the Purported Beneficial Transferee does not receive a price for designating such Beneficiary that reflects a price per share for such Excess Shares that exceeds (i) the price per share such Purported Beneficial Transferee paid for the common Shares and/or preferred Shares, as the case may be, in the purported Transfer that resulted in the Excess Shares, or (ii) if the Purported Beneficial Transferee did not give value for such Excess Shares (through a gift, devise or other transaction), a price per share equal to the Market Price for the Excess Shares on the date of the purported Transfer that resulted in the Excess Shares. Upon such transfer of an interest in the Excess Share Trust, the corresponding Excess Shares in the Excess Share Trust shall be automatically exchanged for an equal number of common Shares and/or preferred Shares, as applicable, and such common Shares and/or preferred Shares, as applicable, shall be transferred of record to the transferee of the interest in the Excess Share Trust if such common Shares and/or preferred Shares, as applicable, would not be Excess Shares in the hands of such transferee. Prior to any transfer of any interest in the Excess Share Trust, the Purported Record Transferee must give advance notice to the Trust of the intended transfer and the Trust must have waived in writing its purchase rights under Section 19 of this Article 3.

Notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Excess Share Trust that exceeds the amounts allowable under this Section 18 of this Article 3, such Purported Beneficial Transferee shall pay, or cause such Beneficiary to pay, such excess to the Trust.

If any of the foregoing restrictions on transfer of Excess Shares are determined to be void, invalid or unenforceable by any court of competent jurisdiction, then the Purported Record Transferee may be deemed, at the option of the Trust, to have acted as an agent of the Trust in acquiring such Excess Shares and to hold such Excess Shares on behalf of the Trust.

**Section 19. Call by Trust on Excess Shares.** Excess Shares 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 (a) the price per share in the transaction that created such Excess Shares (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (b) the Market Price of the common Shares and/or preferred Shares to which such Excess Shares relates on the date

the Trust, or its designee, accepts such offer. The Trust shall have the right to accept each offer for a period of ninety days after the later of (x) the date of the Transfer which resulted in such Excess Shares and (y) the date the Board of Trustees determines in good faith that a Transfer resulting in Excess Shares has occurred, if the Trust does not receive a notice of such Transfer pursuant to Section 5 of this Article 3 but in no event later than a permitted Transfer pursuant to and in compliance with the terms of Section 18 of this Article 3.

#### ARTICLE 4. SHAREHOLDERS

**Section 1. Shareholders' Meetings.** There shall be an annual meeting of the Shareholders at such time and place either within or without the State of Maryland as the Trustees shall prescribe, at which all Trustees shall be elected or reelected and any other proper business may be conducted. The annual meeting of Shareholders shall be held upon reasonable notice and within a reasonable period (not less than 30 days) following delivery of the annual report but in any event such meeting must be held within six months after the end of each full fiscal year. Special meetings of Shareholders may be called by a majority of the Trustees, a majority of the Disinterested Trustees (as defined in Section 1 of Article 5), or by any officer of the Trust, and shall be called upon the written request of Shareholders holding in the aggregate not less than ten percent (10%) of the outstanding Shares of the Trust entitled to vote in the manner provided in the Bylaws. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders for the election of successor Trustees. Written or printed notice stating the place, date and hour of the Shareholders' meeting and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the day of the meeting either personally or by mail, by or at the direction of the Trustees or any officer or person calling the meeting, to each Shareholder of record entitled to vote in such meeting. No other business than that which is stated in the call for a special meeting shall be considered at such meeting.

A majority of the outstanding Shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at any such meeting. Whenever any action is to be taken by the Shareholders, it shall, except as otherwise authorized by law or this Declaration of Trust or the Bylaws, be authorized by a majority of the votes cast at a meeting of Shareholders by holders of Shares entitled to vote thereon.

**Section 2. Voting.** At each meeting of the Shareholders, each Shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of Shares of the Trust owned by him upon each matter upon which the vote of the Shareholders is taken. In any election in which more than one vacancy for the position of Trustee is to be filled, each Shareholder may vote the number of Shares of the Trust owned by him for each such vacancy to be filled. There shall be no right of cumulative voting. Each outstanding common Share shall be entitled to one vote on each matter submitted to a vote at a meeting of Shareholders, except (a) to the extent that this Declaration of Trust or articles supplementary to the extent

permitted by Maryland law) limit or deny voting rights to the holders of the Shares of any class or series or (b) as otherwise provided by Maryland law. Preferred Shares shall have such voting rights as the Trustees shall establish in articles supplementary filed with the State Department of Assessments and Taxation of Maryland.

**Section 3. Distributions.** The Trustees may from time to time declare and pay to Shareholders such dividends or distributions in cash, property or other assets of the Trust or in securities of the Trust or from any other source as the Trustees in their discretion shall determine. The 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 (so long as such qualification, in the opinion of the Trustees, is in the best interests of the Shareholders); however, Shareholders shall have no right to any dividend or distribution unless and until declared by the Trustees. The exercise of the powers and rights of the Trustees pursuant to this Section shall be subject to the provisions of any class or series of Shares at the time outstanding. The receipt by any person in whose name any Shares are registered on the records of the Trust or by his duly authorized agent shall be a sufficient discharge for all dividends or distributions payable or deliverable in respect of such Shares and from all liability to see to the application thereof.

**Section 4. Report to Shareholders.** The Trust shall prepare, file and deliver to its Shareholders an annual report concerning its operations for the preceding fiscal year containing financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants. The Trust shall also include in its annual report, separately stated, full disclosure of all material terms, factors, and circumstances surrounding any and all transactions involving the Trust and the Trustees and/or affiliates thereof occurring in the year for which the annual report is made. Disinterested Trustees are specifically charged with a duty to examine and comment in the report on the fairness of such transactions. Annual reports shall be mailed or delivered to each Shareholder as of a record date after the end of such fiscal year and each holder of other publicly held securities of the Trust within 90 days after the end of the fiscal year to which it relates.

**Section 5. Inspection of Trust Books.** The books and records of the Trust shall be open to inspection upon the written demand of a Shareholder at any reasonable time for a purpose reasonably related to his interests as a Shareholder and shall be exhibited at any time when required by the demand at any Shareholders' meeting of 10% of the Shares represented at the meeting. Such inspection by a Shareholder may be made in person or by agent or attorney and the right of inspection includes the right to make extracts at the Shareholder's expense. Demand of inspection other than at a Shareholders' meeting shall be made in writing upon the President, or the Secretary, of the Trust. The duly authorized officials of any state shall have the same right of inspection as a Shareholder.

**Section 6. Nontliability and Indemnification of Shareholders.** The Shareholders shall have no legal title or interest in the property of the Trust and no right to a partition thereof or

to an accounting during the continuance of the Trust but only to the rights expressly provided in this Declaration of Trust. Shareholders shall not be personally or individually liable in any manner whatsoever for a debt, act, omission or obligation incurred by the Trust or the Trustees and shall be under no obligation to the Trust or its creditors with respect to such Shares other than the obligation to pay to the Trust the full amount of the consideration for which the Shares were issued or to be issued. The Shareholders shall not be liable to assessment and the Trustees shall have no power to bind the Shareholders personally. The Trust shall indemnify and hold each Shareholder harmless from and against all claims and liabilities, whether they proceed to judgment or are settled or otherwise brought to a conclusion, to which such Shareholder may become subject by reason of his being or having been a Shareholder, and shall reimburse such Shareholder for all legal and other expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such Shareholder shall be indemnified or reimbursed if such claim, obligation or liability is finally adjudged by a competent court of law to have arisen out of the Shareholder's bad faith, willful misconduct or gross negligence, and provided further, that such Shareholder must give prompt notice as to any such claims or liabilities or suits and must take such action as will permit the Trust to conduct the defense thereof. The rights accruing to a Shareholder under this Section 6 shall not exclude any other right to which such Shareholder may be lawfully entitled, nor shall anything herein contained restrict the right of the Trust to indemnify or reimburse a Shareholder in any appropriate situation even though not specifically provided herein; provided, however, that the Trust shall have no liability to reimburse Shareholders for taxes assessed against them by reason of their ownership of Shares, nor for any losses suffered by reason of changes in the market value of securities of the Trust. No amendment to the Declaration of Trust increasing or enlarging the liability of the Shareholders shall be made without the unanimous written consent of all of the Shareholders.

**Section 7. Notice of Nonliability.** The Trustees shall use every reasonable means to assure that all persons having dealings with the Trust shall be informed that the private property of the Shareholders and the Trustees shall not be subject to claims against and obligations of the Trust to any extent whatever. The Trustee shall cause to be inserted in every written agreement, undertaking or obligation made or issued on behalf of the Trust, an appropriate provision to the effect that the Shareholders and the Trustees shall not be personally liable thereunder, and that all parties concerned shall look solely to the Trust property for the satisfaction of any claim thereunder, and appropriate reference shall be made to this Declaration of Trust. The omission of such a provision from any such agreement, undertaking or obligation, or the failure to use any other means of giving such notice, shall not, however, render the Shareholders or the Trustees personally liable.

**Section 8. Business Combinations and Control Shares.** The provisions of Article 3, Subtitle 6 of the Corporations and Associations Article of the Annotated Code of Maryland entitled "Special Voting Requirements" (or any successor statute) shall not apply to any business combinations with Anti Realty Co., a Delaware corporation, and its affiliates and successors, and Article 3, Subtitle 7 of the Corporations and Associations Article of the Annotated Code of

Maryland entitled "Voting Rights of Certain Control Shares" (or any successor statute) shall not apply to Shares owned or acquired by Gregory T. Mutz, Baldwin & Lyons, Inc., an Indiana corporation, Amli Realty Co., a Delaware corporation, or any of their respective affiliates.

#### ARTICLE 5. THE TRUSTEES

**Section 1. Number, Terms, Qualification, Compensation and Names of Trustees.** There shall be not less than three nor more than fifteen Trustees (referred to as the "Trustees" or the "Board of Trustees"). The number of Trustees shall be determined from time to time by resolution of the Trustees. Except for the initial terms of Class I and Class II Trustees, as set forth on Schedule A hereto, the term of office of each Trustee shall be three years and until the election and qualification of his successor. Trustees may succeed themselves in office. Trustees shall be individuals who are at least 21 years old and not under legal disability. No person shall qualify as a Trustee until he shall have agreed in writing to be bound by this Declaration of Trust. No Trustee shall be required to give bond, surety or securities to secure the performance of his duties or obligations hereunder. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in Section 3 of this Article 5, the Trustees or Trustee continuing in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration of Trust. The Trustees shall receive such fees for their services and expenses as they shall deem reasonable and proper. Immediately after the closing of the Initial Public Offering (as such term is defined in Article 3), the Board of Trustees shall include a majority of Trustees ("Disinterested Trustees") who are not affiliated with Amli Realty Co., a Delaware corporation, and its affiliates and successors. Any Trustee so appointed shall serve until the next annual meeting or until his or her successor is duly elected and qualified.

The Trustees shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of Trustees constituting the entire Board of Trustees. The initial Class I Trustees shall be elected for a one-year term, the initial Class II Trustees for a two-year term and the initial Class III Trustees for a three-year term. At each succeeding annual meeting of Shareholders, beginning in 1995, successors to the class of Trustees whose term expires at that annual meeting shall be elected for a three-year term. If the authorized number of Trustees is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Trustees in each class as nearly equal as possible, and any additional Trustee of any class elected to fill a vacancy resulting from an increase in such class, subject to Section 3 of this Article 5, shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of Trustees shorten the term of any incumbent Trustee. A Trustee shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation or removal from office. A majority of the entire Board of Trustees shall constitute a quorum for the transaction of business. The name, address and class of each of the initial Trustees (and



all subsequent Trustees) shall be set forth on Schedule A attached hereto as it may be revised from time to time.

**Section 2. Resignation, Removal and Death.** A Trustee may resign at any time by giving written notice thereof in recordable form to the other Trustees at the principal office of the Trust. The acceptance of a resignation shall not be necessary to make it effective. A Trustee may be removed only for cause and only by the vote of the holders of a majority of the outstanding Shares (which action shall be taken only by vote at a meeting (including a special meeting called for such purpose) and not by authorization without a meeting, anything in Section 5 of this Article 5, to the contrary notwithstanding). Upon the resignation or removal of any Trustee, he shall execute and deliver such documents and render such accounting as the remaining Trustees shall require and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his status as a Trustee shall immediately terminate at such incapacity or death, and his legal representatives shall perform the acts set forth in the preceding sentence.

**Section 3. Vacancies.** The resignation, removal or death of any or all of the Trustees shall not terminate the Trust or affect its continuity. During a vacancy, the remaining Trustee or Trustees may exercise the powers of the Trustees hereunder. Whenever there shall be a vacancy or vacancies among the Trustees, such vacancy or vacancies shall be filled in the manner prescribed in the second paragraph of this Section 3 of Article 5.

Any vacancy on the Board of Trustees that results from resignation, removal or death or as a result of an increase of up to two additional Trustees during any calendar year shall be filled by the Trustees then in office, even if less than a quorum, or by a sole remaining Trustee. Disinterested Trustees shall nominate replacements for vacancies amongst the Disinterested Trustees' positions. In the event that a majority of the Board of Trustees are not Disinterested Trustees by reason of the resignation or removal of one or more Disinterested Trustees or otherwise, the remaining Disinterested Trustees (or, if there are no Disinterested Trustees, the remaining members of the Board of Trustees) shall promptly appoint that number of Disinterested Trustees necessary to cause the Board of Trustees to include a majority of Disinterested Trustees. Any Trustee elected to fill a vacancy as provided herein shall hold office until the next annual meeting of Shareholders. A Trustee elected at an annual meeting to fill a vacancy shall have the same remaining term as that of his or her predecessor.

**Section 4. Successor Trustees.** The right, title and interest of the Trustees in and to the Trust property shall vest automatically in all persons who may hereafter become Trustees upon their due election and qualification without any further act, and thereupon they shall have the same rights, privileges, powers, duties and immunities as though originally named as Trustees in this Declaration of Trust. Appropriate written evidence of the election and qualification of Successor Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable. Upon the resignation, removal or death of a Trustee, he (and in the event of his death, his estate) shall

automatically cease to have any right, title or interest in or to any of the Trust property, and the right, title and interest in such Trustee in and to the Trust property shall vest automatically in the remaining Trustees without any further act.

**Section 5. Actions by and Meetings of Trustees.** The Trustees may act with or without a meeting. Except as otherwise provided herein any action of a majority of Trustees present at a duly convened meeting of the Trustees shall be conclusive and binding as an action of the Trustees. A quorum for meetings of the Trustees shall be a majority of all of the Trustees in office. Action may be taken without a meeting only by unanimous consent of all of the Trustees in office and shall be evidenced by a written certificate or instrument signed by all of the Trustees in office. Meetings may otherwise be held and conducted in the manner prescribed by the Bylaws of the Trust. Any action taken by Trustees in accordance with the provisions of this Section 5 of Article 5 shall be conclusive and binding upon the Trust, upon the Trustees, and upon the Shareholders, as an action of all the Trustees, collectively, and of the Trust. Any deed, mortgage, evidence of indebtedness or other instrument, agreement or document of any character, whether similar or dissimilar, executed by one or more of the Trustees, when authorized at a meeting or by written authorization without a meeting in accordance with the provisions of this Section 5 of Article 5, shall be valid and binding upon the Trustees, the Trust and the Shareholders.

**Section 6. Title and Authority of Trustees.** The Trustees shall hold the legal title to all property belonging to the Trust. They shall have absolute and exclusive control, management and disposition thereof, the absolute and exclusive control over the management and conduct of the business affairs of the Trust, and the continuing exclusive authority to make all management decisions for the Trust free from any power or control on the part of the Shareholders, in the same manner as if they were the absolute owners thereof, subject only to the express limitations in this Declaration of Trust.

**Section 7. Powers of Trustees.** The Trustees shall have all the powers necessary, convenient or appropriate to effectuate the purposes of the Trust and may take any action which they deem necessary or desirable and proper to carry out such purposes. Any determination of the purposes of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration of Trust, the presumption shall be in favor of the grant of powers to the Trustees.

Subject to the limitations contained in Article I hereof, the Trustees' powers shall include the following:

- (1) To purchase, acquire through the issuance of shares in the Trust obligations of the Trust or otherwise, and to mortgage, sell, acquire on lease, hold, manage, improve, lease to others, option, exchange, release and partition real estate interests of every nature including freehold, leasehold, mortgage, ground rent and other

interests therein, and to erect, construct, alter, repair, demolish or otherwise change buildings and structures of every nature.

(2) To purchase, acquire through the issuance of Shares in the Trust, obligations of the Trust or otherwise, option, sell and exchange stocks, bonds, notes, certificates of indebtedness and securities of every nature.

(3) To purchase, acquire through the issuance of Shares in the Trust, obligations of the Trust or otherwise, mortgage, sell, acquire on lease, hold, manage, improve, lease to others, option and exchange personal property of every nature.

(4) To hold legal title to property of the Trust in the name of the Trust, or in the name of one or more of the Trustees for the Trust, or of any other person as nominee for the Trust, without disclosure of the interest of the Trust therein.

(5) To borrow money for the purposes of the Trust and to give notes or other negotiable or nonnegotiable instruments of the Trust therefor; to enter into other obligations or guarantee the obligations of others on behalf of and for the purposes of the Trust; and to mortgage or pledge or cause to be mortgaged or pledged real and personal property of the Trust to secure such notes, debentures, bonds, instruments or other obligations.

(6) To lend money on behalf of the Trust and to invest the funds of the Trust

(7) To create reserve funds for such purposes as they deem advisable

(8) To deposit funds of the Trust in banks and other depositories without regard to whether such accounts will draw interest.

(9) To pay taxes and assessments imposed upon or chargeable against the Trust or the Trustees by virtue of or arising out of the existence, property, business or activities of the Trust

(10) To purchase, issue, sell or exchange Shares of the Trust as provided in Article 2 hereof

(11) To exercise with respect to property of the Trust, all options, privileges and rights, whether to vote, assent, subscribe or convert, or of any other nature, to grant proxies, and to participate in and accept securities issued under any voting trust agreement

(12) To participate in any reorganization, readjustment, consolidation, merger, dissolution, sale or purchase of assets, lease, or similar proceedings of any corporation

partnership or other organization in which the Trust shall have an interest and in connection therewith to delegate discretionary powers to any reorganization, protective or similar committee and to pay assessments and other expenses in connection therewith.

(13) To engage or employ agents, representatives and employees of any nature, or independent contractors, including, without limiting the generality of the foregoing, Transfer Agents for the transfer of Shares in the Trust, Registrars, underwriters for the sale of Shares in the Trust, independent certified public accountants, attorneys at law, appraisers, and real estate agents and brokers; and to delegate to one or more Trustees, agents, representatives, employees, independent contractors or other persons such powers and duties as the Trustees deem appropriate.

(14) To determine conclusively the allocation between capital and income of the receipts, holdings, expenses and disbursements of the Trust, regardless of the allocation which might be considered appropriate in the absence of this provision.

(15) To determine conclusively the value from time to time and to revalue the real estate, securities and other property of the Trust by means of independent appraisals.

(16) To compromise or settle claims, questions, disputes and controversies by, against or affecting the Trust.

(17) To solicit proxies of the Shareholders.

(18) To adopt a fiscal year for the Trust and to change such fiscal year.

(19) To adopt and use a seal.

(20) To merge the Trust with or into any other trust or corporation in accordance with the laws of the State of Maryland.

(21) To deal with the Trust property in every way, including joint ventures, partnerships and any other combinations or associations, that it would be lawful for an individual to deal with the same, whether similar to or different from the ways herein and hereinabove specified.

(22) To determine whether or not, at any time or from time to time, to attempt to cause the Trust to qualify for taxation as a REIT.

(23) To make, adopt, amend or repeal Bylaws containing provisions relating to the business of the Trust, the conduct of its affairs, its rights or powers and the rights or powers of its Shareholders, Trustees or officers not inconsistent with law or this Declaration of Trust

(24) To do all such other acts and things as are incident to the foregoing and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes of the Trust, and to carry out the provisions of this Declaration of Trust.

**Section 8. Trustees' Right to Own Shares in Trust.** A Trustee may acquire, hold and dispose of Shares in the Trust for his individual account and may exercise all rights of a Shareholder to the same extent and in the same manner as if he were not a Trustee. After the commencement of any offering of the Shares of the Trust to the public (whether conducted as a publicly registered offering or not), the Trustees may purchase Shares only at the current offering price then prevailing in connection with such offering to the public, less all or any part of the selling or other commission as may be agreed with any underwriter or selling agent.

**Section 9. Related Party Transactions.** Without limiting any other procedures available by law or otherwise to the Trust, the Board of Trustees may authorize any agreement or other transaction with any person, corporation, association, company, trust, partnership (limited or general) or other organization although one or more of the Trustees or officers of the Trust may be a party to any such agreement or an officer, director, Shareholder, partner, owner of an interest in or member of such other party, and no such agreement or transaction shall be invalidated or rendered void or voidable solely by reason of the existence of any such relationship if (a) the existence is disclosed or known and the contract or transaction is approved by the affirmative vote of a majority of the Trustees who do not have a personal interest in such contract or transaction, even if they constitute less than a quorum of the Board of Trustees, or by the affirmative vote of a majority of the votes cast by disinterested Shareholders, and (b) the contract or transaction is fair and reasonable to the Trust; provided, however, that the Trust shall not enter into an agreement or transaction with Amli Realty Co., a Delaware corporation, or any of its affiliates after the closing of the Initial Public Offering (as such term is defined in Article 3) without the approval of a majority of the Disinterested Trustees. Any Trustee of the Trust who is also a director, officer, Shareholder, partner, owner of an interest in or member of such other party may be counted in determining the existence of a quorum at any meeting of the Board of Trustees considering such matter. Notwithstanding anything to the contrary contained herein, unless otherwise provided in any agreement with the Trust, no Trustee or any affiliate of such Trustee shall have any obligation to present to the Trust any opportunity, whether or not the Trust could reasonably be expected to have an interest in developing such opportunity, and any Trustee or any affiliate of such Trustee, shall be free to pursue such opportunity on behalf of such Trustee or affiliate.

**Section 10. Non-liability of Trustees.** The Trustees shall have no rights of indemnity or exoneration against any Shareholder individually with respect to any liability or obligation of the Trust; but, as hereinafter provided, the Trustees may satisfy any claims they have against the Trust out of the Trust assets. No Trustee shall be liable for any act or neglect of any person or firm with respect to the performance of any duty, service or act which has been delegated to such person or firm by the Trustees pursuant to authority contained in this Declaration of Trust.

the Trustees shall, however, use good faith in selecting and appointing agents or representatives to whom authority to act on behalf of the Trust is delegated. No Trustee shall be individually liable for any obligation or liability incurred by or on behalf of the Trust or by the Trustees for the benefit and on behalf of the Trust.

**Section 11. Indemnification of Trustees.** The Trust shall indemnify and hold harmless each Trustee from and against all claims and liabilities, whether they proceed to judgment or are settled, to which such Trustee may become subject by reason of his being or having been a Trustee, or by reason of any action alleged to have been taken or omitted by him as Trustee, and shall reimburse him for all legal and other expenses reasonably incurred by him in connection with any such claim or liability, including any claim or liability arising under the provisions of federal or state securities laws; provided, however, that no Trustee shall be entitled to indemnification under the foregoing provisions in relation to any matter if it shall have been adjudicated that his action or omission was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty or the Trustee actually received an improper personal benefit, or in the case of a criminal proceeding, the Trustee had reasonable cause to believe that the act or omission was unlawful. The foregoing indemnification shall include any action alleged to have been taken or omitted by such individual who, while a Trustee and at the request of the Trust, serve, or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee of such corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The Trust, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses incurred by any Trustee in connection with any threatened, pending or completed action, suit or proceeding to which such Trustee is, was or any time becomes a party or is threatened to be made a party, as a result, directly or indirectly, of serving at any time as a Trustee. The rights accruing to a Trustee under these provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything herein contained restrict the right of the Trust to indemnify or reimburse such Trustee in any proper cause even though not specifically provided for herein.

**Section 12. Persons Dealing with Trustees.** No corporation, person, transfer agent or other party shall be required to examine or investigate the trusts, terms or conditions contained in this Declaration of Trust or otherwise applicable to the Trust, and every such corporation, person, transfer agent or other party may deal with Trust property and assets as if the Trustees were the sole and exclusive owners thereof free of all trusts; and no such corporation, person, transfer agent or other party dealing with the Trustees or with the Trust or Trust property and assets shall be required to see to the application of any money or property paid or delivered to any Trustee, or nominee, agent or representative of the Trust or the Trustees. A certificate executed by or on behalf of the Trustees or by any other duly authorized representative of the Trust, delivered to any person or party dealing with the Trust or Trust property and assets, or, if relating to real property, recorded in the deed records for the county or district in which such real property lies, certifying as to the identity and authority of the Trustees, agents, or

Trust, on behalf of the Trust, to exercise and perform any and all powers granted to the Trustees, and to discharge any and all duties imposed upon the Trustees, and to do any acts and to execute any instruments deemed by such person or persons to be necessary or appropriate to exercise such power or to discharge such duties, and to exercise his own sound judgment in so doing. The authority to act upon any transaction which under the terms of this Declaration of Trust requires the vote of a majority of the Disinterested Trustees may not be delegated to any committee.

#### ARTICLE 6. DURATION AND TERMINATION OF TRUST

**Section 1. Termination of Trust.** The Trust may be terminated at any time by a vote or written consent of the holders of a majority of the outstanding Shares of all classes.

In connection with any termination of the Trust, the Trustees, upon receipt of such releases or indemnity as they deem necessary for their protection, may

(1) Sell and convert into cash the property of the Trust and distribute the net proceeds among the Shareholders ratably; or

(2) Convey the property of the Trust to one or more persons, entities, trusts or corporations for consideration consisting in whole or in part of cash, shares of stock, or other property of any kind, and distribute the net proceeds among the Shareholders ratably, at valuations fixed by the Trustees, in cash or in kind, or partly in cash and partly in kind; provided that the proposal to proceed as described in this clause (2) shall have been set forth in the written approval of the Shareholders holding two-thirds of the Shares issued and outstanding.

Upon termination of the Trust and distribution to the Shareholders as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Shareholders shall cease and be canceled and discharged.

**Section 2. Organization as a Corporation.** Whenever the Trustees deem it for the best interests of the Shareholders that the Trust be organized as a corporation, the Trustees shall have full power to organize such corporation, under the laws of such state as they may consider appropriate, in the place and seal of this Trust without procuring the consent of any of the Shareholders, in which event the capital stock of such corporation shall be and remain the same as fixed under this Declaration of Trust and the Shareholders shall receive and accept stock in such corporation on the same basis as they hold Shares in this Trust.

**Section 3. Merger.** This Trust may merge into a Maryland or foreign business trust or into a Maryland or foreign corporation having capital stock or one or more such business trusts or such corporations may merge into it in accordance with the provisions of Maryland law.

**Section 4. Duration of Trust.** Subject to possible earlier termination in accordance with the provisions of Article 6 hereof, the duration of the Trust shall be perpetual or, in any jurisdiction in which such duration is not permitted, then the Trust shall terminate on the latest date permitted by the law of such jurisdiction.

#### ARTICLE 7. AMENDMENTS

**Section 1. Amendment by Shareholders.** Except as provided in Section 2 of this Article 7, this Declaration of Trust may be amended only by the affirmative vote or written consent of the holders of at least a majority of the Shares entitled to vote thereon.

**Section 2. Amendment by Trustees.** The Trustees by a two-thirds vote may amend provisions of this Declaration of Trust from time to time to qualify as a real estate investment trust under the Code or under Title 8.

**Section 3. Requirements of Maryland Law.** Except as otherwise set forth herein, this Declaration of Trust may not be amended except as provided in Section 8-501 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended.

#### ARTICLE 8. MISCELLANEOUS

**Section 1. Construction.** This Declaration of Trust shall be construed in such a manner as to give effect to the intent and purposes of the Trust and this Declaration of Trust. If any provisions hereof appear to be in conflict, more specific provisions shall control over general provisions. This Declaration of Trust shall govern all of the relationships among the Trustees and Shareholders of the Trust; and each provision hereof shall be effective for all purposes and to all persons dealing with the Trust to the fullest extent possible under applicable law in each jurisdiction in which the Trust shall engage in business. In defining or interpreting the powers and duties of the Trust and the Trustees and officers, reference may be made, to the extent appropriate and not inconsistent with the Code in Title 8, to Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland. In furtherance and not in limitation of the foregoing, in accordance with the provisions of Title 3, Subtitles 6 and 7, of the Corporations and Associations Article of the Annotated Code of Maryland, the Trust shall be included within the definition of "corporation" for purposes of such provision.

**Section 2. Headings for Reference Only.** Headings preceding the text, articles and sections hereof have been inserted solely for convenience and reference, and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust.



**Section 3. Filing and Recording.** This Declaration of Trust and any amendment hereto shall be filed for record with the State Department of Assessments and Taxation of Maryland and may also be filed or recorded in such other places as the Trustees deem appropriate, but failure to file for record this Declaration of Trust or any amendment hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of this Declaration of Trust or any amendment hereto. An amended Declaration of Trust shall, upon filing, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments thereto.

**Section 4. Applicable Law.** This Declaration of Trust has been executed with reference to and its construction and interpretation shall be governed by the laws of Maryland, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of Maryland.

**Section 5. Certifications.** Any certificates signed by a person who, according to the records of the State Department of Assessments and Taxation of Maryland appears to be a Trustee hereunder, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trust or the Trustees or any one or more of them, and the successors or assigns of such persons, which certificate may certify to any matter relating to the affairs of the Trust, including but not limited to any of the following: A vacancy among the Trustees; the number and identity of Trustees; this Declaration of Trust and any Amendments thereto, or any restated Declaration of Trust and any Amendments thereto, or that there are no Amendments to the Declaration of Trust or any restated Declaration of Trust; a copy of the Bylaws of the Trust or any Amendment thereto; the due authorization of the execution of any instrument or writing; the vote at any meeting of Trustees or a committee thereof or Shareholders; the fact that the number of Trustees present at any meeting or executing any written instrument satisfies the requirements of the Declaration of Trust; a copy of any Bylaw adopted by the Shareholders or the identity of any officer elected by the Trustees, or the existence or nonexistence of any fact or facts which in any manner relate to the affairs of the Trust. If the Declaration of Trust or any restated Declaration of Trust is filed or recorded in any recording office other than the State Department of Assessments and Taxation of Maryland, anyone dealing with real estate so located that instruments affecting the same should be filed or recorded in such recording office may rely conclusively upon any certificate of the kind described above which is signed by a person who according to the records of such recording office appears to be a Trustee hereunder. In addition, the Secretary or any Assistant Secretary of the Trust or any other officer of the Trust designated by the Bylaws or by action of the Trustees may sign any certificate of the kind described in this Section 5 of Article 8, and such certificate shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trust, and the successors and assigns of such person.

**Section 6. Severability.** If any provision of the Declaration of Trust shall be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of the

Declaration of Trust, and the Declaration of Trust shall be carried out, if possible, as if such invalid or unenforceable provision were not contained therein.

**Section 7. Bylaws.** The Bylaws of the Trust may be altered, amended or repealed, and new Bylaws may be adopted, at any meeting of the Board of Trustees of the Trust by a majority vote of the Trustees, subject to repeal or change by action of the Shareholders of the Trust entitled to vote thereon.

#### **ARTICLE 9. LIMITATION OF LIABILITY FOR TRUSTEES AND OFFICERS; INDEMNIFICATION**

**Section 1. Liability of Trustee or Officer.** A Trustee or officer of the Trust shall not be liable for monetary damages to the Trust or its Shareholders for any act or omission in the performance of his duties unless:

- (1) The Trustee or officer actually received an improper benefit in money, property or services (in which case, such liability shall be for the amount of the benefit in money, property or services actually received); or
- (2) 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 being adjudicated.

**Section 2. Conflicts.** In the event that any provision or portion of a provision of this Article 9 is determined to be in conflict with any applicable statute, such provision or portion thereof shall be inapplicable to the extent of such conflict.

**Section 3. Severability.** In the event that any provision or portion of a provision of this Article 9 is determined to be invalid, void, illegal or unenforceable, the remainder of the provisions of this Article 9 shall continue to be valid and enforceable and shall in no way be affected, impaired or invalidated.

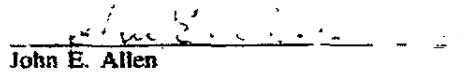
**Section 4. No Impairment.** Nothing in this Article 9 shall be construed to diminish, limit or impair any rights or defenses afforded to officers or Trustees by common law, statute, other provisions of this Declaration of Trust, the Bylaws of the Trust or otherwise, and the provisions of this Article 9 shall be deemed to be cumulative thereto.

**Section 5. References.** References in this Article 9 to Trustees or officers shall be deemed to refer to any person who is or was a Trustee or officer of the Trust and any person who, while a Trustee or officer of the Trust, is or was serving at the request of the Trust as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

**Section 6. Indemnification and Insurance.** Notwithstanding any other provisions of this Declaration of Trust, the Trust, for the purpose of providing indemnification for its Trustees and officers, shall have the authority, without specific Shareholder approval, to enter into insurance or other arrangements, with persons or entities which are not regularly engaged in the business of providing insurance coverage, to indemnify all Trustees and officers of the Trust against any and all liabilities and expenses incurred by them by reason of their being Trustees or officers of the Trust, whether or not the Trust would otherwise have the power under this Declaration of Trust or under Maryland law to indemnify such persons against such liability. Without limiting the power of the Trust to procure or maintain any kind of insurance or other arrangement, the Trust may, for the benefit of persons indemnified by it, (i) create a trust fund, (ii) establish any form of self-insurance, (iii) secure its indemnity obligation by grant of any security interest or other lien on the assets of the Trust, or (iv) establish a letter of credit, guaranty or surety arrangement. Any such insurance or other arrangement may be procured, maintained or established within the Trust or with any insurer or other person deemed appropriate by the Board of Trustees regardless of whether all or part of the stock or other securities thereof are owned in whole or in part by the Trust. In the absence of fraud, the judgment of the Board of Trustees as to the terms and conditions of insurance or other arrangement and the identity of the insurer or other person participating in any arrangement shall be conclusive, and such insurance or other arrangement shall not be subject to voidability, nor subject the Trustees approving such insurance or other arrangement to liability, on any ground, regardless of whether Trustees participating and approving such insurance or other arrangement shall be beneficiaries thereof.

IN WITNESS WHEREOF, the undersigned, constituting all of the present Trustees of  
Amli Residential Properties Trust, have each executed this Declaration of Trust as Trustees.

  
\_\_\_\_\_  
Gregory D. Murr

  
\_\_\_\_\_  
John E. Allen

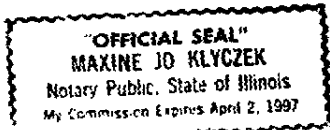
  
\_\_\_\_\_  
Allan J. Sweet



STATE OF ILLINOIS     )  
                                          )  
COUNTY OF COOK        )

On the 15th day of December, 1993, before me, the undersigned, a notary public in and for Cook County, Illinois, personally appeared Allan J. Sweet known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Maxine Jo Klyczek  
Notary Public In and For The  
State of Illinois

My commission expires:  
\_\_\_\_\_

**SCHEDULE A**

**TRUSTEES**

<b><u>Name</u></b>	<b><u>Class</u></b>	<b><u>Address</u></b>
Gregory T. Mutz	II	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606
John E. Allen	I	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606
Allan J. Sweet	III	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606





ARTICLES OF MERGER

Merging

12-16-93 2:02 p.

AMLI RESIDENTIAL PROPERTIES, INC  
(a corporation of the State of Maryland)

Into

AMLI RESIDENTIAL PROPERTIES TRUST  
(a real estate investment trust of the State of Maryland)

REC

93 DEC 16 2:02

AmlI Residential Properties, Inc., a corporation organized and existing under the laws of the State of Maryland ("ARP"), and AmlI Residential Properties Trust, a real estate investment trust organized and existing under the laws of the State of Maryland (the "Trust"), agree that ARP shall be merged with and into the Trust. The terms and conditions of the merger and the mode of carrying the same into effect are as herein set forth in these Articles of Merger.

FIRST: The parties to these Articles of Merger are AmlI Residential Properties Trust, a real estate investment trust organized and existing under the laws of the State of Maryland, and AmlI Residential Properties, Inc., a corporation incorporated on the 25th day of October, 1993, under the General Corporation Law of the State of Maryland (the "MGCL").

SECOND: ARP shall be merged with and into the Trust in accordance with Title 8 of the Corporations and Associations Article of the Code of Maryland, as amended ("Title 8"), and the MGCL, and the Trust shall survive the merger and continue under the name "AmlI Residential Properties Trust" (the "Surviving Entity"). At the effective time of the merger (the "Effective Time"), which shall be upon the date of filing of these Articles of Merger with the Department of Assessments and Taxation of the State of Maryland, the separate existence of ARP shall cease in accordance with the provisions of the MGCL. From and after the Effective Time, the Surviving Entity shall continue its existence under its present name, shall succeed to all of the properties, liabilities and other assets and shall be subject to all of the liabilities and obligations of ARP without further action by either of the parties hereto, and will continue to be governed by the laws of the State of Maryland, including Title 8. At the Effective Time, the declaration of trust and bylaws of the Trust in effect immediately prior to the Effective Time shall become the declaration of trust and bylaws of the Surviving Entity and the trustees and officers in office of the Surviving Entity at the Effective Time shall be the trustees and officers of the Surviving Entity, all of whom shall hold their trusteeships and offices until the election and qualification of their respective successors or until their tenure is otherwise terminated in accordance with the declaration of trust and bylaws of the Surviving Entity.

**THIRD:** The resident agent of the Trust is The Prentice-Hall Corporation System, Maryland, and registered office of the Trust is located at 11 East Chase Street, City of Baltimore, State of Maryland 21202. The principal office of the Trust is located at 125 South Wacker Drive, Suite 3100, City of Chicago, State of Illinois 60606. The Trust owns no interest in land in the State of Maryland.

**FOURTH:** ARP owns no interest in land in the State of Maryland.

**FIFTH:** The terms and conditions of the transaction set forth in these Articles of Merger were advised, authorized and approved by each party to these Articles of Merger in the manner and by the vote required by ARP's certificate of incorporation or the Trust's declaration of trust, as the case may be, and the laws of the jurisdiction in which it was organized.

**SIXTH:** The merger was duly (a) advised by the board of trustees of the Trust, by the adoption on December 15, 1993, of a resolution declaring that the merger herein proposed was advisable substantially on the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon to the sole shareholder of the Trust and (b) approved by the sole shareholder of the Trust by written consent on December 15, 1993.

**SEVENTH:** These Articles of Merger and the merger to be effected hereby were duly adopted, approved, certified, executed, acknowledged, advised and authorized by ARP in the manner and by the vote required by Section 3-105 of the MGCL and by ARP's certificate of incorporation.

**EIGHTH:** The merger was duly (a) advised by the board of directors of ARP, by the adoption on December 15, 1993, of a resolution declaring that the merger herein proposed was advisable substantially on the terms and conditions set forth in these Articles of Merger and directing that the proposed Articles of Merger be submitted for action thereon to the sole shareholder of ARP and (b) approved by the sole shareholder of ARP by written consent on December 15, 1993.

**NINTH:** No amendments to the Trust's declaration of trust are to be effected as part of the merger.

**TENTH:** The total number of shares of beneficial interest which the Trust has authority to issue is one hundred fifty million (150,000,000) shares of beneficial interest, of the par value of one cent (\$0.01) each, all such shares having an aggregate par value of one million five hundred thousand dollars (\$1,500,000).

The total number of shares of stock of all classes which ARP has authority to issue is one hundred fifty million (150,000,000) shares divided into one hundred forty-five million (145,000,000) common shares of the par value of one cent (\$0.01) each, and five million

IN WITNESS WHEREOF, Aml Residential Properties, Inc and Aml Residential Properties Trust, the entities parties to the merger, have caused these Articles of Merger to be signed in their respective names and on their behalf by their respective presidents and witnessed or attested by their respective secretaries all as of the 15th day of December, 1993.

AMLI RESIDENTIAL PROPERTIES, INC.

By: Allan J. Sweet  
Name Printed: Allan J. Sweet  
Title: President

Attest:

Charlotte A. Sparrow  
Charlotte A. Sparrow, Secretary

AMLI RESIDENTIAL PROPERTIES TRUST

By: Allan J. Sweet  
Name Printed: Allan J. Sweet  
Title: President

Attest:

Charlotte A. Sparrow  
Charlotte A. Sparrow, Secretary

THE UNDERSIGNED, President of Amlti Residential Properties, Inc., who executed on behalf of said corporation the foregoing Articles of Merger, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Merger to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under penalties of perjury.

  
Allan J. Sweet

THE UNDERSIGNED, President of Amlti Residential Properties Trust, who executed on behalf of said real estate investment trust the foregoing Articles of Merger, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said real estate investment trust, the foregoing Articles of Merger to be the act of said real estate investment trust and further certifies that, to the best of his knowledge, information and belief, the matters and facts set forth therein with respect to the approval thereof are true in all material respects, under penalties of perjury.

  
Allan J. Sweet

STATE OF MARYLAND  
 WILLIAM DONALD SCHAEFER  
 Governor  
 LEON W. JOHNS  
 Lt. Governor  
 PAUL B. ANNEBERG  
 Secretary



Department of Assessments and Taxation  
 CHARLES P. DIMICK  
 Director

DOCUMENT CODE II BUSINESS CODE \_\_\_\_\_ COURT 7A  
 # \_\_\_\_\_ P.A. \_\_\_\_\_ Religious \_\_\_\_\_ Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

Merging (Transferor) AmLI Residential Properties, Inc. Surviving (Transferee) AmLI Residential Properties Trust D3790276  
D3756293 (not assigned yet)

CODE	AMOUNT	FEE REMITTED	
10	<u>20</u>	Expedited Fee	(New Name) _____
20		Organ. & Capitalization	
61		Rec. Fee (Arts. of Inc.)	
62		Rec. Fee (Amendment)	
63	<u>20</u>	Rec. Fee (Merger, Consol.)	
64		Rec. Fee (Transfer)	
65		Rec. Fee (Dissolution)	_____ Change of Name
66		Rec. Fee (Revival)	_____ Change of Principal Office
52		Foreign Qualification	_____ Change of Resident Agent
50		Cert. of Qual. or Reg.	_____ Change of Resident Agent
51		Foreign Name Registration	_____ Address
13		Certified Copy	_____ Resignation of Resident Agent
56		Penalty	_____ Designation of Resident Agent
54		For. Supplemental Cert.	_____ and Resident Agent's Address
53		Foreign Resolution	_____ Other Change _____
73		Certificate of Conveyance	
75		Special Fee	
80		For. Limited Partnership	
83		Cert. Limited Partnership	CODE <u>045</u>
84		Amendment to Limited Partnership	
85		Termination of Limited Partnership	
21		Recordation Tax	ATTENTION: <u>John Mentzer</u>
22		State Transfer Tax	
23		Local Transfer Tax	
31		Corp. Good Standing	
NA		Foreign Corp. Registration	
87		Limited Part. Good Standing	
71		Financial	
600		_____ Personal	
		Property Reports and late filing penalties	
70		Change of P.O., R.A. or R.A.A.	MAIL TO ADDRESS: _____
91		Amend/Cancellation, For. Limited Part.	
99		Art. of Organization (LLC)	
98		LLC Amend, Diss, Continuation	
97		LLC Cancellation	
90		Reg. Foreign LLC	
94		Foreign LLC Supplemental	
92		LLC Good Standing (short)	
		Other	

TOTAL FEES 50  
 Check \_\_\_\_\_ Cash \_\_\_\_\_ NOTE \_\_\_\_\_  
 Documents on checks \_\_\_\_\_

APPROVED BY: Jim F.

STATE OF MARYLAND  
DEPT OF ASSESSMENTS AND TAXATION  
CUST ID:0000745329  
WORK ORDER:0000512172  
DATE:10-30-2001 01:12 PM  
AMT. PAID:\$120.00

AMLI RESIDENTIAL PROPERTIES TRUST

ARTICLES SUPPLEMENTARY

SERIES D CUMULATIVE CONVERTIBLE REDEEMABLE  
PREFERRED SHARES OF BENEFICIAL INTEREST  
(Par Value \$0.01 Per Share)

AMLI Residential Properties Trust, a Maryland real estate investment trust (hereinafter called the "Company"), hereby certifies to the Department of Assessments and Taxation of the State of Maryland that:

**FIRST:** The Board of Trustees of the Company has classified and designated 1,000,000 unissued preferred shares of beneficial interest, par value \$0.01 per share, of the Company as Series D Cumulative Convertible Redeemable Preferred Shares ("Series D Preferred Shares"), with the preferences, rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption thereof as follows, which upon any restatement of the Company's Declaration of Trust (the "Declaration of Trust") shall be made part of Article 2 thereof, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof:

**Section 1. Number of Shares and Designation.** The Series D Preferred Shares shall be designated as "Series D Cumulative Convertible Redeemable Preferred Shares" and the authorized number of Series D Preferred Shares constituting such series shall be 1,000,000, which number may be decreased from time to time by the Board pursuant to Section 7 upon reacquisition thereof in any manner, or by retirement thereof.

**Section 2. Definitions.** For purposes of the Series D Preferred Shares, the following terms shall have the meanings indicated:

"Acquired Shares" shall have the meaning set forth in Section 8(d)(iv).

"Affiliate" shall mean, with respect to any Person, a Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"Base Amount" shall mean an amount equal to \$25.00 per share.

"Base Common Share Distribution" shall have the meaning set forth in paragraph (a) of Section 10.

"Board" 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 D Preferred Shares.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which day state or federally chartered banking institutions in Chicago, Illinois are not required to be open.

12847460 60669173

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the page document on file in this office. DATED: 3/16/2004 <sup>25</sup>

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Mae Still, Custodian

This stamp replaces our previous certification system. Effective: 6/95

307-696

"Call Date" shall have the meaning set forth in Section 5(b).

"Change of Control" shall have the meaning set forth in Section 6(b).

"Common Shares" shall mean the common shares of beneficial interest, par value \$0.01 per share, of the Company.

"Conversion Price" shall mean the conversion price per Common Share for which each Series D Preferred Share is convertible, as such Conversion Price may be adjusted pursuant to Section 8(d). The initial Conversion Price shall be \$27.75 (equivalent to an initial conversion ratio of 0.9009 of one Common Share for each Series D Preferred Share).

"Covenant Failure" shall have the meaning set forth in Section 13(a).

"Current Market Price" of publicly traded Common Shares or any other class or series of beneficial interest or other security of the Company or of any similar security of any other issuer for any day shall mean the closing 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 regular way on such day, in either case as reported on the principal national securities exchange on which such securities are listed or admitted for trading, or, if such security is not quoted on any national securities exchange, on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") 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 are not reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any New York Stock Exchange or National Association of Securities Dealers, Inc. member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer of the Company or the Board or if any class or series of securities is not publicly traded, the fair value of the shares of such class or series as determined reasonably and in good faith by the Board.

"Distribution Payment Date" shall mean, with respect to any Distribution Period, (a) the date that cash distributions are made on the Common Shares with respect to such Distribution Period or (b) if such distributions have not been paid on the Common Shares by 9:00 a.m., New York City time, on the sixtieth day from and including the last day of such Distribution Period, then on such day; provided, further, that if any Distribution Payment Date falls on any day other than a Business Day, the distribution payment payable on such Distribution Payment Date shall be paid on the Business Day immediately following such Distribution Payment Date.

"Distribution Periods" shall mean the Initial Distribution Period and each subsequent quarterly distribution period commencing on and including January 1, April 1, July 1, and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Distribution Period, other than the Distribution Period during which any Series D Preferred Share is redeemed pursuant to Section 5, which shall end on and include the Call Date with respect to the Series D Preferred Shares being redeemed.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expiration Time" shall have the meaning set forth in Section 8(d)(iv).

"Fair Market Value" shall mean the average of the daily Current Market Prices of a Common Share during the twenty (20) consecutive Trading Days immediately preceding the fifth Business Day prior to the earlier of the day in question and the day before the "ex" date with respect to the issuance or distribution requiring such computation. The term "ex" date," when used with respect to any issuance or distribution, means the first day on which Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Initial Distribution Period" shall mean the period commencing on and including the Initial Issue Date and ending on and including December 31, 2001.

"Initial Issue Date" shall mean the date on which the first Series D Preferred Shares are issued.

"Interest" shall have the meaning set forth in Section 3(b).

"Investor" shall mean The Equitable Life Assurance Society of the United States and one or more other investors identified by the Company and reasonably acceptable to Lend Lease Capital Markets, Inc.

"Issue Date" shall mean the date on which the Company shall initially issue any Series D Preferred Share, regardless of the number of times transfer of such Series D Preferred Share shall be made on the stock records maintained by or for the Company and regardless of the number of certificates which may be issued to evidence such Series D Preferred Share (whether by reason of transfer of such Series D Preferred Share or for any other reason).

"Junior Shares" shall have the meaning set forth in Section 9(c).

"Junior Units" shall have the meaning set forth in the Operating Partnership Agreement.

"Liquidation Preference" shall have the meaning set forth in Section 4(a).

"Operating Partnership" shall mean Amlt Residential Properties, L.P., a Delaware limited partnership.

"Operating Partnership Agreement" shall mean the Amended and Restated Agreement of Limited Partnership of the Operating Partnership, dated as of February 15, 1994, as amended from time to time.

"Parity Shares" shall have the meaning set forth in Section 9(b).

"Parity Units" shall have the meaning set forth in the Operating Partnership Agreement.

"Person" shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity.



"Preferred Dividend" shall have the meaning set forth in Section 3(a).

"Preferred Trustee" shall have the meaning set forth in Section 6(b).

"Property Distribution" shall have the meaning set forth in paragraph (iii) of Section 8(d).

"Redemption Premium" shall have the meaning set forth in Section 4(b).

"REIT" shall mean real estate investment trust.

"REIT Termination Event" shall mean any event or occurrence which causes the Company to fail to continue to be taxed as a real estate investment trust (a "REIT") pursuant to Sections 856 through 860 of the Internal Revenue Code, as amended.

"Senior Shares" shall have the meaning set forth in Section 9(a).

"Senior Units" shall have the meaning set forth in the Operating Partnership Agreement.

"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, the allocation of funds to be so paid on any series or class of beneficial interest of the Company; provided, however, that if any funds for any class or series of Junior Shares or any class or series of 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 D Preferred Shares shall mean placing such funds in a separate account or delivering such funds to a disbursing, paying or other similar agent.

"Trading Day" shall mean, with respect to any securities, any day on which such securities are traded on the principal national securities exchange on which such securities are listed or admitted for trading or, if such securities are not listed or admitted for trading on any national securities exchange, the NASDAQ National Market or, if such securities are not listed or admitted for trading on the NASDAQ National Market, any Business Day.

"Transaction" shall have the meaning set forth in Section 8(e).

"Transfer Agent" means such transfer agent as may be designated by the Board or its designee as the transfer agent for the Series D Preferred Shares; provided that, if the Company has not designated a transfer agent, then the Company shall act as the transfer agent for the Series D Preferred Shares.

### **Section 3. Distributions.**

(a) The holders of Series D Preferred Shares shall be entitled to receive, when, as and if authorized and declared by the Board out of funds legally available for that purpose, cumulative quarterly distributions payable in cash in an amount per share equal to the greater of (i) the base distribution of \$0.540625 per quarter, subject to possible adjustment as provided in Section 13 (the "Preferred Dividend") or (ii) the cash distributions declared on the number of

Common Shares, or portion thereof, into which a Series D Preferred Share would then be convertible. The amount referred to in clause (ii) of this paragraph (a) with respect to each succeeding Distribution Period shall be determined as of the applicable Distribution Payment Date by multiplying the number of Common Shares, or portion thereof calculated to the fourth decimal point, into which a Series D Preferred Share is convertible at the opening of business on such Distribution Payment Date (based on the Conversion Price then in effect) by the aggregate cash distributions payable or paid for such Distribution Period in respect of a Common Share outstanding as of the record date for the distributions payable on the Common Shares for such Distribution Period. If (A) the Company pays a cash distribution on the Common Shares after the Distribution Payment Date for the corresponding Distribution Period and (B) the distribution on the Series D Preferred Shares for such Distribution Period calculated pursuant to clause (ii) of this paragraph (a), taking into account the Common Share distribution referenced in clause (A), exceeds the distribution previously declared on the Series D Preferred Shares for such Distribution Period, the Company shall pay an additional distribution to the holders of the Series D Preferred Shares on the date that the Common Share distribution referenced in clause (A) is paid, in an amount equal to the difference between the distribution calculated pursuant to clause (B) and the distributions previously declared on the Series D Preferred Shares with respect to such Distribution Period. Such distributions shall be cumulative from each Issue Date, whether or not in any Distribution Period or Periods such distributions are declared or there are funds of the Company legally available for the payment of such distributions, and shall be payable quarterly in arrears on the Distribution Payment Dates, commencing on the first Distribution Payment Date after each Issue Date. Each such distribution shall be payable in arrears to the holders of record of the Series D Preferred Shares, as they appear on the share records of the Company at the close of business on such record date as is fixed by the Board which shall be not more than sixty (60) calendar days prior to the corresponding Distribution Payment Date and, within such sixty (60) calendar day period, shall be the same date as the record date for the regular quarterly distribution payable on the Common Shares for such Distribution Period (or, if there is no such record date for the Common Shares, then such date as the Board may fix within such sixty (60) calendar day period). Accumulated, accrued and unpaid distributions for any past Distribution Periods may be authorized or declared and paid at any time, without reference to any regular Distribution Payment Date, to holders of record on such record date as may be fixed by the Board which shall be not more than forty-five (45) calendar days prior to the corresponding payment date. Any dividend payment made on the Series D Preferred Shares shall first be credited against the earliest accrued but unpaid dividend due with respect to the Series D Preferred Shares that remains payable.

(b) In the case of any Series D Preferred Share the Issue Date of which is a date other than the first day of a Distribution Period, or any other period shorter than a full Distribution Period, the amount of distributions payable per such Series D Preferred Share with respect to such partial Distribution Period shall be computed ratably on the basis of a 360-day year of twelve (12), thirty (30) day months. Except as provided in the immediately following sentence, holders of Series D Preferred Shares shall not be entitled to any distributions, whether payable in cash, property or shares, in excess of cumulative distributions as herein provided on the Series D Preferred Shares. In the event that a distribution on the Series D Preferred Shares is not made on the Distribution Payment Date on which such distribution is payable, the unpaid distribution shall accrue interest, compounded quarterly, at a rate equal to 8.65% per annum (9.65% per

annum during the applicable time period in the event that the Preferred Dividend has been increased pursuant to Section 13) (the "Interest") until such distribution is paid.

(c) So long as any of the Series D Preferred Shares is outstanding, except as described in the immediately following sentence, (i) the Company shall not declare, pay or set apart for payment any distributions (other than distributions paid in, or options, warrants or rights to subscribe for or purchase, Junior Shares or Parity Shares) nor declare or make any other distribution of cash or other property, directly or indirectly, with respect to any class or series of Parity Shares, (ii) the Company shall not redeem, purchase or otherwise acquire any Parity Shares for any consideration (or any moneys paid to or made available for a sinking fund for the redemption of any Parity Shares) directly or indirectly by the Company (except by conversion into or exchange for Parity Shares), nor shall any other cash or other property otherwise be paid or distributed to or for the benefit of any holder of Parity Shares in respect thereof directly or indirectly by the Company, (iii) the Company shall not authorize, take or cause or permit to be taken or caused any action in its capacity as general partner of the Operating Partnership, that will result in (A) the declaration or payment by the Operating Partnership of any distributions (other than distributions paid in, or options, warrants or rights to subscribe for or purchase Junior Units or Parity Units) with respect to any class or series of Parity Units or (B) the redemption or purchase (directly or indirectly, including without limitation, through any subsidiaries of the Operating Partnership), or the setting aside of any funds or other assets for the redemption or purchase of any Parity Units (except for the exchange or conversions of partnership interests in the Operating Partnership into Common Shares as permitted under the Operating Partnership Agreement, or the payment of cash by the Operating Partnership upon the exercise by any partner of the Operating Partnership of a right to convert an interest in the Operating Partnership into shares of the Company, or by conversion into or exchange for Junior Shares or Parity Shares), unless in each case (X) all distributions (including all accumulated, accrued and unpaid distributions) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods with respect to the Series D Preferred Shares and all past distribution periods with respect to any Parity Shares and (Y) a sum sufficient for the payment thereof has been or contemporaneously is paid or set apart for payment of the full distribution for the current Distribution Period with respect to the Series D Preferred Shares and the current distribution period with respect to any Parity Shares. When distributions are not paid in full or a sum sufficient for such payment is not set apart for payment as provided above, all distributions declared on the Series D Preferred Shares and all distributions declared on any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of distributions accumulated, accrued and unpaid on the Series D Preferred Shares and on such Parity Shares.

(d) So long as any of the Series D Preferred Shares is outstanding, (i) the Company shall not declare, pay or set apart for payment any distributions (other than distributions paid in, or options, warrants or rights to subscribe for or purchase, Junior Shares) nor declare or make any other distribution of cash or other property, directly or indirectly, with respect to any class or series of Junior Shares, (ii) the Company shall not redeem, purchase or otherwise acquire any Junior Shares (other than a redemption, purchase or other acquisition of Common Shares made for purposes of an employee incentive or benefit plan of the Company or any subsidiary) for any consideration (or any moneys paid to or made available for a sinking fund for the redemption of any Junior Shares) directly or indirectly by the Company (except by conversion into or exchange

for Junior Shares), nor shall any other cash or other property otherwise be paid or distributed to or for the benefit of any holder of Junior Shares in respect thereof directly or indirectly by the Company, (iii) the Company shall not authorize, take or cause or permit to be taken or caused any action in its capacity as general partner of the Operating Partnership, that will result in (A) the declaration or payment by the Operating Partnership of any distributions (other than distributions paid in, or options, warrants or rights to subscribe for or purchase Junior Units) with respect to any class or series of Junior Units or (B) the redemption or purchase (directly or indirectly, including without limitation, through any subsidiaries of the Operating Partnership), or the setting aside of any funds or other assets for the redemption or purchase of any Junior Units (except for the exchange or conversions of partnership interests in the Operating Partnership into Common Shares as permitted under the Operating Partnership Agreement, or the payment of cash by the Operating Partnership upon the exercise by any partner of the Operating Partnership of a right to convert an interest in the Operating Partnership into shares of the Company, or by conversion into or exchange for Junior Shares), unless in each case (X) all distributions (including all accumulated, accrued and unpaid distributions) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods with respect to the Series D Preferred Shares and all past distribution periods with respect to any Parity Shares and (Y) a sum sufficient for the payment thereof has been or contemporaneously is paid or set apart for payment of the full distribution for the current Distribution Period with respect to the Series D Preferred Shares and the current distribution period with respect to any Parity Shares.

#### **Section 4. Liquidation Preference.**

(a) Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, before any payment or distribution of the assets of the Company (whether capital or surplus) shall be made to or set apart for the holders of Junior Shares, the holders of Series D Preferred Shares shall be entitled to receive a liquidation preference (the "Liquidation Preference") in an amount equal to the greater of (i) the Base Amount plus cumulative unpaid distributions which were earned but not declared, including interest, if applicable, plus a Redemption Premium (as defined below), if applicable, and (ii) the amount that would be received if the Series D Preferred Shares were converted into Common Shares immediately prior to liquidation. Until the holders of the Series D Preferred Shares have been paid the Liquidation Preference in full, plus an amount equal to all declared distributions accumulated, accrued and unpaid thereon, plus interest, to the date of final distribution to such holders, no payment may be made to any holder of Junior Shares upon any liquidation, dissolution or winding up of the Company. If, upon any liquidation, dissolution or winding up of the Company, the assets of the Company, or the proceeds thereof, distributable among the holders of Series D Preferred Shares are insufficient to pay in full such preferential amount and liquidating payments on any other class or series of Parity Shares, then such assets, or the proceeds thereof, shall be distributed among the holders of Series D Preferred Shares and any such other Parity Shares ratably in proportion to the respective amounts which would be payable on such Series D Preferred Shares and any such other Parity Shares if all amounts payable thereon were paid in full.

(b) If the Liquidation Preference is payable prior to the second anniversary of the Issue Date, the redemption premium (the "Redemption Premium") that shall be included in the

Liquidation Preference shall equal 2% of the Base Amount. If the Liquidation Preference is payable on or after the second anniversary of the Issue Date and prior to the fifth anniversary of the Issue Date, the Redemption Premium that shall be included in the Liquidation Preference shall equal 1% of the Base Amount. No Redemption Premium shall be included in a Liquidation Preference payable on or after the fifth anniversary of the Issue Date.

(c) Upon any liquidation, dissolution or winding up of the Company, after payment has been made in full to the holders of Series D Preferred Shares and any Parity Shares as provided in this Section 4, any other series or class of Junior Shares shall, subject to the respective terms thereof, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series D Preferred Shares and any Parity Shares shall not be entitled to share therein.

(d) For purposes of this Section 4, (i) a consolidation or merger of the Company with or into one or more corporations, (ii) a sale or transfer of all or substantially all of the Company's assets or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Company.

#### **Section 5. Redemption at the Option of the Company.**

(a) Series D Preferred Shares shall not be redeemable by the Company prior to the fifth anniversary of the Issue Date. On or after the fifth anniversary of the Issue Date, the Company may redeem all, but not less than all, of the outstanding Series D Preferred Shares at any time in the manner provided in this Section 5. The redemption price, in such case, shall be equal to the Liquidation Preference as of the Call Date (as defined below) pertaining to the Series D Preferred Shares being redeemed. The Series D Preferred Shares shall be redeemed in whole by the Company on the last Trading Day of August, 2051. The redemption price, in such case, shall be payable, at the option of the Company, either: (i) in cash in an amount equal to the aggregate Conversion Price (as in effect at the time) of the Series D Preferred Shares; or (ii) by issuance of that number of fully paid and non-assessable Common Shares equal to the quotient obtained by dividing (A) the aggregate Base Amount of the Series D Preferred Shares (plus an amount equal to all unpaid distributions which were earned but not declared) by (B) the Conversion Price (as in effect at the time).

(b) Series D Preferred Shares shall be redeemed by the Company on the date specified in the notice to holders required under Section 5(d) (the "Call Date"). The Call Date shall be selected by the Company, shall be specified in the notice of redemption and shall be not less than thirty (30) days nor more than sixty (60) days after the date notice of redemption is sent by the Company.

(c) Unless all distributions (including all accumulated, accrued and unpaid distributions) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past and current Distribution Periods with respect to the Series D Preferred Shares and all past and current distribution periods with respect to any Parity Shares, no Series D Preferred Share may be redeemed unless all outstanding Series D Preferred Shares are simultaneously redeemed and neither the Company nor any affiliate of the Company may redeem, purchase or acquire Series D Preferred Shares or

Parity Shares, except pursuant to a purchase or exchange offer made on substantially equivalent terms to all holders of Series D Preferred Shares.

(d) If the Company redeems Series D Preferred Shares pursuant to Section 5(a), notice of such redemption shall be given to each holder of record of shares to be redeemed. Such notice shall be provided by first class mail, postage prepaid, at such holder's address as it appears on the share records of the Company. Neither the failure to mail any notice required by this paragraph (d), nor any defect therein or in the mailing thereof to any particular holder, shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to any other holders. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date mailed whether or not the holder receives the notice. Each such notice shall state, as appropriate: (i) the Call Date; (ii) the number of Series D Preferred Shares to be redeemed; (iii) the place or places at which certificates representing such shares are to be surrendered; (iv) the redemption price; and (v) the then-current Conversion Price. If the Company has mailed notice of the redemption of Series D Preferred Shares as provided above, then from and after the Call Date (unless the Company fails to make available to the holders of Series D Preferred Shares on the Call Date the amount of cash or the number of Common Shares, as applicable, necessary to effect such redemption), (A) except as otherwise provided herein, distributions shall cease to accumulate or accrue on the shares called for redemption (except that, in the case of a Call Date which falls after a distribution record date and prior to the related Distribution Payment Date, holders of Series D Preferred Shares on the distribution record date shall be entitled on such Distribution Payment Date to receive the distribution payable on such shares), (B) such shares shall no longer be deemed to be outstanding and (C) all rights of the holders thereof as holders of Series D Preferred Shares shall cease (except the rights to convert (within the time period set forth in Section 8(a)) and to receive the redemption price, without interest thereon, upon surrender and endorsement of their certificates if so required and to receive any distributions payable thereon). The Company's obligation to make available the redemption price in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Call Date, the Company: (1) deposits with a bank or trust company that has, or is an Affiliate of a bank or trust company that has, capital and surplus of at least \$50,000,000, such amount of cash as is necessary for such redemption, in trust, with irrevocable instructions that such cash be applied to the redemption of the shares called for redemption; and (2) provides notice of such arrangements to the holders of Series D Preferred Shares at least seven (7) Business Days prior to the Call Date. No interest shall accrue for the benefit of the holders of Series D Preferred Shares to be redeemed on any cash so set aside by the Company. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Call Date shall revert to the general funds of the Company, and the holders of Series D Preferred Shares so called for redemption shall look only to the general funds of the Company for the payment of such cash.

As promptly as practicable after the surrender in accordance with such notice of the certificates representing any Series D Preferred Shares to be redeemed (properly endorsed or assigned for transfer, if the Company so requires and the notice so states), and in any event no later than two (2) Business Days following the later of (i) the date on which the Series D Preferred Shares are surrendered or, (ii) the Call Date, such certificates shall be exchanged for the redemption price (without interest thereon) for which such shares have been redeemed in accordance with such notice.

**Section 6. Redemption at the Option of the Holders.**

(a) In the event the Company experiences a Change of Control (as defined in Section 6(b)), the holders of the Series D Preferred Shares shall have the option, upon written notice to the Company within thirty (30) calendar days of such Change of Control, to require the Company to redeem all, but not part, of the Series D Preferred Shares at a price equal to the Liquidation Preference as determined as of the date of the Change of Control.

(b) The term "Change of Control" means each occurrence of any of the following: (i) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act) (other than the Investor, Gregory T. Mutz, UICI, a Texas corporation, Amlil Realty Co., a Delaware corporation, Ronald L. Jensen, or any of their respective Affiliates) of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act, except that such Person shall be deemed to have beneficial ownership of all shares which any such Person has the right to acquire, whether such right is exercisable immediately or only after passage of time) of (A) the Company's outstanding shares of beneficial interest with voting power, excluding the Company's outstanding shares with contingent voting rights (unless the holders of such shares were entitled to vote to elect trustees immediately prior to the acquisition of beneficial ownership), to cast more than 30% of the votes entitled to be cast to elect trustees, but only if such acquisition is not assented to by the Board, or more than 30% of the aggregate Fair Market Value of the Company's outstanding shares of beneficial interest, but only if such acquisition is not assented to by the Board, or (B) the Company's outstanding shares of beneficial interest with voting power, excluding the Company's outstanding shares with contingent voting rights (unless the holders of such shares were entitled to vote to elect trustees immediately prior to the acquisition of beneficial ownership), to cast more than 51% of the votes entitled to be cast to elect trustees of the Company or more than 51% of the aggregate Fair Market Value of the Company's outstanding shares of beneficial interest; (ii) other than with respect to the election, resignation or replacement of any trustee designated, appointed or elected by the holders of the Series D Preferred Shares (each a "Preferred Trustee"), during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (together with any new trustees whose election by such Board or whose nomination for election by the shareholders of the Company was approved by a vote of two-thirds of the trustees of the Company (excluding Preferred Trustees) then still in office who were either trustees at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board then in office; (iii) the failure of the Company to qualify as a REIT; (iv) the Company conveying, transferring or leasing all or substantially all of its assets (including, but not limited to, real property investments) to any Person; or (v) (A) the Company consolidating with or merging into another entity or (B) any entity consolidating with or merging into the Company, which in either event (A) or (B) is pursuant to a transaction in which the holders of a majority of the Company's outstanding shares of beneficial interest with voting power, excluding the Company's outstanding shares with contingent voting rights (unless the holders of such shares were entitled to vote on such consolidation or merger immediately prior to the acquisition of beneficial ownership), immediately prior to such transaction beneficially own less than a majority of the surviving entity's outstanding shares of beneficial interest with voting power, excluding the surviving entity's outstanding shares with contingent voting rights, immediately after such transaction.

(c) As promptly as practicable after the surrender of the certificates representing any Series D Preferred Shares to be redeemed pursuant to this Section 6 (properly endorsed and assigned for transfer), and in any event no later than two (2) Business Days following the later of (i) the date on which the Series D Preferred Shares are surrendered and (ii) the date of the Change in Control, such certificates shall be exchanged for the cash (without interest thereon) for which such shares have been redeemed.

**Section 7. Status of Reacquired Shares.** All Series D Preferred Shares which are issued and reacquired in any manner by the Company (including Series D Preferred Shares which are surrendered for conversion into Common Shares) shall be returned to the status of authorized but unissued shares of beneficial interest of the Company, without designation as to class or series.

**Section 8. Conversion.** Holders of Series D 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 Section 8, a holder of Series D Preferred Shares shall have the right, at any time, and from time to time, to convert all or any portion of such shares (unless previously redeemed) into the number of fully paid and non-assessable shares of Common Shares obtained by dividing the aggregate Base Amount of such shares (plus an amount equal to all unpaid distributions which were earned but not declared) by the Conversion Price as in effect at the time and on the date provided for in the last paragraph of paragraph (b) of this Section 8 by surrendering such shares to be converted, such surrender to be made in the manner provided in paragraph (b) of this Section 8; provided, however, that the right to convert shares called for redemption pursuant to Section 5 shall terminate at the close of business on the fifth Business Day prior to the Call Date fixed for such redemption, unless the Company shall default in making payment of the cash payable upon such redemption under Section 5.

(b) In order to exercise the conversion right, the holder of each Series D Preferred Share to be converted shall surrender the certificate representing 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 such holder elects to convert such Series D Preferred Shares. Unless the Common Shares issuable on conversion are to be issued in the same name as the name in which such Series D 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 attorney 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 D Preferred Shares at the close of business on a distribution payment 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 distribution payment record date and prior to such Distribution Payment Date. Except as provided above, the Company shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted shares or for distributions on the Common Shares issued upon such conversion.



As promptly as practicable after the surrender of certificates representing Series D Preferred Shares as provided above, the Company shall issue and deliver at such office to such holder, or send on such holder's written order, a certificate or certificates for the number of full Common Shares issuable upon conversion of such Series D Preferred Shares in accordance with the provisions of this Section 8, and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in Section 8(c).

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 D Preferred Shares have been surrendered and such notice has been received by the Company as provided above, and the Person or Persons in whose name or names any certificate or certificates for Common Shares are 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 on such date unless the share transfer books of the Company are closed on such date, in which event such Person or Persons shall be deemed to have become such holder or holders of record at the close 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 shares were surrendered and such notice was received by the Company. If the distribution payment record dates for the Series D Preferred Shares and Common Shares do not coincide, and the preceding sentence does not operate to ensure that a holder of Series D Preferred Shares whose shares are converted into Common Shares does not receive distributions on both the Series D Preferred Shares and the Common Shares into which such shares are converted for the same Distribution Period, then notwithstanding anything herein to the contrary, it is the intent, and the Transfer Agent is authorized to ensure, that no conversion after the earlier of such record dates will be accepted until after the later of such record dates.

(c) No fractional Common Share or scrip representing fractions of a Common Share shall be issued upon conversion of Series D Preferred Shares. Instead of any fractional interest in a Common Share which would otherwise be deliverable upon conversion of a share of Series D Preferred Shares, the Company shall pay to the holder of such share an amount in cash based upon the Current Market Price of the Common Shares on the Trading Day immediately preceding the date of conversion. If more than one share is 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 D Preferred Shares so surrendered.

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

(i) If the Company after the Initial Issue Date (A) makes a distribution on any of its shares of beneficial interest in Common Shares, (B) subdivides its outstanding Common Shares into a greater number of shares, (C) combines its outstanding Common Shares into a smaller number of shares or (D) issues any shares by reclassification of its outstanding Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of holders of beneficial interest entitled to receive such distribution or at the opening of business on the day following the day on which such subdivision,

combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series D Preferred Share thereafter surrendered for conversion shall be entitled to receive the number of Common Shares (or fraction of a Common Share) which such holder would have owned or been entitled to receive after the happening of any of the events described above if such Series D Preferred Share had 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 paragraph (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in Section 8(h)) in the case of a distribution or 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.

- (ii) If the Company after the Initial Issue Date issues rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within forty-five (45) calendar days after the record date described below) to subscribe for or purchase Common Shares at a price per share less than 95% (100% if a stand-by underwriter is used which charges the Company a commission) of the Fair Market Value per Common Share on the record date for the determination of holders of beneficial interest entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date 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 day following such record date by (B) a fraction, the numerator of which shall be the sum of (1) the number of Common Shares outstanding on the close of business on such record date and (2) the number of shares which could be purchased at 95% (100% if a stand-by underwriter is used which charges the Company a commission) of such Fair Market Value from the aggregate proceeds to the Company from the exercise of such rights, options or warrants for Common Shares, and the denominator of which shall be the sum of (3) the number of Common Shares outstanding on the close of business on such record date and (4) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in Section 8(h)). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than 95% (100% if a stand-by underwriter is used which charges the Company a commission) of such Fair Market Value, 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 in good faith by the Board.

- (iii) If the Company after the Initial Issue Date makes a distribution on its Common Shares other than in cash or Common Shares (including any distribution in securities (other than rights, options or warrants referred to in paragraph (ii) of Section 8(d)) (each of the foregoing being referred to herein as a "Property Distribution"), then the Conversion Price in effect at the opening of business on the day next following the record date for determination of holders of beneficial interest entitled to receive such Property Distribution 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 day following the record date by (B) a fraction, the numerator of which shall be the difference between (1) the number of Common Shares outstanding on the close of business on the record date and (2) the number of shares determined by dividing (x) the aggregate value of the property being distributed by (y) the Fair Market Value per Common Share on the record date, and the denominator of which shall be the number of Common Shares outstanding on the close of business on the record date. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided below). The value of the property being distributed shall be determined in good faith by the Board; provided, however, that, if the property being distributed is a publicly traded security, its value shall be calculated in accordance with the procedure for calculating the Fair Market Value of a Common Share (calculated for a period of five (5) consecutive Trading Days commencing on the twentieth Trading Day after the Property Distribution). Neither the issuance by the Company of rights, options or warrants to subscribe for or purchase securities of the Company nor the exercise thereof shall be deemed a Property Distribution under this paragraph (iii).
- (iv) If the Company after the Initial Issue Date acquires, pursuant to an issuer or self tender offer, all or any portion of the outstanding Common Shares and such tender offer involves the payment of consideration per Common Share having a fair market value (as determined in good faith by the Board), at the last time (the "Expiration Time") tenders may be made pursuant to such offer, which exceeds the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time, then the Conversion Price in effect on the opening of business on the Trading Day next succeeding the Expiration Time shall be adjusted to equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the Expiration Time by (B) a fraction, the numerator of which shall be (1) the number of Common Shares outstanding (including the shares acquired in the tender offer (the "Acquired Shares")) immediately prior to the Expiration Time, multiplied by (2) the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time, and the denominator of which shall be the sum of (3) the fair market value (determined as provided above) of the aggregate consideration paid to acquire the Acquired Shares and

(4) the product of (x) the number of Common Shares outstanding (less any Acquired Shares) at the Expiration Time, multiplied by (y) the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time.

- (v) No adjustment to 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 which by reason of this paragraph (v) 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 Section 8 (other than this paragraph (v)) 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 Section 8, the Company shall not be required to make any adjustment to the Conversion Price for the issuance of (A) 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 optional amounts in Common Shares under such plan or (B) any options, rights or Common Shares pursuant to any share option, share purchase or other share-based plan maintained by the Company. All calculations under this Section 8 shall be made to the nearest cent (with \$0.005 and above being rounded upward) or to the nearest one-tenth of a share (with 0.05 of a share being rounded upward), as the case may be. Anything in this Section 8(d) to the contrary notwithstanding, the Company shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this Section 8(d), as it in its discretion determines to be advisable in order that any share distributions, subdivision of shares, reclassification or combination of shares, distribution of rights or warrants to purchase shares or securities, or a distribution of other assets (other than cash distributions) hereafter made by the Company to its holders of beneficial interest are not taxable, or if that is not possible, to diminish any income taxes which are otherwise payable because of such event.

(e) If the Company is a party to any transaction (including without limitation a merger, consolidation, statutory share exchange, issuer or self tender offer for at least 30% of the Common Shares outstanding, a sale of all or substantially all of the Company's assets or a recapitalization of the Common Shares, but excluding any transaction as to which paragraph (i) of Section 8(d) applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares are converted into the right to receive shares, securities or other property (including cash or any combination thereof), each share of Series D Preferred Shares which is not converted into the right to receive shares, securities or other property in connection with such Transaction shall thereupon be convertible into the kind and amount of shares, securities and other property (including cash or any combination thereof) receivable upon such consummation by a holder of that number of Common Shares into which one share of Series D Preferred Shares was convertible immediately prior to such Transaction

(without giving effect to any Conversion Price adjustment pursuant to paragraph (iv) of Section 8(d)). The Company shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this Section 8(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 D Preferred Shares which contains provisions enabling the holders of the Series D Preferred Shares which remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this Section 8(e) shall similarly apply to successive Transactions.

- (f) If:
- (i) the Company declares a distribution on the Common Shares (other than cash distributions); or
  - (ii) the Company authorizes the granting to all holders of Common Shares of rights or warrants to subscribe for or purchase any shares of any class or series or any other rights or warrants; or
  - (iii) there is any reclassification of the outstanding Common Shares or any consolidation or merger to which the Company is a party and for which approval of any holders of beneficial interest of the Company is required, or a statutory share exchange, or an issuer or self tender offer for at least 30% of the outstanding Common Shares (or an amendment thereto changing the maximum number of shares sought or the amount or type of consideration being offered therefor has been adopted), or the sale or transfer of all or substantially all of the assets of the Company as an entirety; or
  - (iv) there occurs 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 each holder of Series D Preferred Shares at such holder's address as shown on the share records of the Company, as promptly as possible but at least ten (10) Business Days prior to the applicable date specified in (A), (B) or (C) below, a notice stating (A) the record date for the payment of such distribution or rights or warrants, or, if a record date is not established, the date as of which the holders of Common Shares of record to be entitled to such distribution or rights or warrants are to be determined 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 or (C) the date on which such tender offer commenced, the date on which such tender offer is scheduled to expire unless extended, the consideration offered and the other material terms thereof (or the material terms of

any amendment thereto). Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 8.

(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 date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each holder of Series D Preferred Shares at such holder's last address as shown on the share records of the Company.

(h) In any case in which Section 8(d) provides that an adjustment shall become effective on the day 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 D Preferred Share 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) paying to such holder any amount of cash in lieu of any fraction pursuant to Section 8(c).

(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 Section 8. If any action or transaction would require adjustment of the Conversion Price pursuant to more than one paragraph of this Section 8, 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 takes any action affecting the Common Shares, other than action described in this Section 8, which in the opinion of the Board would materially and adversely affect the conversion rights of the holders of Series D Preferred Shares, the Conversion Price for the Series D Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time as the Board, in its sole discretion, may determine to be equitable under the circumstances.

(k) The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Shares solely for the purpose of effecting conversion of the Series D Preferred Shares, the full number of Common Shares deliverable upon conversion of all outstanding Series D Preferred Shares not theretofore converted into Common Shares. For purposes of this Section 8(k), the number of Common Shares which are deliverable upon conversion of all outstanding Series D Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder (and without regard to the Ownership Limit set forth in the Declaration of Trust).

The Company covenants that any Common Share issued upon conversion of the Series D Preferred Shares shall be validly issued, fully paid and nonassessable.

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

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

(m) In addition to any other adjustment required hereby, to the extent permitted by law, the Company from time to time may decrease the Conversion Price by any amount, permanently or for a period of at least twenty (20) Business Days, if the decrease is irrevocable during the period.

(n) Notwithstanding anything to the contrary contained in this Section 8, conversion of Series D Preferred Shares pursuant to this Section 8 shall be permitted only to the extent that such conversion would not result in a violation of the Ownership Limit (as defined in the Declaration of Trust), after taking into account any waiver of such limitation granted to any holder of Series D Preferred Shares.

**Section 9. Ranking.** Any class or series of shares of the Company shall be deemed to rank:

(a) senior to the Series D Preferred Shares, as to the payment of distributions and as to the distribution of assets upon liquidation, dissolution or winding up, if the holders of such class or series are entitled to the receipt of distributions or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Series D Preferred Shares ("Senior Shares");

(b) on a parity with the Series D Preferred Shares, as to the payment of distributions and as to the distribution of assets upon liquidation, dissolution or winding up, whether or not the distribution rates, distribution payment dates or redemption or liquidation prices per share thereof are different from those of the Series D Preferred Shares, if the holders of such class or series and the Series D Preferred Shares are entitled to the receipt of distributions and amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid distributions per share or liquidation preferences, without preference or priority one over the other ("Parity Shares"); and

(c) junior to the Series D Preferred Shares, as to the payment of distributions or as to the distribution of assets upon liquidation, dissolution or winding up, if such class or series is Common Shares or if the holders of Series D Preferred Shares are entitled to the receipt of

distributions or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of such class or series ("Junior Shares").

The Series D Preferred Shares (i) are Parity Shares with respect to the Series B Cumulative Convertible Redeemable Preferred Shares of the Company, (ii) are Junior Shares with respect to the Series A Cumulative Convertible Preferred Shares of the Company, (iii) must be at least on parity with any future preferred shares of the Company, and (iv) are Senior Shares with respect to the Common Shares.

#### Section 10. Voting.

(a) If and whenever (i) four quarterly distributions (whether or not consecutive) payable on the Series D Preferred Shares are in arrears (which shall, with respect to any such quarterly distribution, mean that any such distribution has not been paid in full, whether or not earned or declared, (ii) for four consecutive quarterly Distribution Periods, the Company fails to pay distributions on the Common Shares in an amount per share at least equal to \$0.418 per share per quarter (subject to adjustment consistent with any adjustment of the Conversion Price pursuant to Section 8(d)) (the "Base Common Share Distribution") or (iii) the Company fails to satisfy the test set forth in Section 13(a), then the number of trustees then constituting the Board shall be increased by two (or by three if the number of trustees then constituting the Board is ten or more (without including any trustees elected pursuant to this Section 10(a)) and the holders of Series D Preferred Shares, together with the holders of every other series or class of Parity Shares (with any other such series, the "Voting Preferred Shares"), voting as a single class regardless of series, shall be entitled to elect the additional trustees to serve on the Board at any annual meeting of holders of beneficial interest or a special meeting held in lieu thereof, or at a special meeting of the holders of the Series D Preferred Shares and the Voting Preferred Shares called as hereinafter provided. Whenever (A) in the case of an arrearage in distributions described in clause (i), all distributions in arrears on the Series D Preferred Shares and the Voting Preferred Shares then outstanding have been paid and a sum sufficient for the payment thereof has been set apart for payment of the distribution for the current distribution for two consecutive quarterly Distribution Periods, (B) in the case of an arrearage in distributions described in clause (ii), the Company makes a quarterly distribution payment on the Common Shares in an amount per share equal to or exceeding the Base Common Share Distribution for two consecutive quarterly Distribution Periods, or (C) in the case of a failure described in clause (iii), the Company satisfies the test set forth in Section 13(a) for two consecutive fiscal quarters, then the right of the holders of the Series D Preferred Shares and the Voting Preferred Shares to elect such additional trustees shall cease (but subject always to the same provision for the vesting of such voting rights in the case of any similar future arrearages), and the terms of office of all Persons elected as trustees by the holders of the Series D Preferred Shares and the Voting Preferred Shares shall forthwith terminate and the number of trustees constituting the Board shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of Series D Preferred Shares and the Voting Preferred Shares, the Secretary of the Company may, and upon the written request of any holder of Series D Preferred Shares (addressed to the Secretary at the principal office of the Company) shall, call a special meeting of the holders of the Series D Preferred Shares and the Voting Preferred Shares for the election of the two (or three if the number of trustees then constituting the Board is ten or more) trustees to be elected by them as herein provided, such call to be made by notice similar to that provided



in the Bylaws of the Company for a special meeting of the holders of beneficial interest or as required by law. If any such special meeting required to be called as above provided shall not be called by the Secretary within twenty (20) calendar days after receipt of any such request, then any holder of Series D Preferred Shares may call such meeting, upon the notice above provided, and for that purpose shall have access to the share records of the Company. The trustees elected at such special meeting shall hold office until the next annual meeting of the holders of beneficial interest or special meeting held in lieu thereof if such office has not previously terminated as provided above. If any vacancy occurs among the trustees elected by the holders of the Series D Preferred Shares and the Voting Preferred Shares, a successor shall be elected by the Board, upon the nomination of the then-remaining director elected by the holders of the Series D Preferred Shares and the Voting Preferred Shares or the successor of such remaining director, to serve until the next annual meeting of the holders of beneficial interest or special meeting held in lieu thereof if such office has not previously terminated as provided above.

(b) So long as any of the Series D Preferred Shares is outstanding, in addition to any other vote or consent of holders of beneficial interest required by law or by the Declaration of Trust of the Company, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of the Series D Preferred Shares, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

- (i) Any amendment, alteration or repeal of any of the provisions of these Articles Supplementary, the Declaration of Trust or the By-Laws of the Company which materially and adversely affects the voting powers, rights or preferences of the holders of the Series D Preferred Shares; provided, however, that the amendment of the provisions of the Declaration of Trust so as to authorize or create, or to increase the authorized amount of, any Junior Shares or any class of Parity Shares shall not be deemed to materially adversely affect the voting powers, rights or preferences of the holders of Series D Preferred Shares, and provided further, that if any such amendment, alteration or repeal would materially and adversely affect any voting powers, rights or preferences of the Series D Preferred Shares or another series of Voting Preferred Shares that are not enjoyed by some or all of the other series otherwise entitled to vote in accordance herewith, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of all series similarly affected, similarly given, shall be required in lieu of the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of the Series D Preferred Shares and the Voting Preferred Shares otherwise entitled to vote in accordance herewith; or
- (ii) The authorization, reclassification or creation of, the increase in the authorized amount of, or the issuance of, any class of Senior Shares or any security convertible into any class of Senior Shares (whether or not such class of Senior Shares is currently authorized); provided, however, that no such vote of the holders of Series D Preferred Shares shall be required if at or prior to the time when such amendment, alteration or repeal is to take

effect, or when the issuance of any such Senior Shares or convertible security is to be made, as the case may be, provision is made for the redemption of all Series D Preferred Shares at the time outstanding, if the Series D Preferred Shares are then redeemable at the option of the Company; or

- (iii) Any action by the Company in its capacity as General Partner of the Operating Partnership effecting the issuance of any class of Senior Units or any security convertible into any class of Senior Units (whether or not such class of Senior Units is currently authorized); provided, however, that no such vote of the holders of Series D Preferred Shares shall be required if at or prior to the time when such amendment, alteration or repeal is to take effect, or when the issuance of any such Senior Units is to be made, as the case may be, provision is made for the redemption of all Series D Preferred Shares at the time outstanding, if the Series D Preferred Shares are then redeemable at the option of the Company.

For purposes of the foregoing provisions and all other voting rights under these Articles Supplementary, each Series D Preferred Share shall have one vote per share, except that when any other class or series of preferred shares of beneficial interest shall have the right to vote with the Series D Preferred Shares as a single class on any matter, then the Series D Preferred Shares and such other class or series shall have with respect to such matters one vote per \$100 of stated liquidation preference. Except as otherwise required by applicable law or as set forth herein, the Series D Preferred Shares shall not have any relative, participating, optional or other special voting rights and powers other than as set forth herein, and the consent of the holders thereof shall not be required for the taking of any corporate action.

**Section 11. Record Holders.** The Company and the Transfer Agent may deem and treat the record holder of any Series D Preferred Shares as the true and lawful owner thereof for all purposes, and neither the Company nor the Transfer Agent shall be affected by any notice to the contrary.

**Section 12. Ownership Restrictions.** The Series D Preferred Shares shall be subject to the restrictions and limitations set forth in Section 2 of Article 3 of the Declaration of Trust, subject to waiver thereof by the Board.

**Section 13. Fixed Charge Coverage.**

(a) So long as any Series D Preferred Shares are outstanding, the Company must maintain a fixed charge coverage ratio of aggregate Consolidated EBITDA to aggregate Consolidated Fixed Charges for every fiscal quarter equal to or greater than 1.625 to 1. If the Company is not in compliance with the fixed charge coverage ratio (a "Covenant Failure"), the Company shall have until the end of the next fiscal quarter to cure such Covenant Failure. If the Company does not cure such Covenant Failure by the end of such fiscal quarter, then the Preferred Dividend shall be increased by 25 basis points, and such increase shall be effective retroactively for the original fiscal quarter in which the Covenant Failure occurred and all such subsequent quarters until the last day of the calendar quarter during which the Covenant Failure

shall have been cured and shall no longer be continuing, subject to reinstatement (with the cure right above being afforded) in the event of any subsequent Covenant Failure. There shall be no other remedy for a Covenant Failure.

(b) "Consolidated EBITDA" for any period shall mean the consolidated net income of the Company (before minority interest, extraordinary items and other gains and losses) as reported in the Company's financial statements filed with the Securities and Exchange Commission increased by the sum of the following (without duplication):

- (i) all income and state franchise taxes paid or accrued according to generally accepted accounting principles ("GAAP") for such period (other than income taxes attributable to extraordinary, unusual or non-recurring gains or losses except to the extent that such gains were not included in Consolidated EBITDA);
- (ii) all interest expense paid or accrued in accordance with GAAP for such period (including financing fees and amortization of deferred financing fees and amortization of original issue discount);
- (iii) depreciation and depletion reflected in such reported net income;
- (iv) amortization reflected in such reported net income including, without limitation, amortization of capitalized debt issuance costs (only to the extent that such amounts have not been previously included in the amount of Consolidated EBITDA pursuant to clause (ii) above), goodwill, other intangibles and management fees;
- (v) any fees (to the extent such fees were treated as expenses in the calculation of the consolidated net income of the Company) with respect to any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars and similar agreements) and/or other types of interest hedging agreements and any currency protection agreement (including foreign exchange contracts, currency swap agreements and other currency hedging arrangements) (collectively, "Hedging Costs"); and
- (vi) any other non-cash charges or discretionary prepayment penalties, to the extent deducted from consolidated net income (including, but not limited to, income allocated to minority interests).

(c) "Consolidated Fixed Charges" for any period means the sum of:

- (i) all interest expense paid or accrued in accordance with GAAP for such period (including financing fees and amortization of deferred financing fees and amortization of original issue discount);
- (ii) preferred share distribution requirements for such period, whether or not declared or paid; and

(iii) Hedging Costs.

**Section 14. Sinking Fund.** The Series D Preferred Shares shall not be entitled to the benefit of any retirement or sinking fund.

**SECOND:** The Series D Preferred Shares have been classified and designated by the Board under the authority contained in Article 2 of the Declaration of Trust.

**THIRD:** These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

**FOURTH:** The undersigned President acknowledges these Articles Supplementary to be the act of the Company and, as to all other matters or facts required to be verified under oath, 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 these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Secretary on this 29<sup>th</sup> day of October, 2001.

AMLI RESIDENTIAL PROPERTIES  
TRUST

By: Allan J. Sweet  
Allan J. Sweet, President

ATTEST:

[Signature]  
Secretary

# CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_

# D03790276

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

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

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

[REDACTED]

1000361986280588

ID # D03790276 ACK # 1000361986280588  
LIBER: B00307 FOLIO: 0696 PAGES: 0025  
ANLI RESIDENTIAL PROPERTIES TRUST

10/30/2001 AT 10:42 A WO # 0000512172

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 20

Org. & Cap. Fee: \_\_\_\_\_

Expedite Fee: 70

Penalty: \_\_\_\_\_

State Recordation Tax: \_\_\_\_\_

State Transfer Tax: \_\_\_\_\_

1 Certified Copies Copy Fee: 30

Certificates \_\_\_\_\_

Certificate of Status Fee: \_\_\_\_\_

Personal Property Filings: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL FEES: 120

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

1 Documents on 1 Checks

Approved By: 10

Keyed By: \_\_\_\_\_

COMMENT(S):

- \_\_\_\_\_ 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
- \_\_\_\_\_ Change of Business Code

Adoption of Assumed Name \_\_\_\_\_

Other Change(s): Change of principal office  
Shareholder

Code 604

Attention: \_\_\_\_\_

Mail to Address: \_\_\_\_\_

**CERTIFIED COPY MADE**

Stamp Work Order and Customer Number HERE

CUST ID: 0000745329  
WORK ORDER: 0000512172  
DATE: 10-30-2001 01:12 PM  
AMT PAID: \$120.00

2.

**NOTICE OF CHANGE OF PRINCIPAL OFFICE AND REGISTERED AGENT**

The Board of Directors of AMLI Residential Properties Trust, a Maryland real estate investment trust, did on September 10, 1999, duly approve the following resolutionS:

RESOLVED, That the principal office of the real estate investment trust in the State of Maryland be and hereby is changed to: ~~Ken Kramer~~, 711 Mayton Court, Belair, MD 21014.

FURTHER RESOLVED, that the ~~principal~~ <sup>REGISTERED</sup> agent of the corporation be and hereby is changed to: Ken Kramer, 711 Mayton Court, Belair, Maryland 21014.

I, Charlotte A. Sparrow, Secretary, certify under the penalties of perjury that to the best of my knowledge, information, and belief the foregoing resolutions are true in all material respects.

*Charlotte A. Sparrow*  
Charlotte A. Sparrow, Secretary

MARYLAND  
MAY 11 2003

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 2 page document on file in this office. DATED: 3-16-2004

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Mae Still, Custodian

This stamp replaces our previous certification system. Effective: 6/95

69-875

I HEREBY CONSENT TO ACT AS RESIDENT AGENT IN MARYLAND FOR  
THE ENTITY NAMED IN THE ATTACHED INSTRUMENT.

  
SIGNATURE

  
PRINT NAME



STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

11-12-98

1252 P

RECEIVED  
98 NOV 12 PM 12 52  
UNINC PER PROP

AMLI RESIDENTIAL PROPERTIES TRUST

ARTICLES SUPPLEMENTARY  
SERIES C JUNIOR  
PARTICIPATING PREFERRED SHARES

Amlj Residential Properties Trust, a Maryland real estate investment trust (the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland pursuant to Section 8-203(b) of the Annotated Code of Maryland (the "Code") that:

FIRST: Under a power contained in Article 2, Section 1 of the Declaration of Trust of the Company, the Board of Trustees, as required by Section 8-203(b) of the Code, at a meeting duly called and held on November 2, 1998, has classified 150,000 unissued shares of the Company as Series C Junior Participating Preferred Shares, 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 made part of Article 2 of the Declaration, with any necessary or appropriate changes to the enumeration and lettering hereof:

83178000

SERIES C JUNIOR PARTICIPATING PREFERRED SHARES

Section 1. Designation and Amount. There shall be a series of preferred shares of the Company, \$0.01 par value per share, which shall be designated "Series C Junior Participating Preferred Shares" (the "Series C Preferred Shares"), and the number of shares constituting that Series C shall be 150,000. Such number of shares may be increased or decreased by resolution of the Board of Trustees and by the filing of articles supplementary in accordance with the provisions of Title 8 of the Corporations and Associations Code of the State of Maryland stating that such increase or reduction has been so authorized; provided, however, that no decrease shall reduce the number of Series C Preferred Shares to a number less than the number of Series C Preferred Shares then outstanding plus the number of Series C Preferred Shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Company

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any class or series of preferred shares of the Company ranking prior and superior to the Series C Preferred Shares with respect to dividends, the holders of Series C Preferred Shares shall be entitled to receive, when, as and if authorized by the Board of Trustees out of funds legally available for the purpose, quarterly dividends payable in cash to holders of record on the last

I hereby certify that this is a true and correct copy of the original document on file in this office. DATED: 11/12/98

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Mae Still, Custodian

This stamp replaces our previous certification system. Effective: 6/95

11/12/98 AT 12:52

ACKN. NO. - 096C312910

STATE OF MARYLAND

FILE NO. 03790270

AMLI RESIDENTIAL PROPERTIES TRUST

Business Day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date") (commencing on the first Quarterly Dividend Payment Date after the first issuance of a Series C Preferred Share or fraction thereof) in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in Common Shares (hereinafter defined) or a subdivision of the outstanding Common Shares (by a reclassification or otherwise), authorized on the common shares of beneficial interest, par value \$0.01 per share, of the Company (the "Common Shares") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any Series C Preferred Share or fraction thereof. In the event the Company shall at any time following November 2, 1998 (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the amount to which holders of Series C Preferred Shares were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying each such amount by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Series C Preferred Shares as provided in paragraph (A) above at the time it declares a dividend or distribution on the Common Shares (other than a dividend payable in Common Shares).

(C) No dividend or distribution (other than a dividend or distribution payable in Common Shares) shall be paid or payable to the holders of Common Shares unless, prior thereto, all accrued but unpaid dividends to the date of that dividend or distribution shall have been paid to the holders of Series C Preferred Shares.

(D) Dividends shall begin to accrue and be cumulative on outstanding Series C Preferred Shares from the Quarterly Dividend Payment Date next preceding the date of issuance of such Series C Preferred Shares, unless the date of issuance of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue and be cumulative from the date of issuance of such shares; or unless the date of issuance is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of Series C Preferred Shares entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the Series C Preferred Shares in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Trustees may fix a record date for the determination of holders of Series C Preferred Shares entitled to receive payment of a dividend or distribution declared

thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of Series C Preferred Shares shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each one one-thousandth of a Series C Preferred Share shall entitle the holder thereof to one vote on all matters submitted to a vote of the shareholders of the Company. In the event the Company shall at any time following November 2, 1998 (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the number of votes per share to which holders of Series C Preferred Shares were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, the holders of Series C Preferred Shares and the holders of Common Shares and any other shares of beneficial interest of the Company having general voting rights shall vote together as one class on all matters submitted to a vote of shareholders of the Company.

(C) (i) Whenever, at any time or times, dividends payable on any Series C Preferred Shares shall be in arrears in an amount equal to at least six full quarterly dividends (whether or not declared and whether or not consecutive), the holders of record of the outstanding Series C Preferred Shares shall have the exclusive right, voting separately as a single class, to elect two Trustees of the Company at a special meeting of shareholders of the Company or at the Company's next annual meeting of shareholders, and at each subsequent annual meeting of shareholders, as provided below. At elections for such Trustees, the holders of Series C Preferred Shares shall be entitled to cast one vote for each one one-thousandth of a Series C Preferred Share held, subject to adjustment.

(ii) Upon the vesting of such right of the holders of the Series C Preferred Shares, the maximum authorized number of members of the Board of Trustees shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding Series C Preferred Shares as hereinafter set forth. A special meeting of the shareholders of the Company then entitled to vote shall be called by the Chairman, the President, any Senior Vice President or the Secretary of the Company, if requested in writing by the holders of record of not less than 10% of the Series C Preferred Shares then outstanding. At such special meeting, or, if no such special meeting shall have been called, then at the next annual meeting of shareholders of the Company, the holders of the Series C Preferred Shares shall elect, voting as above

provided, two Trustees of the Company to fill the aforesaid vacancies created by the automatic increase in the number of members of the Board of Trustees. At any and all such meetings for such election, the holders of a majority of the outstanding Series C Preferred Shares shall be necessary to constitute a quorum for such election, whether present in person or by proxy, and such two Trustees shall be elected by the vote of at least a plurality of shares held by such shareholders present or represented at the meeting. Any Trustee elected by holders of Series C Preferred Shares pursuant to this Section may be removed at any annual or special meeting, by vote of a majority of the shareholders voting as a class who elected such Trustee, with or without cause. In case any vacancy shall occur among the Trustees elected by the holders of the Series C Preferred Shares pursuant to this Section, such vacancy may be filled by the remaining Trustee so elected, or his successor then in office, and the Trustee so elected to fill such vacancy shall serve until the next meeting of shareholders for the election of Trustees. After the holders of the Series C Preferred Shares shall have exercised their right to elect Trustees in any default period and during the continuance of such period, the number of Trustees shall not be further increased or decreased except by vote of the holders of Series C Preferred Shares as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series C Preferred Shares.

(iii) The right of the holders of the Series C Preferred Shares, voting separately as a class, to elect two members of the Board of Trustees of the Company as aforesaid shall continue until, and only until, such time as all arrears in dividends (whether or not declared) on the Series C Preferred Shares shall have been paid or declared and set apart for payment, at which time such right shall terminate, except as herein or by law expressly provided, subject to reversion in the event of each and every subsequent default of the character above-mentioned. Upon any termination of the right of the holders of the Series C Preferred Shares as a class to vote for Trustees as herein provided, the term of office of all Trustees then in office elected by the holders of Series C Preferred Shares pursuant to this Section shall terminate immediately. Whenever the term of office of the Trustees elected by the holders of the Series C Preferred Shares pursuant to this Section shall terminate and the special voting powers vested in the holders of the Series C Preferred Shares pursuant to this Section shall have expired, the maximum number of members of the Board of Trustees of the Company shall be such number as may be provided for in the Bylaws of the Company irrespective of any increase made pursuant to the provisions of this Section.

(D) Except as otherwise provided herein or required by law, holders of Series C Preferred Shares shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Shares as provided herein) for taking any corporate action.

**Section 4. Certain Restrictions.**

(A) Whenever any quarterly dividends or other dividends or distributions payable on the Series C Preferred Shares as provided in Section 2 are in arrears, then, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on Series C Preferred Shares outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Preferred Shares, other than dividends paid or payable in such junior shares;

(ii) declare or pay dividends on or make any other distributions on any shares ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Preferred Shares, except dividends paid ratably on the Series C Preferred Shares and all such parity shares on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Preferred Shares, provided that the Company may at any time redeem, purchase or otherwise acquire any such parity shares in exchange for shares of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series C Preferred Shares; or

(iv) purchase or otherwise acquire for consideration any Series C Preferred Shares, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Trustees) to all holders of such shares upon such terms as the Board of Trustees, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of the Company unless the Company could, under paragraph (A) of this Section, purchase or otherwise acquire such shares at such time and in such manner.

**Section 5. Reacquired Shares.** Any Series C Preferred Shares purchased or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued shares of beneficial interest and may be reissued as Common Shares or as part of a new series of preferred shares to be created by resolution or resolutions of the Board of Trustees, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. (A) Upon any voluntary liquidation, dissolution or winding up of the Company, no distribution shall be made to the holders of shares ranking junior (either as to dividends or upon liquidation dissolution or winding up) to the Series C Preferred Shares unless, prior thereto, the holders of Series C Preferred Shares shall have received \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series C Liquidation Preference"). Following the payment of the full amount of the Series C Liquidation Preference, no additional distributions shall be made to the holders of Series C Preferred Shares unless, prior thereto, the holders of Common Shares shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series C Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph C below to reflect such events as share splits, share dividends and recapitalizations with respect to the Common Shares) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series C Liquidation Preference and the Common Adjustment in respect of all outstanding Series C Preferred Shares and Common Shares, respectively, holders of Series C Preferred Shares and holders of Common Shares shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio, on a per share basis, of the Adjustment Number to 1 with respect to such Series C Preferred Shares and Common Shares, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series C Liquidation Preference and the liquidation preferences of all other series of preferred shares, if any, which rank on a parity with the Series C Preferred Shares, then such remaining assets shall be distributed ratably to the holders of the Series C Preferred Shares and such parity shares in proportion to their respective liquidation preferences.

(C) In the event the Company shall at any time following November 2, 1998 (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the Common Shares are exchanged for or changed into other shares or securities, cash and/or any other property, then in any such case, the Series C Preferred Shares shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of shares, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each Common Share is exchanged or changed. In the event the Company shall at any time (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii)

combine the outstanding Common Shares into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Series C Preferred Shares shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

Section 8. Redemption. The Series C Preferred Shares shall not be redeemable by the Company. The preceding sentence shall not limit the ability of the Company to purchase or otherwise deal in such shares to the extent permitted by law.

Section 9. Ranking. The Series C Preferred Shares shall rank junior to all other series of the Company's preferred shares (whether with or without par value), including, but not limited to, the Series A Cumulative Convertible Preferred Shares of Beneficial Interest, par value \$0.01 per share, the Series B Cumulative Convertible Redeemable Preferred Shares of Beneficial Interest, par value \$0.01 per share, and all other series of the Company's preferred shares ranking senior to or on a parity with such Series A or Series B preferred shares, as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. Neither the Company's Declaration of Trust nor any Articles Supplementary relating to the Series C Preferred Shares shall be amended in any manner which would materially and adversely alter or change the preferences, rights or other terms of the Series C Preferred Shares without the affirmative vote of the holders of a majority or more of the outstanding Series C Preferred Shares, voting separately as a class.

Section 11. Fractional Shares. Series C Preferred Shares may be issued in fractions of a share that are integral multiples of one-one thousandth of a share, which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends and participate in distributions and to have the benefit of all other rights of holders of Series C Preferred Shares.

SECOND: These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

THIRD: The undersigned President of the Company acknowledges these Articles Supplementary to be the act of the Company and, as to all matters or facts required to be verified under oath, such officer 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, these Articles Supplementary have been duly executed by the undersigned officer this 2nd day of November, 1998.

AMLI RESIDENTIAL PROPERTIES TRUST

By: Allan J. Sweet  
Name: Allan J. Sweet  
Title: President

Attest:

By: Fred Shapiro  
Name: Fred Shapiro  
Title: Assistant Secretary



State of Maryland  
**DEPARTMENT OF  
 ASSESSMENTS AND TAXATION**



FARRIS N. GLASSBORO  
*Governor*  
 RONALD W. WIDHOLM  
*Director*  
 PAUL B. ANDERSON  
*Administrator*

Charter Division

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_ COUNTY 24  
 # 123790276 P.A. \_\_\_\_\_ Religious \_\_\_\_\_ Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

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

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

**CODE AMOUNT FEE REMITTED**

- 10 50 Expedited Fee
- 61 \_\_\_\_\_ Rec. Fee (Arts. of Inc.)
- 20 \_\_\_\_\_ Organ. & Capitalization
- 62 20 Rec. Fee (Amendment)
- 63 \_\_\_\_\_ Rec. Fee (Merger, Consol.)
- 64 \_\_\_\_\_ Rec. Fee (Transfer)
- 66 \_\_\_\_\_ Rec. Fee (Rev. 1)
- 65 \_\_\_\_\_ Rec. Fee (Dissolution)
- 75 \_\_\_\_\_ Special Fee
- 73 \_\_\_\_\_ Certificate of Conveyance
- 21 \_\_\_\_\_ Recordation Tax
- 22 \_\_\_\_\_ State Transfer Tax
- 23 \_\_\_\_\_ Local Transfer Tax
- 70 \_\_\_\_\_ Change of P.O., R.A. or R.A.A.
- 31 \_\_\_\_\_ Corp. Good Standing
- 900 \_\_\_\_\_ **Returns**
- 62 \_\_\_\_\_ Foreign Qualification
- NA \_\_\_\_\_ Foreign Registration
- 61 \_\_\_\_\_ Foreign Name Registration
- 53 \_\_\_\_\_ Foreign Resolution
- 54 \_\_\_\_\_ For. Supplemental Cert.
- 56 \_\_\_\_\_ Penalty
- 60 \_\_\_\_\_ Cert. of Qual. or Reg.
- 63 \_\_\_\_\_ Cert. Limited Partnership
- 64 \_\_\_\_\_ Amendment to Limited Partnership
- 65 \_\_\_\_\_ Termination of Limited Partnership
- 60 \_\_\_\_\_ For. Limited Partnership
- 61 \_\_\_\_\_ Amend/Cancellation, For. Limited Part.
- 67 \_\_\_\_\_ Limited Part. Good Standing
- 67 \_\_\_\_\_ Cert. Limited Liability Partnership
- 68 \_\_\_\_\_ LLP Amendment - Domestic
- 69 \_\_\_\_\_ Foreign Limited Liability Partnership
- 74 \_\_\_\_\_ LLP Amendment - Foreign
- 99 \_\_\_\_\_ Art. of Organization (LLC)
- 98 \_\_\_\_\_ LLC Amend, Diss, Continuation
- 97 \_\_\_\_\_ LLC Cancellation.
- 96 \_\_\_\_\_ Registration Foreign LLC

- (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
- \_\_\_\_\_ Change of Business Code
- \_\_\_\_\_ Adoption of Assumed Name
- \_\_\_\_\_ Other Change(s)

CODE 193

ATTENTION ABC

MAR. TO ADDRESS: \_\_\_\_\_

(20)

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AMLI RESIDENTIAL PROPERTIES TRUST

ARTICLES SUPPLEMENTARY

SERIES B CUMULATIVE CONVERTIBLE REDEEMABLE PREFERRED SHARES OF BENEFICIAL INTEREST (Par Value \$.01 Per Share)

2/2/98 102/2

AMLI Residential Properties Trust, a Maryland real estate investment trust (hereinafter called the "Company"), hereby certifies to the Department of Assessments and Taxation of the State of Maryland that:

FIRST: The Board of Trustees of the Company has classified and designated 3,125,000 unissued preferred shares of beneficial interest, par value \$.01 per share, of the Company as Series B Cumulative Convertible Redeemable Preferred Shares ("Series B Preferred Shares"), with the preferences, rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption thereof as follows, which upon any restatement of the Company's Declaration of Trust (the "Declaration of Trust") shall be made part of Article 2 thereof, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof:

Section 1. Number of Shares and Designation. The Series B Preferred Shares shall be designated as "Series B Cumulative Convertible Redeemable Preferred Shares" and the authorized number of Series B Preferred Shares constituting such series shall be 3,125,000, which number may be decreased from time to time by the Board pursuant to Section 6 upon reacquisition thereof in any manner, or by retirement thereof.

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Section 2. Definitions. For purposes of the Series B Preferred Shares, the following terms shall have the meanings indicated:

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"Act" shall mean the Securities Act of 1933, as amended.

"Affiliate" shall mean, with respect to any Person, a Person which directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"Base Common Share Distribution" shall have the meaning set forth in paragraph (a) of Section 9.

"Board" 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 B Preferred Shares

I.D. NO# D3790276  
ACKN. NO. - 166C3117859  
AMLI RESIDENTIAL PROPERTIES TRUST  
STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the page document on file in this office. DATED: 3/16/2004

BY: [Signature] Custodian

This stamp replaces our previous certification system. Effective: 6/95

4024-81

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which day state or federally chartered banking institutions in Chicago, Illinois are not required to be open.

"Call Date" shall have the meaning set forth in Section 5(b).

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

"Conversion Price" shall mean the conversion price per Common Share for which each Series B Preferred Share is convertible, as such Conversion Price may be adjusted pursuant to Section 7(d). The initial Conversion Price shall be \$24.00 (equivalent to an initial conversion rate of one Common Share for each Series B Preferred Share).

"Current Market Price" of publicly traded Common Shares or any other class or series of beneficial interest or other security of the Company or of any similar security of any other issuer for any day shall mean the closing 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 regular way on such day, in either case as reported on the principal national securities exchange on which such securities are listed or admitted for trading, or, if such security is not quoted on any national securities exchange, on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"); 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 are not reported through NASDAQ, the average of the bid and asked prices on such day as furnished by any New York Stock Exchange or National Association of Securities Dealers, Inc. member firm regularly making a market in such security selected for such purpose by the Chief Executive Officer of the Company or the Board or if any class or series of securities is not publicly traded, the fair value of the shares of such class or series as determined reasonably and in good faith by the Board.

"Distribution Payment Date" shall mean, with respect to any Distribution Period, (a) the date that cash distributions are made on the Common Shares with respect to such Distribution Period or (b) if such distributions have not been paid on the Common Shares by 9:00 a.m., New York City time, on the 60th day from and including the last day of such Distribution Period, then on such day; provided, further, that if any Distribution Payment Date falls on any day other than a Business Day, the distribution payment payable on such Distribution Payment Date shall be paid on the Business Day immediately following such Distribution Payment Date.

"Distribution Periods" shall mean the Initial Distribution Period and each subsequent quarterly distribution period commencing on and including January 1, April 1, July 1 and October 1 of each year and ending on and including the day preceding the first day of the next succeeding Distribution Period, other than the Distribution Period during which any Series B Preferred Share is redeemed pursuant to Section 5, which shall end on and include the Call Date with respect to the Series B Preferred Share being redeemed.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fair Market Value" shall mean the average of the daily Current Market Prices of a Common Share during five consecutive Trading Days selected by the Company commencing not more than twenty Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex" date with respect to the issuance or distribution requiring such computation. The term "'ex' date," when used with respect to any issuance or distribution, means the first day on which Common Shares trade regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Initial Distribution Period" shall mean the period commencing on and including the Initial Issue Date and ending on and including March 31, 1998.

"Initial Issue Date" shall mean the date on which the first Series B Preferred Shares are issued.

"Investor" shall mean Security Capital Preferred Growth Incorporated, a Maryland corporation.

"Issue Date" shall mean the date on which the Company shall initially issue any Series B Preferred Share, regardless of the number of times transfer of such Series B Preferred Share shall be made on the stock records maintained for the Company and regardless of the number of certificates which may be issued to evidence such Series B Preferred Share (whether by reason of transfer of such Series B Preferred Share or for any other reason).

"Junior Shares" shall have the meaning set forth in Section 8(c).

"NYSE" shall mean the New York Stock Exchange, Inc.

"Parity Shares" shall have the meaning set forth in Section 8(d).

"Person" shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity.

"Property Distribution" shall have the meaning set forth in paragraph (iii) of Section 7(d).

"REIT Termination Event" shall mean any event or occurrence which causes the Company to fail to continue to be taxed as a real estate investment trust (a "REIT") pursuant to Sections 856 through 860 of the Internal Revenue Code, as amended.

"Senior Shares" shall have the meaning set forth in Section 8(a).

"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, the allocation of funds to be so paid on any series or class of beneficial interest of the Company; provided, however that if any funds for any class or series of Junior Shares or any class or series of 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 B Preferred Shares shall mean placing such funds in a separate account or delivering such funds to a disbursing, paying or other similar agent.

"Trading Day" shall mean, with respect to any securities, any day on which such securities are traded on the principal national securities exchange on which such securities are listed or admitted for trading or, if such securities are not listed or admitted for trading on any national securities exchange, the NASDAQ National Market or, if such securities are not listed or admitted for trading on the NASDAQ National Market, any Business Day.

"Transaction" shall have the meaning set forth in Section 7(e).

"Transfer Agent" means such transfer agent as may be designated by the Board or its designee as the transfer agent for the Series B Preferred Shares; provided that, if the Company has not designated a transfer agent, then the Company shall act as the transfer agent for the Series B Preferred Shares.

### Section 3. Distributions.

(a) The holders of Series B Preferred Shares shall be entitled to receive, when, as and if authorized and declared by the Board out of funds legally available for that purpose, cumulative distributions payable in cash in an amount per share equal to the greater of (i) the base distribution of \$0.45 per quarter (the "Base Rate") or (ii) the cash distributions declared on the number of Common Shares, or portion thereof, into which a Series B Preferred Share would then be convertible, without regard to any time restrictions on the convertibility of the Series B Preferred Shares. The amount referred to in clause (ii) of this paragraph (a) with respect to each succeeding Distribution Period shall be determined as of the applicable Distribution Payment Date by multiplying the number of Common Shares, or portion thereof calculated to the fourth decimal point, into which a Series B Preferred Share would then be convertible (without regard to any time restrictions on the convertibility of the Series B Preferred Shares) at the opening of business on such Distribution Payment Date (based on the Conversion Price then in effect) by the aggregate cash distributions payable or paid for such Distribution Period in respect of a Common Share outstanding as of the record date for the distribution payable on the Common Shares for such Distribution Period. If (A) the Company pays a cash distribution on the Common Shares after the Distribution Payment Date for the corresponding Distribution Period and (B) the distribution on the Series B Preferred Shares for such Distribution Period calculated pursuant to clause (ii) of this paragraph (a), taking into account the Common Share distribution referenced in clause (A), exceeds the distribution previously declared on the Series B Preferred Shares for such Distribution Period, the Company

shall pay an additional distribution to the holders of the Series B Preferred Shares on the date that the Common Share distribution referenced in clause (A) is paid, in an amount equal to the difference between the distribution calculated pursuant to clause (B) and the distributions previously declared on the Series B Preferred Shares with respect to such Distribution Period. Such distributions shall be cumulative from each Issue Date, whether or not in any Distribution Period or Periods such distributions are declared or there are funds of the Company legally available for the payment of such distributions, and shall be payable quarterly in arrears on the Distribution Payment Dates, commencing on the first Distribution Payment Date after each Issue Date. Each such distribution shall be payable in arrears to the holders of record of the Series B Preferred Shares, as they appear on the share records of the Company at the close of business on such record date as is fixed by the Board which shall be not more than 60 days prior to the corresponding Distribution Payment Date and, within such 60-day period, shall be the same date as the record date for the regular quarterly distribution payable on the Common Shares for such Distribution Period (or, if there is no such record date for the Common Shares, then such date as the Board may fix). Accumulated, accrued and unpaid distributions for any past Distribution Periods may be authorized or declared and paid at any time, without reference to any regular Distribution Payment Date, to holders of record on such record date as may be fixed by the Board which shall be not more than 45 days prior to the corresponding payment date.

(b) In the case of any Series B Preferred Share the Issue Date of which is a date other than the first day of a Distribution Period, or any other period shorter than a full Distribution Period, the amount of distributions payable per such Series B Preferred Share shall be computed ratably on the basis of a 360-day year of twelve 30-day months. Holders of Series B Preferred Shares shall not be entitled to any distributions, whether payable in cash, property or shares, in excess of cumulative distributions as herein provided on the Series B Preferred Shares. No interest, or sum of money in lieu of interest, shall be payable in respect of any distribution payment or payments on the Series B Preferred Shares which may be in arrears.

(c) So long as any of the Series B Preferred Shares is outstanding, except as described in the immediately following sentence, no distributions shall be declared or paid or set apart for payment by the Company and no other distribution of cash or other property shall be declared or made directly or indirectly by the Company with respect to any class or series of Parity Shares for any period unless all accumulated, accrued and unpaid distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods with respect to the Series B Preferred Shares. When distributions are not paid in full or a sum sufficient for such payment is not set apart for payment as provided above, all distributions declared on the Series B Preferred Shares and all distributions declared on any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of distributions accumulated, accrued and unpaid on the Series B Preferred Shares and on such Parity Shares.

(d) So long as any of the Series B Preferred Shares is outstanding, no distributions (other than distributions paid in, or options, warrants or rights to subscribe for or purchase Junior S

shall be declared or paid or set apart for payment by the Company and no other distribution of cash or other property shall be declared or made directly or indirectly by the Company with respect to any class or series of Junior Shares, nor shall any Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Common Shares made for purposes of an employee incentive or benefit plan of the Company or any subsidiary) for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any Junior Shares) directly or indirectly by the Company (except by conversion into or exchange for Junior Shares), nor shall any other cash or other property otherwise be paid or distributed to or for the benefit of any holder of Junior Shares in respect thereof directly or indirectly by the Company unless in each case (i) all distributions (including all accumulated, accrued and unpaid distributions) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Distribution Periods with respect to the Series B Preferred Shares and all past distribution periods with respect to any Parity Shares and (ii) a sum sufficient for the payment thereof has been or contemporaneously is paid or set apart for payment of the full distribution for the current Distribution Period with respect to the Series B Preferred Shares and the current distribution period with respect to any Parity Shares.

#### Section 4. Liquidation Preference.

(a) Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, before any payment or distribution of the assets of the Company (whether capital or surplus) shall be made to be set apart for the holders of Junior Shares, the holders of Series B Preferred Shares shall be entitled to receive \$24.00 per Series B Preferred Share (the "Liquidation Preference"), plus an amount equal to all distributions (whether or not earned or declared) accumulated, accrued and unpaid thereon to the date of final distribution to such holders, if any; but such holders shall not be entitled to any further payment. Until the holders of the Series B Preferred Shares have been paid the Liquidation Preference in full, plus an amount equal to all distributions (whether or not earned or declared) accumulated, accrued and unpaid thereon to the date of final distribution to such holders, no payment may be made to any holder of Junior Shares upon any liquidation, dissolution or winding up of the Company. If, upon any liquidation, dissolution or winding up of the Company, the assets of the Company, or the proceeds thereof, distributable among the holders of Series B Preferred Shares are insufficient to pay in full such preferential amount and liquidating payments on any other class or series of Parity Shares, then such assets, or the proceeds thereof, shall be distributed among the holders of Series B Preferred Shares and any such other Parity Shares ratably in proportion to the respective amounts which would be payable on such Series B Preferred Shares and any such other Parity Shares if all amounts payable thereon were paid in full.

(b) Upon any liquidation, dissolution or winding up of the Company, after payment has been made in full to the holders of Series B Preferred Shares and any Parity Shares as provided in this Section 4, any other series or class of Junior Shares shall, subject to the respective terms thereof, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series B Preferred Shares and any Parity Shares shall not be entitled to share therein.

(c) For purposes of this Section 4, (i) a consolidation or merger of the Company with or into one or more corporations, (ii) a sale or transfer of all or substantially all of the Company's assets or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Company.

#### Section 5. Redemption at the Option of the Company.

(a) Series B Preferred Shares shall not be redeemable by the Company prior to the date which is nine years after the date on which the Company has issued an aggregate 3,125,000 Series B Preferred Shares to the Investor (the "Final Closing"); provided, however, that if at any time fewer than 312,500 of the Series B Preferred Shares remain outstanding, the Company may redeem all, but not less than all of such shares at any time in the manner provided in this Section 5. On and after the date which is nine years after the Final Closing, the Company, at its option, may redeem Series B Preferred Shares, in whole at any time or in part from time to time, at a redemption price payable in cash equal to the Liquidation Preference, plus all accrued and unpaid distributions to the Call Date.

(b) Series B Preferred Shares shall be redeemed by the Company on the date specified in the notice to holders required under Section 5(d) (the "Call Date"). The Call Date shall be selected by the Company, shall be specified in the notice of redemption and shall be not less than 30 days nor more than 60 days after the date notice of redemption is sent by the Company.

(c) Unless all distributions (including all accumulated, accrued and unpaid distributions) have been or contemporaneously ascertained and paid or declared and a sum sufficient for the payment thereof set apart for payment for at least and current Distribution Periods with respect to the Series B Preferred Shares and all past and current distribution periods with respect to any Parity Shares, no Series B Preferred Share may be redeemed unless all outstanding Series B Preferred Shares are simultaneously redeemed and neither the Company nor any affiliate of the Company may purchase or acquire Series B Preferred Shares, except pursuant to a purchase or exchange offer made on the same terms to all holders of Series B Preferred Shares.

(d) If the Company redeems Series B Preferred Shares pursuant to Section 5(a), notice of such redemption shall be given to each holder of record of shares to be redeemed. Such notice shall be provided by first class mail, postage prepaid, at such holder's address as it appears on the share records of the Company. Neither the failure to mail any notice required by this paragraph (d), nor any defect therein or in the mailing thereof to any particular holder, shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to any other holders. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date mailed whether or not the holder receives notice. Each such notice shall state, as appropriate: (i) the Call Date, (ii) the number of Series B Preferred Shares to be redeemed and, if fewer than all shares held by such holder are to be redeemed, the number of shares to be redeemed from such holder, (iii) the place or places at which certificates representing such shares are to be surrendered for cash, and (iv) the then current Conversion Price if the Company has



mailed notice of the redemption of Series B Preferred Shares as provided above, then from and after the Call Date (unless the Company fails to make available the amount of cash necessary to effect such redemption), (A) except as otherwise provided herein, distributions shall cease to accumulate or accrue on the shares called for redemption (except that, in the case of a Call Date which falls after a distribution record date and prior to the related Distribution Payment Date, holders of Series B Preferred Shares on the distribution record date shall be entitled on such Distribution Payment Date to receive the distribution payable on such shares), (B) such shares shall no longer be deemed to be outstanding and (C) all rights of the holders thereof as holders of Series B Preferred Shares shall cease (except the rights to receive the cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required and to receive any distributions payable thereon). The Company's obligation to make available the redemption price in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Call Date, the Company deposits with a bank or trust company that has, or is an affiliate of a bank or trust company that has, capital and surplus of at least \$50,000,000, such amount of cash as is necessary for such redemption, in trust, with irrevocable instructions that such cash be applied to the redemption of the shares called for redemption. No interest shall accrue for the benefit of the holders of Series B Preferred Shares to be redeemed on any cash so set aside by the Company. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Call Date shall revert to the general funds of the Company, after which reversion the holders of Series B Preferred Shares so called for redemption shall look only to the general funds of the Company for the payment of such cash.

As promptly as practicable after the surrender in accordance with such notice of the certificates representing any Series B Preferred Shares to be redeemed (properly endorsed or assigned for transfer, if the Company requires and the notice so states), such certificates shall be exchanged for cash (without interest thereon) for which such shares have been redeemed in accordance with such notice. If fewer than all outstanding Series B Preferred Shares are to be redeemed, the shares to be redeemed shall be selected by the Company from outstanding Series B Preferred Shares not previously called for redemption by lot or, with respect to the number of Series B Preferred Shares held of record by each holder of such shares, pro rata (as nearly as may be) or by any other method as may be determined by the Board in its discretion to be equitable. If fewer than all Series B Preferred Shares represented by any certificate are redeemed, then a new certificate representing the unredeemed shares shall be issued without cost to the holder thereof.

**Section 6. Status of reacquired Shares.** All Series B Preferred Shares which are issued and reacquired in any manner by the Company (including Series B Preferred Shares which are surrendered for conversion into Common Shares) shall be returned to the status of authorized but unissued shares of beneficial interest of the Company, without designation as to class or series.

**Section 7. Conversion.** Holders of Series B 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 Section 7, a holder of Series B Preferred Shares shall have the right, at such holder's option, at any time following the

earliest to occur of (i) the sixty first day after such holder provides the Company with written notice of its intent to convert Series B Preferred Shares, provided that such holder may not provide such notice prior to 119 days following the Initial Issue Date, (ii) the first day on which a Change of Control occurs, (iii) the occurrence of a REIT Termination Event, (iv) a default in the payment of distributions on the Series B Preferred Shares, (v) a reduction in the indicated rate of distributions on the Common Shares, or (vi) a material breach by the Company of any representation, warranty, or covenant contained in the Preferred Share Purchase Agreement dated as of February 20, 1998 by and among the Company, Security Capital Preferred Growth Incorporated, a Maryland corporation, and AMLI Residential Properties, L.P., a Delaware limited partnership (such date being referred to herein as the "Conversion Date"), to convert all or any portion of such shares into the number of fully paid and non-assessable shares of Common Shares obtained by dividing the aggregate Liquidation Preference of such shares (excluding any accrued but unpaid distributions) by the Conversion Price (as in effect at the time and on the date provided for in the last paragraph of paragraph (b) of this Section 7 by surrendering such shares to be converted, such surrender to be made in the manner provided in paragraph (b) of this Section 7; provided, however, that the right to convert shares called for redemption pursuant to Section 5 shall terminate at the close of business on the fifth Business Day prior to the Call Date fixed for such redemption, unless the Company shall default in making payment of the cash payable upon such redemption under Section 5.

"Change of Control" means each occurrence of any of the following: (i) the acquisition, directly or indirectly, by any individual or entity or group (as such term is used in Section 13(d)(3) of the Exchange Act) (other than the Investor, Gregory T. Mutz, UICI, a Texas corporation, Aml Realty Co., a Delaware corporation, Ronald Jensen, or any of their respective Affiliates) of beneficial ownership (as defined in Rule 122-3 under the Exchange Act, except that such individual or entity shall be deemed to have beneficial ownership of all shares which any such individual or entity has the right to acquire, whether such right is exercisable immediately or only after passage of time) of the Company's outstanding shares or beneficial interest with voting power, under ordinary circumstances, to cast more than 25% of the votes entitled to be cast to elect trustees of the Company; (ii) other than with respect to the election, resignation or replacement of any trustee designated, appointed or elected by the holders of the Series B Preferred Shares (each a "Preferred Trustee"), during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (together with any new trustees whose election by such Board or whose nomination for election by the shareholders of the Company was approved by a vote of two-thirds of the trustees of the Company (excluding Preferred Trustees) then still in office who were either trustees at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board then in office; and (iii) (A) the Company consolidating with or merging into another entity or conveying, transferring or leaving all or substantially all of its assets (including, but not limited to, real property investments) to any individual or entity or (B) any entity consolidating with or merging into the Company, which in either event (A) or (B) is pursuant to a transaction in which the outstanding voting shares of beneficial interest of the Company are reacquired or changed into or exchanged for cash, securities or other property, provided, however, that the events described in (iii) shall not be deemed to be a Change of Control if the sole purpose of such event is that the Company is seeking to

change its domicile or to change its form of organization from a real estate investment trust to a statutory business trust or corporation or (Y) if the holders of the exchanged securities of the Company immediately after such transaction beneficially own at least a majority of the securities of the surviving entity normally entitled to vote in elections of trustees.

(b) In order to exercise the conversion right, the holder of each Series B Preferred Share to be converted shall surrender the certificate representing 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 such holder elects to convert such Series B Preferred Shares. Unless the Common Shares issuable on conversion are to be issued in the same name as the name in which such Series B 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 attorney 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 B Preferred Shares at the close of business on a distribution payment 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 distribution payment record date and prior to such Distribution Payment Date. Except as provided above, the Company shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted shares or for distributions on the Common Shares issued upon such conversion.

As promptly as practicable after the surrender of certificates representing Series B Preferred Shares as provided above, the Company shall issue and deliver at such office to such holder, or send on such holder's written order, a certificate or certificates for the number of full Common Shares issuable upon conversion of such Series B Preferred Shares in accordance with the provisions of this Section 7, and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in Section 7(c).

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 B Preferred Shares have been surrendered and such notice has been received by the Company as provided above, and the Person or Persons in whose name or names any certificate or certificates for Common Shares are 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 on such date unless the share transfer books of the Company are closed on such date, in which event such Person or Persons shall be deemed to have become such holder or holders of record at the close 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 shares were surrendered and such notice was received by the Company. If the distribution payment record dates for the Series B Preferred Shares and Common Shares do not coincide, and the preceding sentence does not operate to ensure that a holder of Series B Preferred Shares whose shares are converted into Common Shares does not receive distributions on both the Series B Preferred Shares

and the Common Shares into which such shares are converted for the same Distribution Period, then notwithstanding anything herein to the contrary, it is the intent, and the Transfer Agent is authorized to ensure, that no conversion after the earlier of such record dates will be accepted until after the later of such record dates.

(c) No fractional Common Share or scrip representing fractions of a Common Share shall be issued upon conversion of Series B Preferred Shares. Instead of any fractional interest in a Common Share which would otherwise be deliverable upon conversion of a share of Series B Preferred Shares, the Company shall pay to the holder of such share an amount in cash based upon the Current Market Price of the Common Shares on the Trading Day immediately preceding the date of conversion. If more than one share is 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 B Preferred Shares so surrendered.

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

(i) If the Company after the Initial Issue Date (A) makes a distribution on any of its shares of beneficial interest in Common Shares, (B) subdivides its outstanding Common Shares into a greater number of shares, (C) combines its outstanding Common Shares into a smaller number of shares or (D) issues any shares by reclassification of its outstanding Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of holders of beneficial interest entitled to receive such distribution or at the opening of business on the day following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series B Preferred Share thereafter surrendered for conversion shall be entitled to receive the number of Common Shares (or fraction of a Common Share) which such holder would have owned or been entitled to receive after the happening of any of the events described above if such Series B Preferred Share had 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 paragraph shall become effective immediately after the opening of business on the day next following the record date (except as provided in Section 7(h)) in the case of a distribution or 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.

(ii) If the Company after the Initial Issue Date issues rights, options or warrants to all holders of Common Shares entitling them (for a period expiring within 45 days after the record date described below) to subscribe for or purchase Common Shares at a price per share less than 94% (100% if a stand-by underwriter is used which charges the Company a commission) of the Fair Market Value per Common Share on the record date for the determination of holders of beneficial interest entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next

Following such record date 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 day following such record date by (B) a fraction, the numerator of which shall be the sum of (1) the number of Common Shares outstanding on the close of business on such record date and (2) the number of shares which could be purchased at 94% (100% if a stand-by underwriter is used which charges the Company a commission) of such Fair Market Value from the aggregate proceeds to the Company from the exercise of such rights, options or warrants for Common Shares, and the denominator of which shall be the sum of (3) the number of Common Shares outstanding on the close of business on such record date and (4) the number of additional Common Shares offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in Section 7(h)). In determining whether any rights, options or warrants entitle the holders of Common Shares to subscribe for or purchase Common Shares at less than 94% (100% if a stand-by underwriter is used which charges the Company a commission) of such Fair Market Value, 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 in good faith by the Board.

(iii) If the Company after the Initial Issue Date makes a distribution on its Common Shares other than in cash or Common Shares (including any distribution in securities (other than rights, options or warrants referred to in paragraph (ii) of Section 7(d)) (each of the foregoing being referred to herein as a "property distribution"), then the Conversion Price in effect at the opening of business on the day next following the record date for determination of holders of beneficial interest entitled to receive such property distribution 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 day following the record date by (B) a fraction, the numerator of which shall be the difference between (1) the number of Common Shares outstanding on the close of business on the record date and (2) the number of shares determined by dividing (x) the aggregate value of the property being distributed by (y) the Fair Market Value per Common Share on the record date, and the denominator of which shall be the number of Common Shares outstanding on the close of business on the record date. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided below). The value of the property being distributed shall be determined in good faith by the Board, provided, however, that, if the property being distributed is a publicly traded security, its value shall be calculated in accordance with the procedure for calculating the Fair Market Value of a Common Share (calculated for a period of five consecutive Trading Days commencing on the twentieth Trading Day after the property distribution). Neither the issuance by the Company of rights, options or warrants to subscribe for or purchase securities of the Company nor the exercise thereof shall be deemed a property distribution under this paragraph (iii).

(iv) If the Company after the Initial Issue Date acquires, pursuant to an issuer or self tender offer, all or any portion of the outstanding Common Shares and such tender offer involves the payment of consideration per Common Share having a fair market value (as determined in good faith by the Board), at the last time (the "Expiration Time") tenders may be made pursuant to such offer, which exceeds the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time, then the Conversion Price in effect on the opening of business on the Trading Day next succeeding the Expiration Time shall be adjusted to equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the Expiration Time by (B) a fraction, the numerator of which shall be (1) the number of Common Shares outstanding (including the shares acquired in the tender offer (the "Acquired Shares")) immediately prior to the Expiration Time, multiplied by (2) the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time, and the denominator of which shall be the sum of (3) the fair market value (determined as provided above) of the aggregate consideration paid to acquire the Acquired Shares and (4) the product of (x) the number of Common Shares outstanding (less any Acquired Shares) at the Expiration Time, multiplied by (y) the Current Market Price per Common Share on the Trading Day next succeeding the Expiration Time.

(v) No adjustment to 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 which by reason of this paragraph (v) 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 Section 7 (other than this paragraph (v)) 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 Section 7, the Company shall not be required to make any adjustment to the Conversion Price for the issuance of (A) 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 optional amounts in Common Shares under such plan or (B) any options, rights or Common Shares pursuant to any share option, share purchase or other share-based plan maintained by the Company. All calculations under this Section 7 shall be made to the nearest cent (with \$0.005 and above being rounded upward) or to the nearest one-tenth of a share (with 0.05 of a share being rounded upward), as the case may be. Anything in this Section 7(d) to the contrary notwithstanding, the Company shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this Section 7(d), as it in its discretion determines to be advisable in order that any share distributions, subdivision of shares, reclassification or combination of shares, distribution of rights or warrants to purchase share or securities, or a distribution of other assets (other than cash distributions) hereafter made by the Company to its holders of beneficial

interest are not taxable, or if that is not possible, to diminish any income taxes which are otherwise payable because of such event.

(e) If the Company is a party to any transaction (including without limitation a merger, consolidation, statutory share exchange, issuer or self tender offer for at least 30% of the Common Shares outstanding, a sale of all or substantially all of the Company's assets or a recapitalization of the Common Shares, but excluding any transaction as to which paragraph (i) of Section 7(d) applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Shares are converted into the right to receive shares, securities or other property (including cash or any combination thereof), each share of Series B Preferred Shares which is not converted into the right to receive shares, securities or other property in connection with such Transaction shall thereupon be convertible into the kind and amount of shares, securities and other property (including cash or any combination thereof) receivable upon such consummation by a holder of that number of Common Shares into which one share of Series B Preferred Shares was convertible immediately prior to such Transaction (without giving effect to any Conversion Price adjustment pursuant to paragraph (iv) of Section 7(d)). The Company shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this Section 7(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 B Preferred Shares which contains provisions enabling the holders of the Series B Preferred Shares which remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this Section 7(e) shall similarly apply to successive Transactions.

(f) If:

- (i) the Company declares a distribution on the Common Shares (other than cash distributions); or
- (ii) the Company authorizes the granting to all holders of Common Shares of rights or warrants to subscribe for or purchase any shares of any class or series or any other rights or warrants; or
- (iii) there is any reclassification of the outstanding Common Shares or any consolidation or merger to which the Company is a party and for which approval of any holders of beneficial interest of the Company is required, or a statutory share exchange, or an issuer or self tender offer for at least 30% of the outstanding Common Shares (or an amendment hereto changing the maximum number of shares sought or the amount or type of consideration being offered therefor has been adopted), or the sale or

transfer of all or substantially all of the assets of the Company as an entirety; or

- (iv) there occurs 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 each holder of Series B Preferred Shares at such holder's address as shown on the share records of the Company, as promptly as possible, a notice stating (A) the record date for the payment of such distribution or rights or warrants, or, if a record date is not established, the date as of which the holders of Common Shares of record to be entitled to such distribution or rights or warrants are to be determined 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 or (C) the date on which such tender offer commenced, the date on which such tender offer is scheduled to expire unless extended, the consideration offered and the other material terms thereof (or the material terms of any amendment thereto). Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 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 date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each holder of Series B Preferred Shares at such holder's last address as shown on the share records of the Company.

(h) In any case in which Section 7(d) provides that an adjustment shall become effective on the day 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 B Preferred Share 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) paying to such holder any amount of cash in lieu of any fraction or share to Section 7(c).



(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 Section 7.

(j) If the Company takes any action affecting the Common Shares, other than action described in this Section 7, which in the opinion of the Board would materially and adversely affect the conversion rights of the holders of Series B Preferred Shares, the Conversion Price for the Series B Preferred Shares may be adjusted, to the extent permitted by law, in such manner, if any, and at such time as the Board, in its sole discretion, may determine to be equitable under the circumstances.

(k) The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Shares solely for the purpose of effecting conversion of the Series B Preferred Shares, the full number of Common Shares deliverable upon conversion of all outstanding Series B Preferred Shares not theretofore converted into Common Shares. For purposes of this Section 7(k), the number of Common Shares which are deliverable upon conversion of all outstanding Series B Preferred Shares shall be computed as if at the time of computation all such outstanding shares were held by a single holder (and without regard to the Ownership Limit set forth in the Declaration of Trust).

The Company covenants that any Common Share issued upon conversion of the Series B Preferred Shares shall be validly issued, fully paid and nonassessable.

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

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

(m) In addition to any other adjustment required hereby, to the extent permitted by law, the Company from time to time may decrease the Conversion Price by any amount, permanently or for a period of at least twenty Business Days, if the decrease is irrevocable during the period

(n) Notwithstanding anything to the contrary contained in this Section 7, conversion of Series B Preferred Shares pursuant to this Section 7 shall be permitted only to the extent that such conversion would not result in a violation of the Ownership Limit (as defined in the Declaration of Trust), after taking into account any waiver of such limitation granted to any holder of Series B Preferred Shares.

**Section 8. Ranking.** Any class or series of shares of the Company shall be deemed to rank:

- (a) senior to the Series B Preferred Shares, as to the payment of distributions and as to the distribution of assets upon liquidation, dissolution or winding up, if the holders of such class or series are entitled to the receipt of distributions or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Series B Preferred Shares ("Senior Shares");
- (b) on a parity with the Series B Preferred Shares, as to the payment of distributions and as to the distribution of assets upon liquidation, dissolution or winding up, whether or not the distribution rates, distribution payment dates or redemption or liquidation prices per share thereof are different from those of the Series B Preferred Shares, if the holders of such class or series and the Series B Preferred Shares are entitled to the receipt of distributions and amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid distributions per share or liquidation preferences, without preference or priority one over the other ("Parity Shares"); and
- (c) junior to the Series B Preferred Shares, as to the payment of distributions or as to the distribution of assets upon liquidation, dissolution or winding up, if such class or series is Common Shares or if the holders of Series B Preferred Shares are entitled to the receipt of distributions or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of such class or series ("Junior Shares").

Any class or series of preferred shares shall be deemed to be Senior Shares for all purposes of these Articles Supplementary unless such preferred shares expressly provide by their terms that they are Parity Shares or Junior Shares.

**Section 9. Voting.**

(a) If and whenever (i) four quarterly distributions (whether or not consecutive) payable on the Series B Preferred Shares are in arrears (which shall, with respect to any such quarterly distribution, mean that any such distribution has not been paid in full), whether or not earned or declared, (ii) for four consecutive quarterly Distribution Periods, the Company fails

to pay distributions on the Common Shares in an amount per share at least equal to \$0.418 per share per quarter (subject to adjustment consistent with any adjustment of the Conversion Price pursuant to Section 7(d)) (the "Base Common Share Distribution") or (iii) the Company fails to satisfy the test set forth in Section 12(a), then the number of trustees then constituting the Board shall be increased by two (or by three if the number of trustees then constituting the Board is ten or more (without including any trustees elected pursuant to this Section 9(a)) and the holders of Series B Preferred Shares, together with the holders of every other series or class of Parity Shares (with any other such series, the "Voting Preferred Shares"), voting as a single class regardless of series, shall be entitled to elect the additional trustees to serve on the Board at any annual meeting of holders of beneficial interest or a special meeting held in lieu thereof, or at a special meeting of the holders of the Series B Preferred Shares and the Voting Preferred Shares called as hereinafter provided. Whenever (A) in the case of an arrearage in distributions described in clause (i), all distributions in arrears on the Series B Preferred Shares and the Voting Preferred Shares then outstanding have been paid and a sum sufficient for the payment thereof has been set apart for payment of the distribution for the current distribution for two consecutive quarterly Distribution Periods, (B) in the case of an arrearage in distributions described in clause (ii), the Company makes a quarterly distribution payment on the Common Shares in an amount per share equal to or exceeding the Base Common Share Distribution for two consecutive quarterly Distribution Periods, or (C) in the case of a failure described in clause (iii), the Company satisfies the test set forth in Section 12(a) for two consecutive fiscal quarters, then the right of the holders of the Series B Preferred Shares and the Voting Preferred Shares to elect such additional trustees shall cease (but subject always to the same provision for the vesting of such voting rights in the case of any similar future arrearages), and the terms of office of all Persons elected as trustees by the holders of the Series B Preferred Shares and the Voting Preferred Shares shall forthwith terminate and the number of trustees constituting the Board shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of Series B Preferred Shares and the Voting Preferred Shares, the Secretary of the Company may, and upon the written request of any holder of Series B Preferred Shares (addressed to the Secretary at the principal office of the Company) shall, call a special meeting of the holders of the Series B Preferred Shares and the Voting Preferred Shares for the election of the two (or three if the number of trustees then constituting the Board is ten or more) trustees to be elected by them as herein provided, such call to be made by notice similar to that provided in the Bylaws of the Company for a special meeting of the holders of beneficial interest or as required by law. If any such special meeting required to be called as above provided shall not be called by the Secretary within 20 days after receipt of any such request, then any holder of Series B Preferred Shares may call such meeting, upon the notice above provided, and for that purpose shall have access to the share records of the Company. The trustees elected at such special meeting shall hold office until the next annual meeting of the holders of beneficial interest or special meeting held in lieu thereof if such office has not previously terminated as provided above. If any vacancy occurs among the trustees elected by the holders of the Series B Preferred Shares and the Voting Preferred Shares, a successor shall be elected by the Board, upon the nomination of the then-remaining director elected by the holders of the Series B Preferred Shares and the Voting Preferred Shares or the successor of such remaining director,

to serve until the next annual meeting of the holders of beneficial interest or special meeting held in lieu thereof if such office has not previously terminated as provided above.

(b) So long as any of the Series B Preferred Shares is outstanding, in addition to any other vote or consent of holders of beneficial interest required by law or by the Declaration of Trust of the Company, the affirmative vote of at least two-thirds of the votes entitled to be cast by the holders of the Series B Preferred Shares, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

- (i) Any amendment, alteration or repeal of any of the provisions of these Articles Supplementary, the Declaration of Trust or the By-Laws of the Company which materially and adversely affects the voting powers, rights or preferences of the holders of the Series B Preferred Shares; provided, however, that the amendment of the provisions of the Declaration of Trust so as to authorize or create, or to increase the authorized amount of, any Junior Shares or any class of Senior Shares or Parity Shares shall not be deemed to materially adversely affect the voting powers, rights or preferences of the holders of Series B Preferred Shares; or
- (ii) The authorization, reclassification or creation of, the increase in the authorized amount of, or the issuance of, any class of Senior Shares or any security convertible into any class of Senior Shares (whether or not such class of Senior Shares is currently authorized); provided, however, that no such vote of the holders of Series B Preferred Shares shall be required if either: (A) at or prior to the time when such amendment, alteration or repeal is to take effect, or when the issuance of any such Senior Shares or convertible security is to be made, as the case may be, provision is made for the redemption of all Series B Preferred Shares at the time outstanding, if the Series B Preferred Shares are then redeemable at the option of the Company; or (B) after giving effect to the issuance of such Senior Shares proposed to be so authorized, reclassified, created, increased or issued and (if known) the application of the net proceeds therefrom, the Company continues to be in compliance with Section 12 hereof.

For purposes of the foregoing provisions and all other voting rights under these Articles Supplementary, each Series B Preferred Share shall have one vote per share, except that when any other class or series of preferred shares of beneficial interest shall have the right to vote with the Series B Preferred Shares as a single class on any matter, then the Series B Preferred Shares and such other class or series shall have with respect to such matters one vote per \$100 of stated liquidation preference. Except as otherwise required by applicable law or as set forth herein, the Series B Preferred Shares shall not have any relative, participating, optional or other

special voting rights and powers other than as set forth herein, and the consent of the holders thereof shall not be required for the taking of any corporate action.

**Section 10. Record Holders.** The Company and the Transfer Agent may deem and treat the record holder of any Series B Preferred Shares as the true and lawful owner thereof for all purposes, and neither the Company nor the Transfer Agent shall be affected by any notice to the contrary.

**Section 11. Ownership Restrictions.** The Series B Preferred Shares shall be subject to the restrictions and limitations set forth in Article 3 of the Declaration of Trust, subject to waiver thereof by the Board.

**Section 12. Fixed Charge Coverage.**

(a) So long at least 312,500 Series B Preferred Shares are outstanding, without the written consent of the holders of two-thirds of the outstanding Series B Preferred Shares, neither the Company nor any subsidiary of the Company may issue any preferred securities of such entity or incur any additional indebtedness for borrowed money if immediately following such issuance or incurrence and after giving effect to such issuance or incurrence and the application of the net proceeds therefrom the Company's ratio of aggregate Consolidated EBITDA to aggregate Consolidated Fixed Charges for the four fiscal quarters immediately preceding such issuance would be less than 1.625 to 1.

(b) "Consolidated EBITDA" for any period shall mean the consolidated net income of the Company (before minority interest, extraordinary items and other gains and losses) as reported in the Company's financial statements filed with the Securities and Exchange Commission increased by the sum of the following (without duplication):

- (i) all income and state franchise taxes paid or accrued according to generally accepted accounting principles ("GAAP") for such period (other than income taxes attributable to extraordinary, unusual or non-recurring gains or losses except to the extent that such gains were not included in Consolidated EBITDA);
- (ii) all interest expense paid or accrued in accordance with GAAP for such period (including financing fees and amortization of deferred financing fees and amortization of original issue discount);
- (iii) depreciation and depletion reflected in such reported net income;
- (iv) amortization reflected in such reported net income including, without limitation, amortization of capitalized debt issuance costs (only to the extent that such amounts have not been previously included in the amount;

of Consolidated EBITDA pursuant to clause (ii) above), goodwill, other intangibles and management fees;

- (v) any fees (to the extent such fees were treated as expenses in the calculation of the consolidated net income of the Company) with respect to any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars and similar agreements) and/or other types of interest hedging agreements and any currency protection agreement (including foreign exchange contracts, currency swap agreements and other currency hedging arrangements) (collectively, "Hedging Costs"); and
- (vi) any other non-cash charges or discretionary prepayment penalties, to the extent deducted from consolidated net income (including, but not limited to, income allocated to minority interests).

(c) "Consolidated Fixed Charges" for any period means the sum of:

- (i) all interest expense paid or accrued in accordance with GAAP for such period (including financing fees and amortization of deferred financing fees and amortization of original issue discount;
- (ii) preferred share distribution requirements for such period, whether or not declared or paid; and
- (iii) Hedging Costs.

**Section 13. Sinking Fund.** The Series B Preferred Shares shall not be entitled to the benefit of any retirement or sinking fund.

**SECOND:** The Series B Preferred Shares have been classified and designated by the Board under the authority contained in Article 2 of the Declaration of Trust.

**THIRD:** These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

**FOURTH:** The undersigned President acknowledges these Articles Supplementary to be the act of the Company and, as to all other matters or facts required to be verified under oath, 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 these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Secretary on this 23<sup>rd</sup> day of February, 1998.

**AMEI RESIDENTIAL PROPERTIES  
TRUST**

By: Allan J. Sweet  
Allan J. Sweet, President

**ATTEST:**

Charaldd. Am  
Secretary

Maryland  
DEPARTMENT OF  
BUSINESS AND TAXATION



PARRIS S. GLENDENING  
Governor  
RONALD W. WISERDILL  
Comptroller  
L. L. B. ANDERSON  
Secretary

IDENTIFICATION CODE 10 1111 BUSINESS CODE 11 COUNTY 24  
3790276 P.A. Religious Close Lock No. stock

Merging (Transferor) \_\_\_\_\_ Surviving (Transferee) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CODE	AMOUNT	FEE REMITTED	
10	<u>30</u>	Expedited Fee (New Name)	_____
61	_____	Rec. Fee (Arts. of Inc.)	_____
20	_____	Organ. & Capitalization	_____
62	_____	Rec. Fee (Amendment)	_____
63	_____	Rec. Fee (Merger, Consol.)	_____
64	_____	Rec. Fee (Transfer)	_____
66	_____	Rec. Fee (Revival)	_____
65	_____	Rec. Fee (Dissolution)	_____
75	_____	Special Fee	_____
73	_____	Certificate of Conveyance	_____
21	_____	Recordation Tax	_____
22	_____	State Transfer Tax	_____
23	_____	Local Transfer Tax	_____
70	_____	Change of P.O., R.A. or R.A.A.	_____
31	_____	Corp. Good Standing	_____
600	_____	Returns	_____
52	_____	Foreign Qualification	_____
NA	_____	Foreign Registration	_____
51	_____	Foreign Name Registration	_____
53	_____	Foreign Resolution	_____
54	_____	For. Supplemental Cert.	_____
56	_____	Penalty	_____
50	_____	Cert. of Qual. or Reg.	_____
83	_____	Cert. Limited Partnership	_____
84	_____	Amendment to Limited Partnership	_____
85	_____	Termination of Limited Partnership	_____
80	_____	For. Limited Partnership	_____
91	_____	Amend/Cancellation, For. Limited Part.	_____
87	_____	Limited Part. Good Standing	_____
67	_____	Cert. Limited Liability Partnership	_____
68	_____	LLP Amendment - Domestic	_____
69	_____	Foreign Limited Liability Partnership	_____
74	_____	LLP Amendment - Foreign	_____
99	_____	Art. of Organization (LLC)	_____
98	_____	LLC Amend, Diss, Continuation	_____
97	_____	LLC Cancellation	_____
96	_____	Registration Foreign LLC	_____
94	_____	Foreign LLC Supplemental	_____
92	_____	LLC Good Standing (Foreign)	_____
19	_____	Certified Copy	_____
Other:	_____	_____	_____

- \_\_\_\_\_ 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
- \_\_\_\_\_ Change of Business Code
- \_\_\_\_\_ Adoption of Assumed Name
- \_\_\_\_\_ Other Change(s)

CODE 907  
ATTENTION: \_\_\_\_\_

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

TOTAL FEES 30  
\_\_\_\_\_ Check \_\_\_\_\_ Cash

Documents on \_\_\_\_\_ checks  
APPROVED BY: [Signature]



24

ARTICLES SUPPLEMENTARY  
OF  
ANLI RESIDENTIAL PROPERTIES TRUST

APPROVED AND RECEIVED FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
OF MARYLAND JANUARY 30, 1996 AT 10:17 O'CLOCK A.M. AS IN CONFORMITY  
WITH LAW AND ORDERED RECORDED.

ORGANIZATION AND  
CAPITALIZATION FEE PAID

RECORDING  
FEE PAID

SPECIAL  
FEE PAID

\$ \_\_\_\_\_

\$ 20.00

\$ \_\_\_\_\_

D3790276

IT IS HEREBY CERTIFIED THAT THE WITHIN INSTRUMENT, TOGETHER WITH ALL INDORSEMENTS THEREON, HAS  
BEEN RECEIVED, APPROVED AND RECORDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND.

THE CORPORATION TRUST  
INCORPORATED  
32 SOUTH STREET  
BALTIMORE MD 21202

147C3097891



I hereby certify that this is a true and complete copy of the page document on file on January 30, 1996.

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
DATED: 3-16-2004  
RECORDED IN THE RECORDS OF THE  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
BY: Nae Stall Assistant State Custodian  
This stamp replaces the certification of the State Department of Assessments and Taxation effective 6/95

STATE DEPARTMENT OF REVENUE

APPROVED

1/30/96 10/17/95

*je*

Series A Cumulative Convertible  
Preferred Shares of Beneficial Interest

ARTICLES SUPPLEMENTARY

AMLI RESIDENTIAL PROPERTIES TRUST

Articles Supplementary of Board of Trustees Classifying  
and Designating a Series of Preferred Shares as  
Series A Cumulative Convertible Preferred  
Shares of Beneficial Interest and Fixing Distribution and  
Other Preferences and Rights of Such Series

Dated as of January 30, 1996

RECEIVED

60318285

60318286

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4211674

**AMLI RESIDENTIAL PROPERTIES TRUST**

**Articles Supplementary of Board of Trustees Classifying  
and Designating a Series of Preferred Shares as  
Series A Cumulative Convertible Preferred  
Shares of Beneficial Interest and Fixing Distribution and  
Other Preferences and Rights of Such Series**

The undersigned, the President of Amlj Residential Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland pursuant to section 8-203(b) of the Annotated Code of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Board of Trustees of the Trust pursuant to Article 2, Section 1 of the Amended and Restated Declaration of Trust of the Trust, dated January 31, 1994 (the "Declaration of Trust"), the Board of Trustees has duly classified and designated 1,500,000 unissued shares of beneficial interest of the Trust as Series A Cumulative Convertible Preferred Shares of Beneficial Interest.

**SECOND:** Subject in all cases to the provisions of Article 3 of the Declaration of Trust, and any successor provisions thereto, the following is a description of the Series A Cumulative Convertible Preferred Shares of Beneficial Interest, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption thereof:

**Section 1. Number of Shares and Designation.** This class of Preferred Shares shall be designated as Series A Cumulative Convertible Preferred Shares of Beneficial Interest (the "Series A Preferred Shares") and the number of shares of beneficial interest which shall constitute such Series shall not be more than 1,500,000 shares, \$0.01 par value per share, which number may be decreased (but not below the number thereof then outstanding plus the number required to fulfill the Trust's obligations under options, warrants or similar rights issued by the Trust) from time to time by the Board of Trustees.

**Section 2. Definitions.** For purposes of the Series A Preferred Shares, the following terms shall have the meanings indicated:

"Board of Trustees" shall mean the Board of Trustees of the Trust 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, Sunday or a day on which state or federally chartered banking institutions in Chicago, Illinois are not required to be open.

"Call Date" shall have the meaning set forth in paragraph (b) of Section 6.

"Common Shares" shall mean the Common Shares of Beneficial Interest of the Trust, \$.01 par value per share.

"Constituent Person" shall have the meaning set forth in paragraph (e) of Section 5 hereof.

"Conversion Price" shall mean the conversion price per Common Share for which the Series A Preferred Shares are convertible, as such Conversion Price may be adjusted pursuant to Section 5. The initial conversion price shall be \$20.00 (equivalent to a conversion rate of 1 Common Share 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 Trust 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 New York Stock Exchange, 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 National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ") or, if such security is not quoted on such National Market System, 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 selected for such purpose by the Chairman of the Board or the Board of Trustees.

"Dividend Payment Date" shall mean the Tuesday which is nearest to the twenty-first (21st) day of February, May, August and November in each year, commencing on February 20th, 1996, provided, however, that if any Dividend Payment Date falls on any day other than a Business Day, the dividend payment due on such Dividend Payment

Date shall be paid on the Business Day immediately following such Dividend Payment Date.

"Dividend Periods" shall mean quarterly dividend periods commencing on the Wednesday following the Tuesday which is nearest to the twentieth day of February, May, August and November in each year, and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Issue Date and end on and include February 20th, 1996).

"Fair Market Value" shall mean the average of the daily Current Market Prices of a Common Share during the five (5) consecutive Trading Days selected by the Trust commencing not more than 20 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex date" with respect to the issuance or distribution requiring such computation. The term "ex date," when used with respect to any issuance or distribution, means the first day on which the Common Shares trades regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Current Market Price.

"Fully Junior Shares" shall mean the Common Shares and any other class or series of shares of beneficial interest of the Trust now or hereafter issued and outstanding over which the Series A Preferred Shares have preference or priority in both (i) the payment of dividends and (ii) the distribution of assets on any liquidation, dissolution or winding up of the Trust.

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

"Junior Shares" shall mean the Common Shares and any other class or series of shares of beneficial interest of the Trust now or hereafter issued and outstanding over which the Series A Preferred Shares have preference or priority in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Trust.

"Non-Electing Share" shall have the meaning set forth in paragraph (e) of Section 5 hereof.

"Parity Shares" shall have the meaning set forth in paragraph (b) of Section 8.

"Person" shall mean any individual, firm, partnership, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Securities" and "Security" shall have the meanings set forth in subparagraph (d)(iii) of Section 5 hereof.

"Series A Preferred Shares" shall have the meaning set forth in Section 1 hereof.

"set apart for payment" shall be deemed to include, without any action other than the following, the recording by the Trust in its accounting ledgers of any accounting or bookkeeping entry which indicates, pursuant to a declaration of dividends or other distribution by the Board of Trustees, the allocation of funds to be so paid on any series or class of shares of beneficial interest of the Trust; provided, however, that if any funds for any class or series of Junior Shares or Fully Junior Shares or any class or series of shares of beneficial interest ranking on a parity with the Series A Preferred Shares as to the payment of dividends are placed in a separate account of the Trust 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.

"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 National Market System of NASDAQ, or if such securities are not quoted on such National Market System, in the applicable securities market in which the securities are traded.

"Transaction" shall have the meaning set forth in paragraph (c) of Section 5 hereof.

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

"Voting Preferred Shares" shall have the meaning set forth in Section 9 hereof.

### Section 3. Dividends.

(a) The holders of Series A Preferred Shares shall be entitled to receive, when, as and if declared by the Board of Trustees out of funds legally available for that purpose, dividends payable in cash in an amount per share equal to the greater of (i) \$1.72 per annum or (ii) the dividends (determined on each Dividend Payment Date) on the Common Shares, or portion thereof, into which a Series A Preferred Share is convertible. The dividends referred to in clause (ii) of the immediately preceding sentence shall equal the number of Common Shares, or portion thereof, into which a

Series A Preferred Share is convertible, multiplied by the most current quarterly dividend on a Common Share on or before the applicable Dividend Payment Date. Such dividends shall begin to accrue and shall be fully cumulative from the Issue Date, whether or not in any Dividend Period or Periods there shall be funds of the Trust legally available for the payment of such dividends, and shall be payable quarterly, when, as and if declared by the Board of Trustees, in arrears on Dividend Payment Dates, commencing on the first Dividend Payment Date after the Issue Date. Such dividends shall be payable in arrears to the holders of record of Series A Preferred Shares, as they appear on the share records of the Trust at the close of business on the record date, not more than 50 days preceding the relevant Dividend Payment Date, as shall be fixed by the Board of Trustees. Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time and for such interim periods, without reference to any regular Dividend Payment Date, to holders of record on such date, not exceeding 50 days preceding the payment date thereof, as may be fixed by the Board of Trustees.

(b) The amount of dividends payable for each full Dividend Period for the Series A Preferred Shares shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for the initial Dividend Period, or any other period shorter or longer than a full Dividend Period, on the Series A Preferred Shares shall be computed on the basis of the actual number of days in such Dividend Period. Holders of Series A Preferred Shares shall not be entitled to any dividends, whether payable in cash, property or shares of beneficial interest, in excess of cumulative dividends, as herein provided, on the Series A Preferred Shares. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series A Preferred Shares that may be in arrears.

(c) So long as any Series A Preferred Shares are outstanding, no dividends, except as described in the immediately following sentence, shall be declared or paid or set apart for payment on any class or series of Parity Shares for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series A Preferred Shares for all Dividend Periods terminating on or prior to the dividend payment date for such class or series of Parity Shares. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all dividends declared upon Series A Preferred Shares and all dividends declared upon any other class or series of Parity Shares shall be declared ratably in proportion to the respective amounts of dividends accumulated and unpaid on the Series A Preferred Shares and accumulated and unpaid on such Parity Shares.

(d) So long as any Series A Preferred Shares are outstanding, no dividends (other than dividends or distributions paid solely in shares of, or options, warrants or rights to subscribe for or purchase shares of, Fully Junior Shares) shall be declared or paid or set apart for payment or other distribution declared or made upon Junior Shares

or Fully Junior Shares, nor shall any Junior Shares or Fully Junior Shares be redeemed, purchased or otherwise acquired (other than a redemption, purchase or other acquisition of Common Shares made pursuant to any plan providing for the acquisition, whether directly or pursuant to options or other securities, of Common Shares by Trustees, directors, officers or employees of the Trust or of any entity in which the Trust, either directly or indirectly, owns more than a 50% economic interest) for any consideration (or any moneys be paid to or made a liability for a sinking fund for the redemption of any such shares of beneficial interest) by the Trust, directly or indirectly (except by conversion into or exchange for Fully Junior Shares), unless in each case (i) the full cumulative dividends on all outstanding Series A Preferred Shares and any other Parity Shares of the Trust shall have been paid or declared and set apart for payment for all past Dividend Periods with respect to the Series A Preferred Shares and all past dividend periods with respect to such Parity Shares and (ii) sufficient funds shall have been paid or declared and set apart for the payment of the dividend for the current Dividend Period with respect to the Series A Preferred Shares and the current dividend period with respect to such Parity Shares.

**Section 4. Liquidation Preference.**

(a) In the event of any liquidation, dissolution or winding up of the Trust, whether voluntary or involuntary, before any payment or distribution of the assets of the Trust (whether capital or surplus) shall be made to or set apart for the holders of Junior Shares or Fully Junior Shares, the holders of the Series A Preferred Shares shall be entitled to receive Twenty Dollars (\$20.00) per Series A Preferred Share plus an amount equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders; but such holders shall not be entitled to any further payment. If, upon any liquidation, dissolution or winding up of the Trust, the assets of the Trust, or proceeds thereof, distributable among the holders of the Series A Preferred Shares shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of beneficial interest of any class or series of Parity Shares, then such assets, or the proceeds thereof, shall be distributed among the holders of Series A Preferred Shares and any such other Parity Shares ratably in accordance with the respective amounts that would be payable on such Series A Preferred Shares and any such other Parity Shares if all amounts payable thereon were paid in full. For the purposes of this Section 4, (i) a consolidation or merger of the Trust with one or more corporations or real estate investment trusts, (ii) a sale or transfer of all or substantially all of the Trust's assets, or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Trust.

(b) Subject to the rights of the holders of shares of any series or class or classes of shares of beneficial interest ranking on a parity with or prior to the Series A Preferred Shares upon liquidation, dissolution or winding up, upon any liquidation,



dissolution or winding up of the Trust, after payment shall have been made in full to the holders of the Series A Preferred Shares, as provided in this Section 4, any other series or class or classes of Junior Shares or Fully Junior Shares shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series A Preferred Shares shall not be entitled to share therein.

Section 5. **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 Section 5, a holder of Series A Preferred Shares shall have the right, at his or her option, at any time to convert such shares into the number of fully paid and non-assessable 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 paragraph (b) of this Section 5) by surrendering such shares to be converted, such surrender to be made in the manner provided in paragraph (b) of this Section 5; provided, however, that the right to convert shares called for redemption pursuant to Section 6 shall terminate at the close of business on the fifth Business Day prior to the Call Date fixed for such redemption, unless the Trust shall default in making payment of the cash payable upon such redemption under Section 6 hereof.

(b) In order to exercise the conversion right, the holder of each Series A Preferred Share to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Trust or in blank, at the office of the Transfer Agent, accompanied by written notice to the Trust that the holder thereof elects to convert such Series A Preferred Shares. 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 Trust, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Trust demonstrating that such taxes have been paid).

Holders of Series A Preferred Shares at the close of business on a dividend payment record date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the conversion thereof following such dividend payment record date and prior to or on such Dividend Payment Date. Except as provided above, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends 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 Trust shall issue and shall deliver at such office to such holder, or on his or her written order, a certificate or certificates for the number of full Common Shares issuable upon the conversion of such shares in accordance with provisions of this Section 5, and any fractional interest in respect of a Common Share arising upon such conversion shall be settled as provided in paragraph (c) of this Section 5.

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 dividend payable on such shares) received by the Trust 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 on such date unless the share transfer books of the Trust 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 close 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 shares shall have been surrendered and such notice received by the Trust. If the dividend payment record date for the Series A Preferred Shares and Common Shares do not coincide, and the preceding sentence does not operate to ensure that a holder of Series A Preferred Shares whose shares are converted into Common Shares does not receive dividends on both the Series A Preferred Shares and the Common Shares into which such shares are converted for the same Dividend Period, then notwithstanding anything herein to the contrary, it is the intent, and the Transfer Agent is authorized to ensure, that no conversion after the earlier of such record dates will be accepted until after the later of such record dates.

(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 Series A Preferred Share, the Trust 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 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 Trust shall after the Issue Date (A) pay a dividend or make a distribution on its shares of beneficial interest, in either case, in Common Shares, (B) subdivide its outstanding Common Shares into a greater number of shares of beneficial interest, (C) combine its outstanding Common Shares into a smaller number of shares of beneficial interest or (D) issue any shares of beneficial interest by reclassification of its Common Shares, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or distribution or at the opening of business on the Business Day next following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series A Preferred Share 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 as if such Series A Preferred Shares had been converted immediately prior to the record date in the case of a dividend or distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subparagraph (i) shall become effective immediately after the opening of business on the Business Day next following the record date (except as provided in paragraph (h) below) in the case of a dividend or distribution and shall become effective immediately after the opening of business on the Business Day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Trust 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 mentioned below) to subscribe for or purchase Common Shares at a price per share less than 94% (100% if a stand-by underwriter is used and charges the Trust a commission) of the Fair Market Value per Common Share on the record date for the determination of shareholders entitled to receive such rights, option or warrants, then the Conversion Price in effect at the opening of business on the Business Day next following such record date shall be adjusted to equal the price determined by multiplying (I) 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 (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of shares that the aggregate proceeds to the Trust from the exercise of such rights, option or warrants for Common Shares would purchase at 94% of such Fair Market Value (or 100% in the case of a stand-by underwriting), and the denominator of which shall be the sum of (A) the number of Common Shares outstanding on the close of business on the date fixed for such determination and (B) the number of additional Common Shares offered

for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in paragraph (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 94% of such Fair Market Value (or 100% in the case of a stand-by underwriting), there shall be taken into account any consideration received by the Trust 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 Chairman of the Board or the Board of Trustees.

(iii) If the Trust shall distribute to all holders of its Common Shares any shares of beneficial interest of the Trust (other than Common Shares) or evidence of its indebtedness or assets (excluding cumulative cash dividends or distributions paid with respect to the Common Shares after December 31, 1995 which are not in excess of the following: the sum of (A) the Trust's cumulative undistributed funds from operations at December 31, 1995, plus (B) the cumulative amount of funds from operations, as determined by the Board of Trustees, after December 31, 1995, minus (C) the cumulative amount of dividends accrued or paid in respect of the Series A Preferred Shares or any other class or series of Preferred Shares of the Trust after the Issue Date) or rights, options or warrants to subscribe for or purchase any of its securities (excluding those rights, options 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 subparagraph (ii) above to subscribe for or purchase Common Shares, which rights and warrants are referred to in and treated under subparagraph (ii) above) (any of the foregoing being hereinafter in this subparagraph (iii) collectively called the "Securities" and individually a "Security"), then in each such case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) 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 (II) a fraction, the numerator of which shall be the Fair Market Value per Common Share on the record date mentioned below less the then fair market value (as determined by the Chairman of the Board or the Board of Trustees, whose determination shall be conclusive), of the portion 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 Fair Market Value per Common Share on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the Business Day next following (except as provided in paragraph (h) below) the record date for the determination of shareholders entitled to receive such distribution. For the purposes of this clause (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 clause (c); 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 clause (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).

(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 subparagraph (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 Section 5 (other than this subparagraph (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 Section 5, the Trust shall not be required to make any adjustment of the Conversion Price for the issuance of any Common Shares pursuant to (i) any plan providing for the reinvestment of dividends or interest payable on securities of the Trust and the investment of additional optional amounts in Common Shares under such plan or (ii) any plan providing for the acquisition, whether directly or pursuant to options or other securities, of Common Shares by Trustees, directors, officers, employees of the Trust or of any entity in which the Trust, either directly or indirectly, owns more than a 50% economic interest. All calculations under this Section 5 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. Anything in this paragraph (d) to the contrary notwithstanding, the Trust shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this paragraph (d), as it in its discretion shall determine to be advisable in order that any share dividends, subdivision of shares, reclassification or combination of shares, distribution of rights or warrants to purchase shares or securities, or a distribution of other assets (other than cash dividends) hereafter made by the Trust to its shareholders shall not be taxable.

(e) If the Trust shall be a party to any transaction (including without limitation a merger, consolidation, statutory share exchange, self tender offer for all or substantially

all Common Shares, sale of all or substantially all of the Trust's assets or recapitalization of the Common Shares and excluding any transaction as to which subparagraph (d)(i) of this Section 5 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which all or substantially all Common Shares are converted into the right to receive stock, securities or other property (including cash or any combination thereof), each Series A Preferred Share, which is not redeemed or converted into the right to receive stock, securities or other property prior to such Transaction, shall thereafter be convertible into the kind and amount of shares of 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 Trust consolidated or into which the Trust merged or which merged into the Trust or to which such sale or transfer was made, as the case may be ("Constituent Person"), or an affiliate of a Constituent Person and (ii) failed to exercise his rights of election, if any, as to the kind or amount of stock, securities and other property (including cash) receivable upon such Transaction (provided that if the kind or amount of stock, securities and other property (including cash) receivable upon such Transaction is not the same for each Common Share held immediately prior to such Transaction by other than a Constituent Person or an affiliate thereof and in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purpose of this paragraph (e) the kind and amount of stock, securities and other property (including cash) receivable upon such Transaction by 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 Trust shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this paragraph (e), and it shall not consent or agree to the occurrence of any Transaction until the Trust 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 contain provisions enabling the holders of the Series A Preferred Shares that remain outstanding after such Transaction to convert into the consideration received by holders of Common Shares at the Conversion Price in effect immediately prior to such Transaction. The provisions of this paragraph (e) shall similarly apply to successive Transactions

(f)     :

(i)     : Trust shall declare a dividend (or any other distribution) on the Common Shares (other than cash dividends or distributions paid with respect to the Common Shares after December 31, 1995 not in excess of the sum of the Trust's cumulative undistributed funds from operations at December 31, 1995, plus the cumulative amount of funds from operations, as determined by the Board of Trustees, after December 31, 1995, minus the cumulative amount of dividends

accrued or paid in respect of the Series A Preferred Shares or any other class or series of Preferred Shares of the Trust after the Issue Date); or

(ii) the Trust shall authorize the granting to the holders of Common Shares of rights, options or warrants to subscribe for or purchase any shares of beneficial interest of any class or any other rights, options or warrants; or

(iii) there shall be any reclassification of the Common Shares (other than an event to which subparagraph (d)(i) of this Section 5 applies) or any consolidation or merger to which the Trust is a party and for which approval of any shareholders of the Trust is required, or a statutory share exchange, or a self tender offer by the Trust 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 Trust as an entirety; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding up of the Trust,

then the Trust shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of Series A Preferred Shares at their addresses as shown on the share records of the Trust, as promptly as possible, but at least 10 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such dividend, distribution or granting of rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such dividend, distribution or rights, options or warrants are to be determined 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 Section 5.

(g) Whenever the Conversion Price is adjusted as herein provided, the Trust 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 Trust shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date of such adjustment 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 Trust.

(h) In any case in which paragraph (d) of this Section 5 provides that an adjustment shall become effective on the day next following the record date for an event, the Trust may defer until the occurrence of such event (A) issuing to the holder of any Series A Preferred Share converted as of 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 (B) paying to such holder any amount of cash in lieu of any fraction pursuant to paragraph (c) of this Section 5.

(i) There shall be no adjustment of the Conversion Price in case of the issuance of any shares of beneficial interest or other security of the Trust in a reorganization, acquisition or other similar transaction except as specifically set forth in this Section 5. If any action or transaction would require adjustment of the Conversion Price pursuant to more than one paragraph of this Section 5, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Trust shall take any action affecting the Common Shares, other than action described in this Section 5, 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 Trust 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 paragraph (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 Trust covenants that any Common Shares issued upon conversion of the Series A Preferred Shares shall be validly issued, fully paid and non-assessable. 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 Trust will take any trust action that, in the opinion of its counsel, may be necessary in order that the Trust may validly and legally issue fully paid and



(subject to any customary qualification based upon the nature of a real estate investment trust) non-assessable Common Shares at such adjusted Conversion Price.

The Trust shall endeavor 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 Trust shall be obligated to deliver upon conversion of the Series A Preferred Shares, the Trust 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.

(i) The Trust 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 Trust 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 Trust the amount of any such tax or established, to the reasonable satisfaction of the Trust, that such tax has been paid.

**Section 6. Redemption at the Option of the Trust.**

(a) The Series A Preferred Shares shall not be redeemable by the Trust prior to the fifth (5th) anniversary of the Issue Date. On and after the fifth (5th) anniversary of the Issue Date, the Trust, at its option, may redeem the Series A Preferred Shares, in whole at any time or from time to time in part,

(i) at a redemption price of Twenty Dollars (\$20.00) per Series A Preferred Share, plus the amounts indicated in Section 6(b); or

(ii) for the number of fully paid and non-assessable Common Shares obtained by dividing the aggregate liquidation preference of such shares by the Conversion Price (as in effect at the close of business on the day preceding the Call Date); provided, however, that the Trust may redeem Series A Preferred Shares pursuant to this subparagraph (a)(ii) only if for twenty (20) or more Trading Days within the period of thirty (30) consecutive Trading Days ending on the day prior to the date on which notice of such redemption is given, including the last Trading Day of such 30-Trading Day period, the Current

Market Price of the Common Shares on each such twenty (20) or more Trading Days equals or exceeds the Conversion Price in effect on such Trading Day; provided further, that the holders of any Series A Preferred Shares to be so redeemed shall comply with the provisions of Section 5 in the same manner as if they were voluntarily converting such shares pursuant to Section 5 on the Call Date, and the provisions of section 5 shall govern such redemption in the same manner as if holders of the Series A Preferred Shares to be redeemed were voluntarily converting such shares pursuant to Section 5 on the Call Date.

(b) Upon any redemption of Series A Preferred Shares pursuant to this Section 6 for cash as set forth in subparagraph (a)(1) of this Section 6, the Trust shall pay any accrued and unpaid dividends in arrears for any Dividend Period ending on or prior to the date of such redemption (the "Call Date"). If the Call Date falls after a dividend payment record date and prior to the corresponding Dividend Payment Date, then each holder of Series A Preferred Shares at the close of business on such dividend payment record date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before such Dividend Payment Date. Except as provided above, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series A Preferred Shares called for redemption.

(c) If full cumulative dividends on the Series A Preferred Shares and any other class or series of Parity Shares of the Trust have not been paid or declared and set apart for payment, the Series A Preferred Shares may not be redeemed under this Section 6 in part and the Trust may not purchase or acquire Series A Preferred Shares, otherwise than pursuant to a purchase or exchange offer made on the same terms to all holders of Series A Preferred Shares.

(d) Notice of the redemption of any Series A Preferred Shares under this Section 6 shall be mailed by first-class mail to each holder of record of Series A Preferred Shares to be redeemed at the address of each such holder as shown on the Trust's record, not less than 30 nor more than 90 days prior to the Call Date. Neither the failure to mail any notice required by this paragraph (d), nor any defect therein or in the mailing thereof, to any particular holder, shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given on the date mailed whether or not the holder receives the notice. Each such mailed notice shall state, as appropriate: (1) the Call Date; (2) the number of Series A Preferred Shares to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the number of Common Shares to be issued with respect to each Series A Preferred Share; (4) the place or places at which certificates for such shares are to be

surrendered; (5) the then-current Conversion Price; and (6) that dividends on the shares to be redeemed shall cease to accrue on such Call Date except as otherwise provided herein. Notice having been mailed as aforesaid, from and after the Call Date (unless the Trust shall fail to make available a number of Common Shares and an amount of cash necessary to effect such redemption), (i) except as otherwise provided herein, dividends on the Series A Preferred Shares so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of Series A Preferred Shares of the Trust shall cease (except the right to receive the Common Shares and cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required). The Trust's obligation to provide Common Shares and cash in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Call Date, the Trust shall deposit with a bank or trust company (which may be an affiliate of the Trust) that has an office in the City of Chicago, and that has, or is an affiliate of a bank or trust company that has, capital and surplus of at least \$50,000,000, Common Shares and cash necessary for such redemption, in trust, with irrevocable instructions that such Common Shares and cash be applied to the redemption of the Series A Preferred Shares so called for redemption. At the close of business on the Call Date, each holder of Series A Preferred Shares to be redeemed (unless the Trust defaults in the delivery of the Common Shares payable on such Call Date) shall be deemed to be the record holder of the number of Common Shares into which such Series A Preferred Shares are to be redeemed, regardless of whether such holder has surrendered the certificates representing the Series A Preferred Shares. No interest shall accrue for the benefit of the holders of Series A Preferred Shares to be redeemed on any cash so set aside by the Trust. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Call Date shall revert to the general funds of the Trust, after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Trust for the payment of such cash.

As promptly as practicable after the surrender in accordance with said notice of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Trust shall so require and if the notice shall so state), such shares shall be exchanged for certificates evidencing Common Shares and any cash (without interest thereon) for which such shares have been redeemed. If fewer than all the outstanding Series A Preferred Shares are to be redeemed, shares to be redeemed shall be selected by the Trust from outstanding Series A Preferred Shares not previously called for redemption by lot or pro rata (as nearly as may be) or by any other method determined by the Trust in its sole discretion to be equitable. If fewer than all the Series A Preferred Shares represented by any certificate are redeemed, then new certificates representing the unredeemed shares shall be issued without cost to the holder thereof.

**Section 7. Shares To Be Retired.** All Series A Preferred Shares which shall have been issued and reacquired in any manner by the Trust shall be restored to the status of

authorized but unissued shares of beneficial interest of the Trust, without designation as to class or series.

Section 8. **Ranking.** Any class or series of shares of beneficial interest of the Trust shall be deemed to rank:

(a) prior to the Series A Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Series A Preferred Shares;

(b) on a parity with the Series A Preferred Shares, as to the payment of dividends and as to distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof be different from those of the Series A Preferred Shares, if the holders of such class or series of shares of beneficial interest and the Series A Preferred Shares shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority one over the other ("Parity Shares"); and

(c) junior to the Series A Preferred Shares, as to the payment of dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such shares of beneficial interest shall be Junior Shares.

(d) junior to the Series A Preferred Shares, as to the payment of dividends and as to the distribution of assets upon liquidation, dissolution or winding up, if such shares of beneficial interest shall be Fully Junior Shares.

Section 9. **Voting.** If and whenever six quarterly dividends (whether or not consecutive) payable on the Series A Preferred Shares or any series or class of Parity Shares shall be in arrears (which shall, with respect to any such quarterly dividend, mean that any such dividend has not been paid in full), whether or not declared, the number of trustees then constituting the Board of Trustees shall be increased by two, and the holders of Series A Preferred Shares, together with the holders of shares of every other series of Parity Shares (any such other series, the "Voting Preferred Shares"), voting as a single class regardless of series, shall be entitled to elect the two additional trustees to serve on the Board of Trustees at any annual meeting of shareholders or special meeting held in place thereof, or at a special meeting of the holders of the Series A Preferred Shares and the Voting Preferred Shares called as hereinafter provided. Whenever all arrears in dividends on the Series A Preferred Shares and the Voting Preferred Shares then outstanding shall have been paid and dividends thereon for the current quarterly dividend period shall have been paid or declared and set apart for payment,

then the right of the holders of the Series A Preferred Shares and the Voting Preferred Shares to elect such additional two trustees shall immediately cease (but subject always to the same provision for the vesting of such voting rights in the case of any similar future arrearages in six quarterly dividends), and the terms of office of all persons elected as trustees by the holders of the Series A Preferred Shares and the Voting Preferred Shares shall immediately terminate and the number of the Board of Trustees shall be reduced accordingly. At any time after such voting power shall have been so vested in the holders of the Series A Preferred Shares and the Voting Preferred Shares, the secretary of the Trust may, and upon the written request of any holder of Series A Preferred Shares (addressed to the secretary at the principal office of the Trust) shall, call a special meeting of the holders of the Series A Preferred Shares and of the Voting Preferred Shares for the election of the two trustees to be elected by them as herein provided, such call to be made by notice similar to that provided in the Bylaws of the Trust for a special meeting of the shareholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the secretary within 20 days after receipt of any such request, then any holder of Series A Preferred Shares may call such meeting, upon the notice above provided, and for that purpose shall have access to the share records of the Trust. The trustees elected at any such special meeting shall hold office until the next annual meeting of the shareholders or special meeting held in lieu thereof if such office shall not have previously terminated as above provided. If any vacancy shall occur among the trustees elected by the holders of the Series A Preferred Shares and the Voting Preferred Shares, a successor shall be elected by the Board of Trustees, upon the nomination of the then-remaining trustee elected by the holders of the Series A Preferred Shares and the Voting Preferred Shares or the successor of such remaining trustee, to serve until the next annual meeting of the shareholders or special meeting held in place thereof if such office shall not have previously terminated as provided above.

So long as any Series A Preferred Shares are outstanding, in addition to any other vote or consent of shareholders required by law or by the Amended and Restated Declaration of Trust, as amended, the affirmative vote of at least 66% of the votes entitled to be cast by the holders of the Series A Preferred Shares and the Voting Preferred Shares, at the time outstanding, acting as a single class regardless of series, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(a) Any amendment, alteration or repeal of any of the provisions of the Amended and Restated Declaration of Trust or these Articles Supplementary that materially and adversely affects the voting powers, rights or preferences of the holders of the Series A Preferred Shares or the Voting Preferred Shares, provided, however, that the amendment of the provisions of the Amended and Restated Declaration of Trust so as to authorize or create or to increase the authorized amount of, any Fully Junior Shares or Junior Shares that are not senior in any respect to the Series A Preferred Shares, or any shares of beneficial interest of any class ranking on a parity with the Series A Preferred Shares or the Voting Preferred Shares shall not be deemed to materially

adversely affect the voting powers, rights or preferences of the holders of Series A Preferred Shares, and provided, further, that if any such amendment, alteration or repeal would materially and adversely affect any voting powers, rights or preferences of the Series A Preferred Shares or another series of Voting Preferred Shares that are not enjoyed by some or all of the other series otherwise entitled to vote in accordance herewith, the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of all series similarly affected, similarly given, shall be required in lieu of the affirmative vote of at least 66 2/3% of the votes entitled to be cast by the holders of the Series A Preferred Shares and the Voting Preferred Shares otherwise entitled to vote in accordance herewith; or

(b) A share exchange that affects the Series A Preferred Shares, a consolidation with or merger of the Trust into another entity, or a consolidation with or merger of another entity into the Trust, unless in each such case each Series A Preferred Share (i) shall remain outstanding without a material and adverse change to its terms and rights or (ii) shall be converted into or exchanged for convertible preferred stock of the surviving entity having preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms or conditions of redemption thereof identical to that of a Series A Preferred Share (except for changes that do not materially and adversely affect the holders of the Series A Preferred Shares); or

(c) The authorization or creation of, or the increase in the authorized amount of, any shares of beneficial interest of any class or any security convertible into shares of beneficial interest of any class ranking prior to the Series A Preferred Shares in the distribution of assets on any liquidation, dissolution or winding up of the Trust or in the payment of dividends;

provided, however, that no such vote of the holders of Series A Preferred Shares shall be required if, at or prior to the time when such amendment, alteration or repeal is to take effect, or when the issuance of any such prior shares of beneficial interest or convertible security is to be made, as the case may be, provision is made for the redemption of all Series A Preferred Shares at the time outstanding.

For purposes of the foregoing provisions of this Section 9, each Series A Preferred Share shall have one (1) vote per share, except that when any other series of Preferred Shares shall have the right to vote with the Series A Preferred Shares as a single class on any matter, then the Series A Preferred Shares and such other series shall have with respect to such matters one (1) vote per \$20.00 of stated liquidation preference. Except as otherwise required by applicable law or as set forth herein, the Series A Preferred Shares shall not have any relative, participating, optional or other special voting rights and powers, and the consent of the holders thereof shall not be required for the taking of any trust action.

Section 10. **Record Holders.** The Trust and the Transfer Agent may deem and treat the record holder of any Series A Preferred Shares as the true and lawful owner thereof for all purposes, and neither the Trust nor the Transfer Agent shall be affected by any notice to the contrary.

Section 11. **Sinking Fund.** The Series A Preferred Shares shall not be entitled to the benefits of any retirement or sinking fund.

**THIRD:** The Series A Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in Article 2, Section 1, of the Declaration of Trust.

**FOURTH:** These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

**FIFTH:** The undersigned President of the Trust acknowledges these Articles Supplementary to be the act of the Trust and further, as to all matters or facts required to be verified under oath, the undersigned President 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 penalty of perjury.

IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be duly executed in its name and on its behalf by its President and attested by its Secretary on this 30th day of January, 1996.

AMLI RESIDENTIAL PROPERTIES TRUST

(S.F.A.L.)

By:

Allan J. Sweet  
Allan J. Sweet, President

WITNESS:

Charlotte A. Sparrow  
Charlotte A. Sparrow, Secretary





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AMLI RESIDENTIAL PROPERTIES TRUST

CERTIFICATE OF CORRECTION

Amlí Residential Properties Trust, a Maryland real estate investment trust formed under Title 8 of the Corporations and Associations Article of the Annotated Code of the State of Maryland (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of the State of Maryland (the "Department") that:

**FIRST:** The title of the document being corrected by this Certificate of Correction is the Articles of Merger Merging Amlí Residential Properties, Inc. into Amlí Residential Properties Trust.

**SECOND:** The names of each party to such Articles of Merger are: Amlí Residential Properties, Inc. and Amlí Residential Properties Trust.

**THIRD:** The Articles of Merger being corrected by this Certificate of Correction were filed with and approved by the Department on December 16, 1993.

**FOURTH:** The Articles of Merger being corrected by this Certificate of Correction were executed defectively by the Trust. Section 1-301(a)(3) of Title 1 of the Corporations and Associations Article of the Annotated Code of the State of Maryland requires that the Articles of Merger be signed and acknowledged on behalf of each entity party to such Articles of Merger, other than a corporation, by a majority of the entire board of trustees or other governing body. The Articles of Merger were not executed on behalf of the Trust by a majority of its Board of Trustees.

**FIFTH:** The undersigned have executed this Certificate of Correction in the manner in which the Articles of Merger being corrected by this Certificate of Correction were required to be executed.

IN WITNESS WHEREOF, Amlí Residential Properties Trust has caused this Certificate of Correction to be executed on its behalf by its Board of Trustees and on behalf of Amlí Residential Properties, Inc. by its last acting President, and attested on behalf of Amlí Residential Properties, Inc. by its last acting Secretary as of the 14 day of February, 1994.

ATTEST:

AMLI RESIDENTIAL PROPERTIES, INC.

Charlotte A. Sparrow  
Charlotte A. Sparrow,  
Last Acting Secretary

BY: Allan J. Sweet  
Allan J. Sweet  
Last Acting President





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AMLI RESIDENTIAL PROPERTIES TRUST  
AMENDED AND RESTATED  
DECLARATION OF TRUST  
January 31, 1994

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**ANLI RESIDENTIAL PROPERTIES TRUST**

**AMENDED AND RESTATED**

**DECLARATION OF TRUST**

This Amended and Restated Declaration of Trust of Anli Residential Properties Trust (this "Declaration of Trust"), made in Chicago, Illinois, as of January 31, 1994, amends and restates in its entirety the Declaration of Trust dated December 15, 1993, as follows:

**RECITALS**

I. This Trust is a real estate investment trust under the laws of the State of Maryland.

II. The Trustees desire that this Trust qualify as a real estate investment trust ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as now in effect or hereafter amended (the "Code"), and under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended ("Title 8").

III. The beneficial interest in this Trust shall be divided into transferable shares ("Shares") of one or more classes evidenced by certificates.

**DECLARATION**

NOW, THEREFORE, the Trustees hereby declare that they assume the duties of Trustees hereunder and hold all assets of the Trust presently existing and hereafter to be received, and all rents, income, profits and gains therefrom, from whatever source derived, in trust, for the Shareholders in accordance with the terms and conditions hereinafter provided.

**ARTICLE 1. THE TRUST**

**Section 1. Name.** The Trust created by this Declaration of Trust is herein referred to as the "Trust" and shall be known by the name "Anli Residential Properties Trust." So far as may be practicable, legal and convenient, the affairs of the Trust shall be conducted and transacted under that name, which name shall not refer to the Trustees individually or personally or to the beneficiaries or Shareholders of the Trust, or to any officers, employees or agents of the Trust.

Under circumstances in which the Trustees determine that the use of the name "Anli Residential Properties Trust" is not practicable, legal or convenient, they may as appropriate use their names with suitable reference to their trustee status, or some

other suitable designation, or they may adopt another name under which the Trust may hold property or operate in any jurisdiction which name shall not, to the knowledge of the Trustees, refer to beneficiaries or shareholders of the Trust. Legal title to all the properties subject from time to time to this Declaration of Trust shall be transferred to, vested, and held by the Trust in its own name or by the Trustees as joint tenants with right of survivorship as Trustees of this Trust, except that the Trustees shall have the power to cause legal title to any property of this Trust to be held by and/or in the name of one or more of the Trustees, or any other person as nominee, on such terms, in such manner, and with such powers as the Trustees may determine, provided that the interest of the Trust therein is appropriately protected.

The Trust shall have the authority to operate under an assumed name or names in such state or states or any political subdivision thereof where it would be legal, practical or convenient to operate in the name of the Trust. The Trust shall have the authority to file such assumed name certificates or other instruments in such places as may be required by applicable law to operate under such assumed name or names.

**Section 2. Resident Agent.** The name and address of the Resident Agent of the Trust in the State of Maryland is The Prentice-Hall Corporation System, Maryland, 11 East Chase Street, Baltimore, Maryland 21202. The Trust may have such other offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

**Section 3. Nature of Trust.** The Trust is a real estate investment trust within the meaning of Title 8. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint stock association or, except as contemplated in Article 8, Section 1, a corporation. The Shareholders shall be beneficiaries in that capacity in accordance with the rights conferred upon them hereunder.

**Section 4. Purpose of the Trust.**

(a) The Trust shall have all the powers granted to real estate investment trusts generally by Title 8 or any successor statute and shall have any other and further powers as are not inconsistent with and are appropriate to promote and attain the purposes of the Trust as set forth in this Declaration of Trust. Its purpose is to invest in notes, bonds and other obligations secured by mortgages on real property and to purchase, hold, lease, manage, develop, subdivide and improve, and ultimately to sell or exchange, real property and interests in real property, and in general, to carry on any other acts in connection with the foregoing and to have and exercise all powers conferred by the laws of the State of Maryland upon real estate investment trusts formed under Title 8, and to do any or all of the things herein set forth

to the same extent as natural persons might or could do. The Trust may act as registered agent for service of process in any jurisdiction where permitted on behalf of any partnership for which it is a general partner.

(b) The Board of Trustees shall use its reasonable best efforts to cause the Trust to qualify for U.S. Federal income tax treatment as a REIT under Sections 856 - 860 of the Code. In furtherance of the foregoing, the Board of Trustees shall use its reasonable best efforts to take such actions from time to time as are necessary, and is authorized to take such actions as in its sole judgment and discretion are desirable, to preserve the status of the Trust as a REIT; provided, however, that if the Board of Trustees determines, with the affirmative vote of a majority of the voting power of the Trust entitled to vote approving the Board's determination, that it is no longer in the best interests of the Trust to continue to have the Trust qualify as a REIT, the Board of Trustees may revoke or otherwise terminate the Trust's REIT election pursuant to applicable U.S. Federal tax law.

#### ARTICLE 2. SHARES

Section 1. ~~Shares; Certificates of Beneficial Interest.~~ The beneficial interest in the Trust shall be divided into and shall be designated as Shares. The Trust shall have authority to issue an aggregate of 150,000,000 Shares, \$0.01 par value per Share, and shall consist of common Shares and such other types or classes of securities of the Trust as the Trustees may create and authorize from time to time and designate as representing a beneficial interest in the Trust. The amount and form of consideration paid for the issuance of Shares shall be determined by the Trustees from time to time in accordance with the laws of the State of Maryland. The Trustees shall hold the money or property received for the issuance of Shares for the benefit of the owners of such Shares. Shares shall not be issued until the full amount of the consideration has been received by the Trust. The Trustees may authorize Share dividends or Share splits. All shares issued hereunder shall be, when issued, fully paid, and no assessment shall ever be made upon the Shareholders. Ownership of Shares shall be evidenced by transferable certificates in such form as shall be determined by the Trustees from time to time in accordance with the laws of the State of Maryland. The owners of such Shares, who are the beneficiaries of the Trust, shall be designated as Shareholders. The certificates shall be negotiable and title thereto shall be transferred by assignment or delivery in all respects as a stock certificate of a Maryland corporation.

The Board of Trustees may classify or reclassify any unissued Shares from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the Shares by filing articles supplementary pursuant to the applicable laws of the State of Maryland. The

Board of Trustees is authorized to issue from the authorized but unissued Shares of the Trust preferred Shares in series and to establish from time to time the number of preferred Shares to be included in each such series and to fix the designation and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the Shares of each series. Except for Shares so classified or reclassified, and any preferred Shares issued hereunder, all other Shares shall be designated as common Shares, each of which common Shares shall be equal in all respects to every other common Share. Subject to any preferential rights in favor of any class of preferred Shares, upon liquidation of the Trust, each issued and outstanding common Share shall be entitled to participate pro rata in the assets of the Trust remaining after payment of, or adequate provision for, all known debts and liabilities of the Trust.

Subject to the immediately succeeding paragraph and to the provisions in Section 8 of this Article 2 regarding Excess Shares, the authority of the Board of Trustees with respect to each unissued series shall include, but not be limited to, determination of the following:

(a) The number of Shares constituting that series and the distinctive designation of that series;

(b) The rate of dividend on such series, if any, and whether (and if so, on what terms and conditions) dividends shall be cumulative (and, if so, whether unpaid dividends shall compound or accrue interest) or shall be payable in preference or in any other relation to the dividends payable on any other class or classes of Shares or any other series of the preferred Shares;

(c) Whether that series shall have voting rights in addition to the voting rights provided by law and, if so, the terms and extent of such voting rights;

(d) Whether the Shares shall be issued with the privilege of conversion or exchange and, if so, the terms and conditions of such conversion or exchange (including, without limitation, the price or prices or the rate or rates of conversion or exchange or any terms for adjustment thereof);

(e) Whether the Shares may be redeemed and, if so, the terms and conditions on which they may be redeemed (including, without limitation, the dates upon or after which they may be redeemed and the price or prices at which they may be redeemed, which price or prices may be different in different circumstances or at different redemption dates);

(f) The amounts, if any, payable upon the Shares in the event of voluntary liquidation, dissolution or winding up of the Trust in preference of Shares of any other class or series and whether the

Shares shall be entitled to participate generally in distributions on the common Shares under such circumstances;

(g) The amounts, if any, payable under the Shares thereof in the event of involuntary liquidation, dissolution or winding up of the Trust in preference of Shares of any other class or series and whether the Shares shall be entitled to participate generally in distributions on the common Shares under such circumstances;

(h) Sinking fund provisions, if any, for the redemption or purchase of the Shares (the term "sinking fund" being understood to include any similar fund, however designated); and

(i) Any other relative rights, preferences, limitations and powers of that series.

Notwithstanding anything to the contrary in this Declaration of Trust, no determination shall be made by the Trustees nor shall any transaction be entered into with respect to any Shares or series thereof which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code or which would cause any distribution to constitute a preferential dividend as described in Section 562(c) of the Code.

**Section 2. Sale of Shares.** The Trustees, in their discretion, may from time to time issue or sell or contract to issue or sell, Shares, including Shares held in the treasury, to such party or parties and for money or property actually received, as allowed by the laws of the State of Maryland, at such time or times, and on such terms as the Trustees may deem appropriate. In connection with any issuance of Shares, the Trustees, in their discretion, may provide for the issuance of fractional Shares. The Shareholders shall have no preemptive rights of any kind whatsoever (preemptive rights hereby defined as including, but not limited to, the right to purchase or subscribe for or otherwise acquire any Shares of the Trust of any class, whether now or hereafter authorized, or any securities or obligations convertible into or exchangeable for, or any right, warrant or option to purchase such Shares whether or not such Shares are issued and/or disposed of for cash, property, or other consideration of any kind).

**Section 3. Offering of Shares.** The Trustees are authorized to cause to be made from time to time offerings of the Shares of the Trust in private offerings or to the public at offering prices deemed appropriate by the Trustees. For this purpose, the Trustees are authorized to enter into a contract with an underwriter or placement agent, which shall be granted such commissions for its services as may be agreed upon by the parties.

**Section 4. Treasury Shares.** The Trust may repurchase or otherwise acquire its own Shares at the prevailing market price and

for this purpose the Trust may create and maintain such reserves as are deemed necessary and proper. Shares issued hereunder and purchased or otherwise acquired for the account of the Trust shall not, so long as they belong to the Trust, either receive distributions (except that they shall be entitled to receive distributions payable in Shares of the Trust) or be voted at any meeting of the shareholders. Such Shares may, in the discretion of the Trustees, be held in the treasury and be disposed of by the Trustees at such time or times, to such party or parties, and for such consideration, as the Trustees may deem appropriate.

**Section 5. Transferability of Shares.** Subject to Section 1 of this Article 2, Shares in the Trust shall be transferable in accordance with the procedure prescribed from time to time in the Trust Bylaws. The persons in whose name the Shares are registered on the books of the Trust shall be deemed the absolute owners thereof and, until a transfer is effected on the books of the Trust, the Trustees shall not be affected by any notice, actual or constructive, of any transfer. Any issuance, redemption or transfer of, or restriction on, Trust Shares which would operate to disqualify the Trust as a real estate investment trust for purposes of Federal income tax is null and void *ab initio*.

**Section 6. Effect of Transfer of Shares or Death, Insolvency or Incapacity of Shareholders.** Neither the transfer of Shares nor the death, insolvency or incapacity of any Shareholder shall operate to dissolve or terminate the Trust, nor shall it entitle any transferee, legal representative or other person to a partition of the property of the Trust or to an accounting.

**ARTICLE 3. RESTRICTION ON TRANSFER, ACQUISITION AND REDEMPTION OF SHARES**

**Section 1. Definitions.** For the purposes of this Article 3, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Equity Shares by a Person who would be treated as an owner of such Equity Shares under Section 542(a)(2) of the Code either directly or constructively 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," "Beneficially Own" and "Beneficially Owned" shall have the correlative meanings.

"Beneficiary" shall mean the beneficiary of the Excess Share Trust as determined pursuant to Section 18 of this Article 3.

"Debt" shall mean indebtedness of (a) the Trust or (b) Amfi Residential Properties, L.P., a Delaware limited partnership, or any predecessor thereof.

"Equity Shares" shall mean Shares that are either common Shares or preferred Shares.

"Excess Share Trust" shall mean the trust created pursuant to Section 15 of this Article 3.

"Existing Holder" shall mean (a) any Person who is, or would be upon the exchange of Units, Debt or any other security of the Trust, the Beneficial Owner of common Shares and/or preferred Shares in excess of the Ownership Limit both upon and immediately after the closing of the Initial Public Offering, so long as, but only so long as, such Person Beneficially Owns or would, upon exchange of Units, Debt or any other security of the Trust, Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit and (b) any Person to whom an Existing Holder Transfers, subject to the limitations provided in this Article 3, Beneficial Ownership of Common Shares and/or preferred Shares causing such transfers to Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit.

"Existing Holder Limit" (a) for any Existing Holder who is an Existing Holder by virtue of clause (a) of the definition thereof, shall mean, initially, the percentage of the outstanding Equity Shares Beneficially Owned, or which would be Beneficially Owned upon the exchange of Units, Debt or any other security of the Trust, by such Existing Holder upon and immediately after the date of the closing of the Initial Public Offering, and, after any adjustment pursuant to Section 9 of this Article 3, shall mean such percentage of the outstanding Equity Shares as so adjusted, and (b) for any Existing Holder who becomes an Existing Holder by virtue of clause (b) of the definition thereof, shall mean, initially, the percentage of the outstanding Equity Shares Beneficially Owned by such Existing Holder at the time that such Existing Holder becomes an Existing Holder, but in no event shall such percentage be greater than the Existing Holder Limit for the Existing Holder who Transferred Beneficial Ownership of the common Shares and/or preferred Shares or, in the case of more than one transferor, in no event shall such percentage be greater than the smallest Existing Holder Limit of any transferring Existing Holder, and, after any adjustment pursuant to Section 9 of this Article 3, shall mean such percentage of the outstanding Equity Shares as so adjusted. From the date of the Initial Public Offering and until the Restriction Termination Date, the Trust shall maintain and, upon request, make available to each Existing Holder, a schedule which sets forth the then current Existing Holder Limits for each Existing Holder.

"Initial Public Offering" shall mean 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.

"Market Price" shall mean the last reported sales price reported on the New York Stock Exchange of common Shares or

preferred Shares, as the case may be, on the trading day immediately preceding the relevant date, or if not then traded on the New York Stock Exchange, the last reported sales price of the common Shares or preferred Shares, as the case may be, on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over or through which the common Shares or preferred Shares, as the case may be, may be traded, or if not then traded over or through any exchange or quotation system, then the market price of the common Shares and/or preferred Shares, as the case may be, on the relevant date as determined in good faith by the Board of Trustees.

"Ownership Limit" shall initially mean 5.0%, in number of shares or value, of the outstanding Equity Shares of the Trust, and after any adjustment as set forth in Section 10 of this Article 3, shall mean such greater percentage of the outstanding Equity Shares as so adjusted. The number and value of the outstanding Equity Shares of the Trust shall be determined by the Board of Trustees in good faith, which determination shall be conclusive for all purposes hereof.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), 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; but does not include an underwriter which participated in a public offering of the common Shares and/or preferred Shares for a period of 25 days following the purchase by such underwriter of the common Shares and/or preferred Shares.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer which results in Excess Shares as defined below in Section 3 of this Article 3, the purported beneficial transferee for whom the Purported Record Transferee would have acquired shares of Equity Shares, if such Transfer had been valid under Section 2 of this Article 3.

"Purported Record Transferee" shall mean, with respect to any purported Transfer which results in Excess Shares, the record holder of the Equity Shares if such Transfer had been valid under Section 2 of this Article 3.

"Restriction Termination Date" shall mean the first day after the date of the Initial Public Offering on which the Board of Trustees determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Equity Shares (including



(a) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Shares, (b) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Shares, but excluding the exchange of Units, Debt or any other security of the Trust for Equity Shares and (c) any transfer or other disposition of any interest in Equity Shares as a result of a change in the marital status of the holder thereof, whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise. The terms "transfers" and "Transferred" shall have the correlative meanings.

"Units" shall mean units of limited partnership of Aml Residential Properties, L.P., a Delaware limited partnership.

#### Section 2. Ownership Limitation.

(A) Except as provided in Section 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, no Person (other than an Existing Holder) shall Beneficially Own common Shares and/or preferred Shares in excess of the Ownership Limit and no Existing Holder shall Beneficially Own common Shares and/or preferred Shares in excess of the Existing Holder Limit for such Existing Holder.

(B) Except as provided in Sections 9 and 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in any Person (other than an Existing Holder) Beneficially Owning common Shares and/or preferred Shares in excess of the Ownership Limit shall be void ab initio as to the Transfer of such common Shares and/or preferred Shares which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such common Shares and/or preferred Shares.

(C) Except as provided in Sections 9 and 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in any Existing Holder Beneficially Owning common Shares and/or preferred Shares in excess of the applicable Existing Holder Limit shall be void ab initio as to the Transfer of such common Shares and/or preferred Shares which would be otherwise Beneficially Owned by such Existing Holder in excess of the applicable Existing Holder Limit; and such Existing Holder shall acquire no rights in such common Shares and/or preferred Shares.

(D) Except as provided in Section 12 of this Article 3, from the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer that, if effective, would result in the common Shares and/or preferred Shares being beneficially owned (as provided in Section 856(a) of the Code) by less than 100 Persons (determined without reference to any rules of

attribution) shall be void ab initio as to the Transfer of such common Shares and/or preferred Shares which would be otherwise beneficially owned (as provided in Section 856(a) of the Code) by the transferee; and the intended transferee shall acquire no rights in such common Shares and/or preferred Shares.

(E) From the date of the Initial Public Offering and until the Restriction Termination Date, any Transfer 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 the common Shares and/or preferred 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 common Shares and/or preferred Shares.

(F) Nothing contained in this Article 3 shall impair the settlement of transactions entered into on the facilities of the New York Stock Exchange.

#### **Section 3. Excess Shares.**

(A) If, notwithstanding the other provisions contained in this Article 3, at any time after the date of the Initial Public Offering and until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust (except for a change resulting from the exchange of Units for Equity Shares) such that any Person would Beneficially Own common Shares and/or preferred Shares in excess of the applicable Ownership Limit or Existing Holder Limit, then, except as otherwise provided in Sections 9 and 12 of this Article 3, such common Shares and/or preferred Shares in excess of such Ownership Limit or Existing Holder Limit (rounded up to the nearest whole share) shall constitute "Excess Shares" and be treated as provided in this Article 3. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change in capital structure (except for a change resulting from the exchange of Units for Equity Shares).

(B) If, notwithstanding the other provisions contained in this Article 3, at any time after the date of the Initial Public Offering and until the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Trust (except for a change resulting from the exchange of Units for Equity Shares) which, if effective, would cause the Trust to become "closely held" within the meaning of Section 856(h) of the Code, then the common Shares and/or preferred Shares being Transferred which would cause the Trust to be "closely held" within the meaning of Section 856(h) of the Code (rounded up to the nearest whole share) shall constitute Excess Shares and be treated as provided in this Article 3. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the purported Transfer or change

in capital structure (except for a change resulting from the exchange of Units for Equity Shares).

**Section 4. Prevention of Transfer.** If the Board of Trustees or its designee shall at any time determine in good faith that a Transfer has taken place in violation of Section 2 of this Article 3 or that a Person intends to acquire or has attempted to acquire beneficial ownership (determined without reference to any rules of attribution) or Beneficial Ownership of any Shares of the Trust in violation of Section 2 of this Article 3, the Board of Trustees or its designee shall take such action as it deems advisable to refuse to give effect to or to prevent such transfer, 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; provided, however, that any Transfers or attempted Transfers in violation of Sections 2(B), 2(C), 2(D) and 2(E) of this Article 3 shall automatically result in the designation and treatment described in Section 3 of this Article 3, irrespective of any action (or non-action) by the Board of Trustees.

**Section 5. Notice to Trust.** Any Person who acquires or attempts to acquire Equity Shares in violation of Section 2 of this Article 3, or any Person who is a transferee such that Excess Shares results under Section 3 of this Article 3, shall immediately give written notice or, in the event of a proposed or attempted Transfer, give at least 15 days prior 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 attempted Transfer on the Trust's status as a REIT.

**Section 6. Information for Trust.** From the date of the Initial Public Offering and until the Restriction Termination Date:

(A) every Beneficial Owner of more than 5.0% (or such other percentage, between 1/2 of 1% and 5%, as provided in the income tax regulations promulgated under the Code) of the number or value of outstanding Equity Shares of the Trust shall, within 30 days after January 1 of each year, give written notice to the Trust stating the name and address of such Beneficial Owner, the number of Shares Beneficially Owned, and a description of how such Shares are held. Each such Beneficial Owner shall provide to the Trust such additional information as the Trust may reasonably request in order to determine the effect, if any, of such Beneficial Ownership on the Trust's status as a REIT.

(B) each Person who is a Beneficial Owner of common Shares and/or preferred Shares and each Person (including the Shareholder of record) who is holding common Shares and/or preferred Shares for a Beneficial Owner shall provide to the Trust in writing such information with respect to direct, indirect and constructive ownership of Shares as the Board of Trustees deems

reasonably necessary to comply with the provisions of the Code applicable to a REIT, to determine the Trust's status as a REIT, to comply with the requirements of any taxing authority or governmental agency or to determine any such compliance.

**Section 7. Other Action by Board.** Subject to clause (F) of Section 2 of this Article 3, nothing contained in this Article 3 shall limit the authority of the Board of Trustees 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.

**Section 8. Ambiguities.** In the case of an ambiguity in the application of any of the provisions of this Article 3, including any definition contained in Section 1, the Board of Trustees shall have the power to determine the application of the provisions of this Article 3 with respect to any situation based on the facts known to it.

**Section 9. Modification of Existing Holder Limits.** The Existing Holder Limits may be modified as follows:

(A) Subject to the limitations provided in Section 11 of this Article 3, the Board of Trustees of the Trust may grant options which result in Beneficial Ownership of common Shares and/or preferred Shares by an Existing Holder pursuant to an option plan approved by the Board of Trustees and/or the Shareholders of the Trust. Any such grant shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under Section 11 to permit the Beneficial Ownership of the common Shares and/or preferred Shares issuable upon the exercise of such option.

(B) Subject to the limitations provided in Section 11 of this Article 3, an Existing Holder may elect to participate in a dividend reinvestment plan approved by the Board of Trustees which results in Beneficial Ownership of common Shares and/or preferred Shares by such participating Existing Holder and any comparable reinvestment plan of Anli Residential Properties, L.P., a Delaware limited partnership, wherein those Existing Holders holding Units are entitled to purchase additional Units. Any such participation shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under Section 11 of this Article 3 to permit Beneficial Ownership of the common Shares and/or preferred Shares acquired as a result of such participation.

(C) The Board of Trustees will reduce the Existing Holder Limit for any Existing Holder after any Transfer permitted in this Article 3 by such Existing Holder by the percentage of the outstanding Equity Shares so Transferred or after the lapse (without exercise) of an option described in Section 9(A) of this Article 3 by the percentage of the Equity Shares that the option.

if exercised, would have represented, but in either case no Existing Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

**Section 10. Increase or Decrease in Ownership Limit.** Subject to the limitations provided in Section 11 of this Article 3 and Section 4 of Article 1, the Board of Trustees may from time to time increase or decrease the Ownership Limit; provided, however, that any decrease may only be made prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law, in which case such decrease shall be effective immediately).

**Section 11. Limitations on Changes in Existing Holder and Ownership Limits.**

(A) Neither the Ownership Limit nor any Existing Holder Limit may be increased (nor may any additional Existing Holder Limit be created) if, after giving effect to such increase (or creation), five Beneficial Owners of common Shares (including all of the then Existing Holders) could Beneficially Own, in the aggregate, more than 50.0% in number or value of the outstanding Equity Shares.

(B) Prior to the modification of any Existing Holder Limit or Ownership Limit pursuant to Sections 9 or 10 of this Article 3, the Board of Trustees may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT.

(C) No Existing Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

**Section 12. Waivers by Board.** The Board of Trustees, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence satisfactory to the Board of Trustees and upon at least 15 days written notice from a transferee prior to the proposed transfer which, if consummated, would result in the intended transferee owning shares in excess of Ownership Limit or Existing Holder Limit, as the case may be, and upon such other conditions as the Board of Trustees may direct, may waive the Ownership Limit or the Existing Holder Limit, as the case may be, with respect to such transferee.

**Section 13. Legend.** Each certificate for common Shares and/or preferred Shares shall bear substantially the following legend:

The securities 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. Except as otherwise provided pursuant to the Declaration of Trust of the Trust, no Person may Beneficially Own Shares of common Shares and/or preferred Shares in excess of 5.0% (or such greater percentage as may be determined by the Board of Trustees of the Trust) of the number or value of the outstanding Equity Shares of the Trust (unless such Person is an Existing Holder). Any Person who attempts or proposes to Beneficially Own common Shares and/or preferred Shares in excess of the above limitations must notify the Trust in writing at least 15 days prior to such proposed or attempted Transfer. All capitalized terms in this legend have the meanings defined in the Declaration of Trust of the Trust, a copy of which, including the restrictions on transfer, will be sent without charge to each Shareholder who so requests. If the restrictions on transfer are violated, the securities represented hereby will be designated and treated as Excess Shares which will be held in trust by the Trust.

**Section 14. Severability.** If any provision of this Article 3 or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions shall be affected only to the extent necessary to comply with the determination of such court.

**Section 15. Trust for Excess Shares.** Upon any purported Transfer that results in Excess Shares pursuant to Section 3 of this Article 3, such Excess Shares shall be deemed to have been transferred to the Trust, as trustee of an "Excess Share Trust" for the benefit of such Beneficiary or Beneficiaries to whom an interest in such Excess Shares may later be transferred pursuant to Section 18 of this Article 3. Excess Shares so held in trust shall be issued and outstanding Shares of the Trust. The Purported Record Transferee shall have no rights in such Excess Shares except the right to designate a Beneficiary of an interest in the Excess Share Trust (representing the number of shares of Excess Shares held by the Trust attributable to a purported Transfer that resulted in the Excess Shares) upon the terms specified in Section 18. The Purported Beneficial Transferee shall have no rights in such Excess Shares except as provided in Section 18.

**Section 16. No Distributions for Excess Shares.** Excess Shares shall not be entitled to any distributions (whether as dividends or as distributions upon liquidation, dissolution or winding up). Any dividend or distribution paid prior to the discovery by the Trust that the common Shares and/or preferred

Shares have been Transferred so as to be deemed Excess Shares shall be repaid to the Trust upon demand.

**Section 17. No Voting Rights for Excess Shares.** The holders of Excess Shares shall not be entitled to vote on any matter.

**Section 18. Non-Transferability of Excess Shares.** Excess Shares in the Excess Share Trust shall not be transferable. The Purported Record Transferee may freely designate a Beneficiary of an interest in the Excess Share Trust (representing the number of Excess Shares held by the Trust attributable to a purported transfer that resulted in the Excess Shares), if (a) the Excess Shares held in the Excess Share Trust would not be Excess Shares in the hands of such Beneficiary and (b) the Purported Beneficial Transferee does not receive a price for designating such Beneficiary that reflects a price per share for such Excess Shares that exceeds (i) the price per share such Purported Beneficial Transferee paid for the common Shares and/or preferred Shares, as the case may be, in the purported transfer that resulted in the Excess Shares, or (ii) if the Purported Beneficial Transferee did not give value for such Excess Shares (through a gift, devise or other transaction), a price per share equal to the Market Price for the Excess Shares on the date of the purported transfer that resulted in the Excess Shares. Upon such transfer of an interest in the Excess Share Trust, the corresponding Excess Shares in the Excess Share Trust shall be automatically exchanged for an equal number of common Shares and/or preferred Shares, as applicable, and such common Shares and/or preferred Shares, as applicable, shall be transferred of record to the transferee of the interest in the Excess Share Trust if such common Shares and/or preferred Shares, as applicable, would not be Excess Shares in the hands of such transferee. Prior to any transfer of any interest in the Excess Share Trust, the Purported Record Transferee must give advance notice to the Trust of the intended transfer and the Trust must have waived in writing its purchase rights under Section 19 of this Article 3.

Notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Excess Share Trust that exceeds the amounts allowable under this Section 18 of this Article 3, such Purported Beneficial Transferee shall pay, or cause such Beneficiary to pay, such excess to the Trust.

If any of the foregoing restrictions on transfer of Excess Shares are determined to be void, invalid or unenforceable by any court of competent jurisdiction, then the Purported Record Transferee may be deemed, at the option of the Trust, to have acted as an agent of the Trust in acquiring such Excess Shares and to hold such Excess Shares on behalf of the Trust.

**Section 19. Call by Trust on Excess Shares.** Excess Shares 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 (a) the price per share in the transaction that created such Excess Shares (or, in the case of a devise, gift or other transaction in which no value was given for such Excess Shares, the Market Price at the time of such devise, gift or other transaction) and (b) the Market Price of the common Shares and/or preferred Shares to which such Excess Shares relates 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 (x) the date of the Transfer which resulted in such Excess Shares and (y) the date the Board of Trustees determines in good faith that a Transfer resulting in Excess Shares has occurred, if the Trust does not receive a notice of such Transfer pursuant to Section 5 of this Article 3 but in no event later than a permitted Transfer pursuant to and in compliance with the terms of Section 18 of this Article 3.

#### **ARTICLE 4. SHAREHOLDERS**

**Section 1. Shareholders' Meetings.** There shall be an annual meeting of the Shareholders at such time and place, either within or without the State of Maryland, as the Trustees shall prescribe, at which all Trustees shall be elected or re-elected and any other proper business may be conducted. The annual meeting of Shareholders shall be held upon reasonable notice and within a reasonable period (not less than 30 days) following delivery of the annual report, but in any event such meeting must be held within six months after the end of each full fiscal year. Special meetings of Shareholders may be called by a majority of the Trustees, a majority of the Disinterested Trustees (as defined in Section 1 of Article 5), or by any officer of the Trust, and shall be called upon the written request of Shareholders holding in the aggregate not less than ten percent (10%) of the outstanding Shares of the Trust entitled to vote at such meeting in the manner provided in the Bylaws. Unless requested by the Shareholders entitled to cast a majority of all votes entitled to be cast at such meeting, a special meeting need not be called to consider any matter which is substantially the same as a matter voted on at any special meeting of the Shareholders held during the preceding 12 months. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders for the election of successor Trustees. Written or printed notice stating the place, date and hour of the Shareholders' meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the day of the meeting either personally or by mail, by or at the direction of the Trustees or any officer or person calling the meeting, to each Shareholder of record entitled to vote in such meeting. No other business than that which is



stated in the call for a special meeting shall be considered at such meeting.

A majority of the outstanding Shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at any such meeting. Whenever any action is to be taken by the Shareholders, it shall, except as otherwise authorized by law or this Declaration of Trust or the Bylaws, be authorized by a majority of the votes cast at a meeting of Shareholders by holders of Shares entitled to vote thereon.

**Section 2. Voting.** At each meeting of the Shareholders, each Shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of Shares of the Trust owned by him upon each matter upon which the vote of the Shareholders is taken. In any election in which more than one vacancy for the position of Trustee is to be filled, each Shareholder may vote the number of Shares of the Trust owned by him for each such vacancy to be filled. There shall be no right of cumulative voting. Each outstanding common Share shall be entitled to one vote on each matter submitted to a vote at a meeting of Shareholders, except (a) to the extent that this Declaration of Trust or articles supplementary (to the extent permitted by Maryland law) limit or deny voting rights to the holders of the Shares of any class or series, or (b) as otherwise provided by Maryland law. Preferred Shares shall have such voting rights as the Trustees shall establish in articles supplementary filed with the State Department of Assessments and Taxation of Maryland.

**Section 3. Distributions.** The Trustees may from time to time declare and pay to Shareholders such dividends or distributions in cash, property or other assets of the Trust or in securities of the Trust or from any other source as the Trustees in their discretion shall determine. The 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 (so long as such qualification, in the opinion of the Trustees, is in the best interests of the Shareholders); however, Shareholders shall have no right to any dividend or distribution unless and until declared by the Trustees. The exercise of the powers and rights of the Trustees pursuant to this Section shall be subject to the provisions of any class or series of Shares at the time outstanding. The receipt by any person in whose name any Shares are registered on the records of the Trust or by his duly authorized agent shall be a sufficient discharge for all dividends or distributions payable or deliverable in respect of such Shares and from all liability to see to the application thereof.

**Section 4. Report to Shareholders.** The Trust shall prepare, file and deliver to its Shareholders an annual report concerning its operations for the preceding fiscal year containing financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by

independent certified public accountants. The Trust shall also include in its annual report, separately stated, full disclosure of all material terms, factors, and circumstances surrounding any and all transactions involving the Trust and the Trustees and/or affiliates thereof occurring in the year for which the annual report is made. Disinterested Trustees are specifically charged with a duty to examine and comment in the report on the fairness of such transactions. Annual reports shall be mailed or delivered to each Shareholder as of a record date after the end of such fiscal year and each holder of other publicly held securities of the Trust within 90 days after the end of the fiscal year to which it relates.

**Section 3. Inspection of Trust Books.** The books and records of the Trust shall be open to inspection upon the written demand of a Shareholder at any reasonable time for a purpose reasonably related to his interests as a Shareholder and shall be exhibited at any time when required by the demand at any Shareholders' meeting of 10% of the Shares represented at the meeting. Such inspection by a Shareholder may be made in person or by agent or attorney and the right of inspection includes the right to make extracts at the Shareholder's expense. Demand of inspection other than at a Shareholders' meeting shall be made in writing upon the President, or the Secretary, of the Trust. The duly authorized officials of any state shall have the same right of inspection as a Shareholder.

**Section 4. Nonliability and Indemnification of Shareholders.** The Shareholders shall have no legal title or interest in the property of the Trust and no right to a partition thereof or to an accounting during the continuance of the Trust but only to the rights expressly provided in this Declaration of Trust and in the Bylaws. Shareholders shall not be personally or individually liable in any manner whatsoever for any debt, act, omission or obligation incurred by the Trust or the Trustees and shall be under no obligation to the Trust or its creditors with respect to such Shares other than the obligation to pay to the Trust the full amount of the consideration for which the Shares were issued or to be issued. The Shareholders shall not be liable to assessment and the Trustees shall have no power to bind the Shareholders personally. The Trust shall indemnify and hold each Shareholder harmless from and against all claims and liabilities, whether they proceed to judgment or are settled or otherwise brought to a conclusion, to which such Shareholder may become subject by reason of his being or having been a Shareholder, and shall reimburse such Shareholder for all legal and other expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such Shareholder shall be indemnified or reimbursed if such claim, obligation or liability is finally adjudged by a competent court of law to have arisen out of the Shareholder's bad faith, willful misconduct or gross negligence, and provided further, that such Shareholder must give prompt notice as to any such claims or liabilities or suits and must take such action as will permit the Trust to conduct the defense thereof.

The rights accruing to a Shareholder under this Section 6 shall not exclude any other right to which such Shareholder may be lawfully entitled, nor shall anything herein contained restrict the right of the Trust to indemnify or reimburse a Shareholder in any appropriate situation even though not specifically provided herein; provided, however, that the Trust shall have no liability to reimburse Shareholders for taxes assessed against them by reason of their ownership of Shares, nor for any losses suffered by reason of changes in the market value of securities of the Trust. No amendment to the Declaration of Trust increasing or enlarging the liability of the Shareholders shall be made without the unanimous written consent of all of the Shareholders.

**Section 7. Notice of Nonliability.** The Trustees shall use every reasonable means to assure that all persons having dealings with the Trust shall be informed that the private property of the Shareholders and the Trustees shall not be subject to claims against and obligations of the Trust to any extent whatever. The Trustees shall cause to be inserted in every written agreement, undertaking or obligation made or issued on behalf of the Trust, an appropriate provision to the effect that the Shareholders and the Trustees shall not be personally liable thereunder, and that all parties concerned shall look solely to the Trust property for the satisfaction of any claim thereunder, and appropriate reference shall be made to this Declaration of Trust. The omission of such a provision from any such agreement, undertaking or obligation, or the failure to use any other means of giving such notice, shall not, however, render the Shareholders or the Trustees personally liable.

**Section 8. Business Combinations and Control Shares.** The provisions of Title 3, Subtitle 6 of the Corporations and Associations Article of the Annotated Code of Maryland entitled "Special Voting Requirements" (or any successor statute) shall not apply to any business combinations with Gregory T. Kutz, Baldwin & Lyons, Inc., an Indiana corporation, Aml Realty Co., a Delaware corporation, or any of their respective existing or future affiliates and successors, and Title 3, Subtitle 7 of the Corporations and Associations Article of the Annotated Code of Maryland entitled "Voting Rights of Certain Control Shares" (or any successor statute) shall not apply to Shares owned or acquired by Gregory T. Kutz, Baldwin & Lyons, Inc., an Indiana corporation, Aml Realty Co., a Delaware corporation, or any of their respective existing or future affiliates and successors.

#### ARTICLE 5. THE TRUSTEES

**Section 1. Number, Terms, Qualification, Compensation and Names of Trustees.** There shall be not less than three nor more than fifteen Trustees (referred to as the "Trustees" or the "Board of Trustees"). The number of Trustees shall be determined from time to time by resolution of the Trustees. Except for the initial

terms of Class I and Class II Trustees, as set forth on Schedule A hereto, the term of office of each Trustee shall be three years and until the election and qualification of his successor. Trustees may succeed themselves in office. Trustees shall be individuals who are at least 21 years old and not under legal disability. No person shall qualify as a Trustee until he shall have agreed in writing to be bound by this Declaration of Trust. No Trustee shall be required to give bond, surety or securities to secure the performance of his duties or obligations hereunder. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided in Section 3 of this Article 5, the Trustees or Trustee continuing in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration of Trust. The Trustees shall receive such fees for their services and expenses as they shall deem reasonable and proper. Immediately after the closing of the Initial Public Offering (as such term is defined in Article 3), the Board of Trustees shall include a majority of Trustees ("Disinterested Trustees") who are not affiliated with Hall Realty Co., a Delaware corporation, and its affiliates and successors.

The Trustees shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of Trustees constituting the entire Board of Trustees. The initial Class I Trustees shall be elected for a one-year term, the initial Class II Trustees for a two-year term and the initial Class III Trustees for a three-year term. At each succeeding annual meeting of Shareholders, beginning with the annual meeting in 1995, successors to the class of Trustees whose term expires at that annual meeting shall be elected for a three-year term. If the authorized number of Trustees is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Trustees in each class as nearly equal as possible, and any additional Trustee of any class elected to fill a vacancy resulting from an increase in such class, subject to Section 3 of this Article 5, shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of Trustees shorten the term of any incumbent Trustee. A Trustee shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation or removal from office. A majority of the entire Board of Trustees shall constitute a quorum for the transaction of business, provided that, if less than a majority of such Trustees are present at said meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that, if, pursuant to this Declaration of Trust or the Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum must also include a majority of such group. The name, address and class of each of the initial Trustees (and all subsequent Trustees) shall

be set forth on Schedule A attached hereto as it may be revised from time to time.

**Section 2. Resignation, Removal and Death.** A Trustee may resign at any time by giving written notice thereof in recordable form to the other Trustees at the principal office of the Trust. The acceptance of a resignation shall not be necessary to make it effective. A Trustee may be removed only for cause and only by the vote of the holders of a majority of the outstanding Shares (which action shall be taken only by vote at a meeting (including a special meeting called for such purpose) and not by authorization without a meeting, anything in Section 5 of this Article 5, to the contrary notwithstanding). Upon the resignation or removal of any Trustee, he shall execute and deliver such documents and render such accounting as the remaining Trustees shall require and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his status as a Trustee shall immediately terminate at such incapacity or death, and his legal representatives shall perform the acts set forth in the preceding sentence.

**Section 3. Vacancies.** The resignation, removal or death of any or all of the Trustees shall not terminate the Trust or affect its continuity. During a vacancy, the remaining Trustee or Trustees may exercise the powers of the Trustees hereunder. Whenever there shall be a vacancy or vacancies among the Trustees, such vacancy or vacancies shall be filled in the manner prescribed in the second paragraph of this Section 3 of Article 5.

Any vacancy on the Board of Trustees for any cause other than an increase in the number of Trustees shall be filled by a majority of the remaining Trustees, even if less than a quorum, or by a sole remaining Trustee. Any vacancy created by an increase in the number of Trustees shall be filled by a majority of the entire Board of Trustees. Disinterested Trustees shall nominate replacements for vacancies amongst the Disinterested Trustees' positions. In the event that, after the closing of the Initial Public Offering (as such term is defined in Article 3), a majority of the Board of Trustees are not Disinterested Trustees by reason of the resignation or removal of one or more Disinterested Trustees or otherwise, the remaining Disinterested Trustees (or, if there are no Disinterested Trustees, the remaining members of the Board of Trustees) shall promptly appoint that number of Disinterested Trustees necessary to cause the Board of Trustees to include a majority of Disinterested Trustees. Any Trustee elected to fill a vacancy as provided herein shall hold office until the next annual meeting of Shareholders. A Trustee elected at an annual meeting to fill a vacancy shall have the same remaining term as that of his or her predecessor.

**Section 4. Successor Trustees.** The right, title and interest of the Trustees in and to the Trust property shall vest automatically in all persons who may hereafter become Trustees upon their due election and qualification without any further act, and

thereupon they shall have the same rights, privileges, powers, duties and immunities as though originally named as Trustees in this Declaration of Trust. Appropriate written evidence of the election and qualification of successor Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable. Upon the resignation, removal or death of a Trustee, he (and in the event of his death, his estate) shall automatically cease to have any right, title or interest in or to any of the Trust property, and the right, title and interest in such Trustee in and to the Trust property shall vest automatically in the remaining Trustees without any further act.

**Section 5. Actions by and Meetings of Trustees.** The Trustees may act with or without a meeting. Except as otherwise provided herein, any action of a majority of Trustees present at a duly convened meeting of the Trustees shall be conclusive and binding as an action of the Trustees. A quorum for meetings of the Trustees shall be a majority of all of the Trustees in office, provided that, if less than a majority of such Trustees are present at said meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that, if, pursuant to this Declaration of Trust or the Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum must also include a majority of such group. Action may be taken without a meeting only by unanimous consent of all of the Trustees in office and shall be evidenced by a written certificate or instrument signed by all of the Trustees in office. Meetings may otherwise be held and conducted in the manner prescribed by the Bylaws of the Trust. Any action taken by Trustees in accordance with the provisions of this Section 5 of Article 5 shall be conclusive and binding upon the Trust, upon the Trustees, and upon the Shareholders, as an action of all the Trustees, collectively, and of the Trust. Any deed, mortgage, evidence of indebtedness or other instrument, agreement or document of any character, whether similar or dissimilar, executed by one or more of the Trustees, when authorized at a meeting or by written authorization without a meeting in accordance with the provisions of this Section 5 of Article 5, shall be valid and binding upon the Trustees, the Trust and the Shareholders.

**Section 6. Title and Authority of Trustees.** The Trustees shall hold the legal title to all property belonging to the Trust. They shall have absolute and exclusive control, management and disposition thereof, the absolute and exclusive control over the management and conduct of the business affairs of the Trust, and the continuing exclusive authority to make all management decisions for the Trust, free from any power or control on the part of the Shareholders, in the same manner as if they were the absolute owners thereof, subject only to the express limitations in this Declaration of Trust.

**Section 7. Powers of Trustees.** The Trustees shall have all the powers necessary, convenient or appropriate to effectuate the purposes of the Trust and may take any action which they deem necessary or desirable and proper to carry out such purposes. Any determination of the purposes of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration of Trust, the presumption shall be in favor of the grant of powers to the Trustees.

Subject to the limitations contained in Article 1 hereof, the Trustees' powers shall include the following:

(1) To purchase, acquire through the issuance of Shares in the Trust, obligations of the Trust or otherwise, and to mortgage, sell, acquire on lease, hold, manage, improve, lease to others, option, exchange, release and partition real estate interests of every nature, including freehold, leasehold, mortgage, ground rent and other interests therein, and to erect, construct, alter, repair, demolish or otherwise change buildings and structures of every nature.

(2) To purchase, acquire through the issuance of Shares in the Trust, obligations of the Trust or otherwise, option, sell and exchange stocks, bonds, notes, certificates of indebtedness and securities of every nature.

(3) To purchase, acquire through the issuance of Shares in the Trust, obligations of the Trust or otherwise, mortgage, sell, acquire on lease, hold, manage, improve, lease to others, option and exchange personal property of every nature.

(4) To hold legal title to property of the Trust in the name of the Trust, or in the name of one or more of the Trustees for the Trust, or of any other person as nominee for the Trust, without disclosure of the interest of the Trust therein.

(5) To borrow money for the purposes of the Trust and to give notes or other negotiable or nonnegotiable instruments of the Trust therefor; to enter into other obligations or guarantee the obligations of others on behalf of and for the purposes of the Trust; and to mortgage or pledge or cause to be mortgaged or pledged real and personal property of the Trust to secure such notes, debentures, bonds, instruments or other obligations.

(6) To lend money on behalf of the Trust and to invest the funds of the Trust.

(7) To create reserve funds for such purposes as they deem advisable.

(8) To deposit funds of the Trust in banks and other depositories without regard to whether such accounts will draw interest.

(9) To pay taxes and assessments imposed upon or chargeable against the Trust or the Trustees by virtue of or arising out of the existence, property, business or activities of the Trust.

(10) To purchase, issue, sell or exchange Shares of the Trust as provided in Article 2 hereof.

(11) To exercise with respect to property of the Trust, all options, privileges and rights, whether to vote, assent, subscribe or convert, or of any other nature; to grant proxies; and to participate in and accept securities issued under any voting trust agreement.

(12) To participate in any reorganization, readjustment, consolidation, merger, dissolution, sale or purchase of assets, lease, or similar proceedings of any corporation, partnership or other organization in which the Trust shall have an interest and in connection therewith to delegate discretionary powers to any reorganization, protective or similar committee and to pay assessments and other expenses in connection therewith.

(13) To engage or employ agents, representatives and employees of any nature, or independent contractors, including, without limiting the generality of the foregoing, Transfer Agents for the transfer of Shares in the Trust, Registrars, underwriters for the sale of Shares in the Trust, independent certified public accountants, attorneys at law, appraisers, and real estate agents and brokers; and to delegate to one or more Trustees, agents, representatives, employees, independent contractors or other persons such powers and duties as the Trustees deem appropriate.

(14) To determine conclusively the allocation between capital and income of the receipts, holdings, expenses and disbursements of the Trust, regardless of the allocation which might be considered appropriate in the absence of this provision.

(15) To determine conclusively the value from time to time and to revalue the real estate, securities and other property of the Trust by means of independent appraisals.

(16) To compromise or settle claims, questions, disputes and controversies by, against or affecting the Trust.

(17) To solicit proxies of the Shareholders.



(18) To adopt a fiscal year for the Trust and to change such fiscal year.

(19) To adopt and use a seal.

(20) To merge the Trust with or into any other trust or corporation in accordance with the laws of the State of Maryland.

(21) To deal with the Trust property in every way, including joint ventures, partnerships and any other combinations or associations, that it would be lawful for an individual to deal with the same, whether similar to or different from the ways herein and hereinabove specified.

(22) To determine whether or not, at any time or from time to time, to attempt to cause the Trust to qualify for taxation as a REIT.

(23) To make, adopt, amend or repeal Bylaws containing provisions relating to the business of the Trust, the conduct of its affairs, its rights or powers and the rights or powers of its Shareholders, Trustees or officers not inconsistent with law or this Declaration of Trust.

(24) To do all such other acts and things as are incident to the foregoing and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes of the Trust, and to carry out the provisions of this Declaration of Trust.

**Section 8. Trustees' Right to Own Shares in Trust.** A Trustee may acquire, hold and dispose of Shares in the Trust for his individual account and may exercise all rights of a Shareholder to the same extent and in the same manner as if he were not a Trustee. After the commencement of any offering of the Shares of the Trust to the public (whether conducted as a publicly registered offering or not), the Trustees may purchase Shares only at the current offering price then prevailing in connection with such offering to the public, less all or any part of the selling or other commission as may be agreed with any underwriter or selling agent.

**Section 9. Related Party Transactions.** Without limiting any other procedures available by law or otherwise to the Trust, the Board of Trustees may authorize any agreement or other transaction with any person, corporation, association, company, trust, partnership (limited or general) or other organization, although one or more of the Trustees or officers of the Trust may be a party to any such agreement or an officer, director, shareholder, partner, owner of an interest in or member of such other party, and no such agreement or transaction shall be invalidated or rendered void or voidable solely by reason of the existence of any such relationship if (a) the existence of such relationship is disclosed

or known to the Board of Trustees and the contract or transaction is approved, authorized or ratified by the affirmative vote of a majority of the Trustees who do not have a personal interest in such contract or transaction, even if they constitute less than a quorum of the Board of Trustees, or the existence of such relationship is disclosed or known to the Shareholders and the contract or transaction is approved, authorized or ratified by the affirmative vote of a majority of the votes cast by disinterested Shareholders, or (b) the contract or transaction is fair and reasonable to the Trust; provided, however, that the Trust shall not enter into an agreement or transaction with Asil Realty Co., a Delaware corporation, or any of its affiliates, after the closing of the Initial Public Offering (as such term is defined in Article 3) without the approval of a majority of the Disinterested Trustees. Notwithstanding anything to the contrary contained herein, unless otherwise provided in any agreement with the Trust, no Disinterested Trustee or any affiliate of such Trustee shall have any obligation to present to the Trust any opportunity, whether or not the Trust could reasonably be expected to have an interest in developing such opportunity, and any such Trustee or any affiliate of such Trustee, shall be free to pursue such opportunity on behalf of such Trustee or affiliates.

**Section 10. Non-liability of Trustees.** The Trustees shall have no rights of indemnity or exoneration against any Shareholder individually with respect to any liability or obligation of the Trust; but, as hereinafter provided, the Trustees may satisfy any claims they have against the Trust out of the Trust assets. No Trustee shall be liable for any act or neglect of any person or firm with respect to the performance of any duty, service or act which has been delegated to such person or firm by the Trustees pursuant to authority contained in this Declaration of Trust; the Trustees shall, however, use good faith in selecting and appointing agents or representatives to whom authority to act on behalf of the Trust is delegated. No Trustee shall be individually liable for any obligation or liability incurred by or on behalf of the Trust or by the Trustees for the benefit and on behalf of the Trust.

**Section 11. Indemnification of Trustees.** To the extent permitted by Maryland law, the Trust shall indemnify and hold harmless each Trustee from and against all claims and liabilities, whether they proceed to judgment or are settled, to which such Trustee may become subject by reason of his being or having been a Trustee, or by reason of any action alleged to have been taken or omitted by him as Trustee, and shall reimburse him for all legal and other expenses reasonably incurred by him in connection with any such claim or liability, including any claim or liability arising under the provisions of federal or state securities laws; provided, however, that no Trustee shall be entitled to indemnification under the foregoing provisions in relation to any matter if it shall have been adjudicated that his action or omission was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and

deliberate dishonesty or the Trustee actually received an improper personal benefit or, in the case of a criminal proceeding, the Trustee had reasonable cause to believe that the act or omission was unlawful. The foregoing indemnification shall include any action alleged to have been taken or omitted by such individual who, while a Trustee and at the request of the Trust, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee of such corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The Trust, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses incurred by any Trustee in connection with any threatened, pending or completed action, suit or proceeding to which such Trustee is, was or at any time becomes a party or is threatened to be made a party, as a result, directly or indirectly, of serving at any time as a Trustee, provided that if such payment or reimbursement is to be made prior to the final disposition of any proceeding to which a Trustee is a party, no payment or reimbursement shall be made by the Trust unless and until the Trust shall receive a written affirmation from such Trustee of his good faith belief that the standard for indemnification of a Trustee under Maryland law has been met and a written undertaking by such Trustee to repay such amounts paid or reimbursed by the Trust if it shall ultimately be determined that the standard for indemnification has not been met. The rights accruing to a Trustee under these provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything herein contained restrict the right of the Trust to indemnify or reimburse such Trustee in any proper cause even though not specifically provided for herein.

**Section 12. Persons Dealing with Trustees.** No corporation, person, transfer agent or other party shall be required to examine or investigate the trusts, terms or conditions contained in this Declaration of Trust or otherwise applicable to the Trust, and every such corporation, person, transfer agent or other party may deal with Trust property and assets as if the Trustees were the sole and exclusive owners thereof free of all trusts; and no such corporation, person, transfer agent or other party dealing with the Trustees or with the Trust or Trust property and assets shall be required to see to the application of any money or property paid or delivered to any Trustee, or nominee, agent or representative of the Trust or the Trustees. A certificate executed by or on behalf of the Trustees or by any other duly authorized representative of the Trust, delivered to any person or party dealing with the Trust or Trust property and assets, or, if relating to real property, recorded in the deed records for the county or district in which such real property lies, certifying as to the identity and authority of the Trustees, agents, or representatives of the Trust for the time being, or as to any action of the Trustees or of the Trust, or of the Shareholders, or as to any other fact affecting or relating to the Trust or this Declaration of Trust, may be treated

as conclusive evidence thereof by all persons dealing with the Trust. No provision of this Declaration of Trust shall diminish or affect the obligation of the Trustees and every other representative or agent of the Trust to deal fairly and act in good faith with respect to the Trust and the Shareholders insofar as the relationship and accounting among the parties to the Trust is concerned; but no third party dealing with the Trust or with any trustee, agent or representative of the Trust shall be obliged or required to inquire into, investigate or be responsible for the discharge and performance of such fiduciary obligation.

**Section 13. Administrative Powers of Trustees.** The Trustees shall have power to pay the expenses of organization and administration of the Trust, including all legal and other expenses in connection with the preparation and carrying out of the plan for the formation of the Trust, the acquisition of properties thereunder and the issuance of Shares thereunder; and to employ such officers, experts, counsel, managers, salesmen, agents, workmen, clerks and other persons as they think best.

**Section 14. Election of Officers.** The Trustees may annually elect a Chairman of the Board (or more than one Co-Chairman of the Board), a Vice Chairman of the Board (or more than one Vice Chairman of the Board) and a President (chief executive officer) of the Trust. The Trustees may also annually elect one or more Vice Presidents, a Chief Operating Officer, a Chief Financial Officer, a Secretary, a Treasurer, Assistant Secretaries, Assistant Treasurers, and such other officers as the Trustees shall deem proper. Except as required by law, the officers of the Trust need not be Trustees. All officers and agents of the Trust shall have such authority and perform such duties in the management of the Trust as may be provided in the Bylaws or as may be determined by the Trustees not inconsistent with the Bylaws. Any officer or agent elected or appointed by the Trustees may be removed by the Trustees whenever in their judgment the best interest of the Trust will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of any officer or agent shall not of itself create contract rights. The Trustees shall fix the compensation of all officers. Each such officer shall be entitled to indemnification by the Trust on the same basis provided to Trustees hereunder.

**Section 15. Committees of Trustees, Delegation of Powers and Duties to Committees, Trustees, Officers and Employees.** The Trustees may, in their discretion, by resolution passed by a majority of the Trustees, designate from among their members one or more committees which shall consist of one or more Trustees. The Trustees may designate one or more Trustees as alternate members of any such committee, who may replace any absent or disqualified member at any meeting of the committee. Such committees shall have and may exercise such powers as shall be conferred or authorized by the resolution appointing them. A majority of any such committee may determine its action and fix the time and place of its

meetings, unless the Trustees shall otherwise provide. The Trustees, by resolution passed by a majority of the Trustees, may at any time change the membership of any such committee, fill vacancies in it, or dissolve it. The Bylaws, or a majority of the Trustees, may authorize any one or more of the Trustees, or any one or more of the officers or employees or agents of the Trust, on behalf of the Trust, to exercise and perform any and all powers granted to the Trustees, and to discharge any and all duties imposed upon the Trustees, and to do any acts and to execute any instruments deemed by such person or persons to be necessary or appropriate to exercise such power or to discharge such duties, and to exercise his own sound judgment in so doing. The authority to act upon any transaction which under the terms of this Declaration of Trust requires the vote of a majority of the Disinterested Trustees may not be delegated to any committee.

Section 16. Proposal of Amendments. Notwithstanding anything in this Declaration of Trust to the contrary, no amendment to Sections 1, 3, 9 or 16 of this Article 5 or Section 1 of Article 7 shall be deemed to have been proposed by the Board of Trustees for approval by the Shareholders unless and until such proposed amendment has been approved by a majority of the Disinterested Trustees. Nothing contained in this Section 16 of Article 5 shall be construed as a condition to or a limitation on the right of the Shareholders to amend any Section of this Declaration of Trust by action taken independent of the Board of Trustees in accordance with Title 8.

#### ARTICLE 6. DURATION AND TERMINATION OF TRUST

Section 1. Termination of Trust. The Trust may be terminated at any time by a vote or written consent of the holders of a majority of the outstanding Shares of all classes.

In connection with any termination of the Trust, the Trustees, upon receipt of such releases or indemnity as they deem necessary for their protection, may

(1) Sell and convert into cash the property of the Trust and distribute the net proceeds among the Shareholders ratably; or

(2) Convey the property of the Trust to one or more persons, entities, trusts or corporations for consideration consisting in whole or in part of cash, shares of stock, or other property of any kind, and distribute the net proceeds among the Shareholders ratably, at valuations fixed by the Trustees, in cash or in kind, or partly in cash and partly in kind; provided that the proposal to proceed as described in this clause (2) shall have been set forth in the written

approval of the Shareholders holding two-thirds of the Shares issued and outstanding.

Upon termination of the Trust and distribution to the Shareholders as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Shareholders shall cease and be canceled and discharged.

**Section 2. Organization as a Corporation.** Whenever the Trustees deem it for the best interests of the Shareholders that the Trust be organized as a corporation, the Trustees shall have full power to organize such corporation under the laws of such state as they may consider appropriate, in the place and stead of this Trust without procuring the consent of any of the Shareholders, in which event the capital stock of such corporation shall be and remain the same as fixed under this Declaration of Trust and the Shareholders shall receive and accept stock in such corporation on the same basis as they hold Shares in this Trust.

**Section 3. Merger.** This Trust may merge into a Maryland or foreign business trust or into a Maryland or foreign corporation having capital stock or one or more such business trusts or such corporations may merge into it in accordance with the provisions of Maryland law.

**Section 4. Duration of Trust.** Subject to possible earlier termination in accordance with the provisions of Article 6 hereof, the duration of the Trust shall be perpetual or, in any jurisdiction in which such duration is not permitted, then the Trust shall terminate on the latest date permitted by the law of such jurisdiction.

#### ARTICLE 7. AMENDMENTS

**Section 1. Amendment by Shareholders.** Except as provided in Section 2 of this Article 7, this Declaration of Trust may be amended only by the affirmative vote or written consent of the holders of at least a majority of the Shares entitled to vote thereon.

**Section 2. Amendment by Trustees.** The Trustees by a two-thirds vote may amend provisions of this Declaration of Trust from time to time to qualify as a real estate investment trust under the Code or under Title 8.

**Section 3. Requirements of Maryland Law.** Notwithstanding anything contained in this Declaration of Trust to the contrary, this Declaration of Trust may not be amended except as provided in section 8-501 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended.

#### ARTICLE 8. MISCELLANEOUS

**Section 1. Construction.** This Declaration of Trust shall be construed in such a manner as to give effect to the intent and purposes of the Trust and this Declaration of Trust. If any provisions hereof appear to be in conflict, more specific provisions shall control over general provisions. This Declaration of Trust shall govern all of the relationships among the Trustees and Shareholders of the Trust; and each provision hereof shall be effective for all purposes and to all persons dealing with the Trust to the fullest extent possible under applicable law in each jurisdiction in which the Trust shall engage in business. In defining or interpreting the powers and duties of the Trust and the Trustees and officers, reference may be made to the extent appropriate and not inconsistent with the Code of Title 8, to Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland. In furtherance and not in limitation of the foregoing, in accordance with the provisions of Title 3, Subtitles 6 and 7, of the Corporations and Associations Article of the Annotated Code of Maryland, the Trust shall be included within the definition of "corporation" for purposes of such provision.

**Section 2. Headings for Reference Only.** Headings preceding the text, articles and sections hereof have been inserted solely for convenience and reference, and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust.

**Section 3. Filing and Recording.** This Declaration of Trust and any amendment hereto shall be filed for record with the State Department of Assessments and Taxation of Maryland and may also be filed or recorded in such other places as the Trustees deem appropriate, but failure to file for record this Declaration of Trust or any amendment hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of this Declaration of Trust or any amendment hereto. An amended Declaration of Trust shall, upon filing, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments thereto.

**Section 4. Applicable Law.** This Declaration of Trust has been executed with reference to and its construction and interpretation shall be governed by the laws of Maryland, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of Maryland.

**Section 5. Certifications.** Any certificates signed by a person who, according to the records of the State Department of Assessments and Taxation of Maryland appears to be a Trustee hereunder, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trust or the

Trustees or any one or more of them, and the successors or assigns of such persons, which certificate may certify to any matter relating to the affairs of the Trust, including but not limited to any of the following: A vacancy among the Trustees; the number and identity of Trustees; this Declaration of Trust and any Amendments thereto, or any restated Declaration of Trust and any Amendments thereto, or that there are no Amendments to the Declaration of Trust or any restated Declaration of Trust; a copy of the Bylaws of the Trust or any Amendment thereto; the due authorization of the execution of any instrument or writing; the vote at any meeting of Trustees or a committee thereof or Shareholders; the fact that the number of Trustees present at any meeting or executing any written instrument satisfies the requirements of the Declaration of Trust; a copy of any Bylaw adopted by the Shareholders or the identity of any officer elected by the Trustees; or the existence or nonexistence of any fact or facts which in any manner relate to the affairs of the Trust. If the Declaration of Trust or any restated Declaration of Trust is filed or recorded in any recording office other than the State Department of Assessments and Taxation of Maryland, anyone dealing with real estate so located that instruments affecting the same should be filed or recorded in such recording office may rely conclusively upon any certificate of the kind described above which is signed by a person who according to the records of such recording office appears to be a Trustee hereunder. In addition, the Secretary or any Assistant Secretary of the Trust or any other officer of the Trust designated by the Bylaws or by action of the Trustees may sign any certificate of the kind described in this Section 5 of Article 3, and such certificate shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trust, and the successors and assigns of such person.

**Section 6. Severability.** If any provision of the Declaration of Trust shall be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of the Declaration of Trust, and the Declaration of Trust shall be carried out, if possible, as if such invalid or unenforceable provision were not contained therein.

**Section 7. Bylaws.** The Bylaws of the Trust may be altered, amended or repealed, and new Bylaws may be adopted, at any meeting of the Board of Trustees of the Trust by a majority vote of the Trustees, subject to repeal or change by action of the Shareholders of the Trust entitled to vote thereon.

**ARTICLE 4. LIMITATION OF LIABILITY FOR TRUSTEES  
AND OFFICERS; INDEMNIFICATION**

**Section 1. Liability of Trustee or Officer.** A Trustee or officer of the Trust shall not be liable for monetary damages to the Trust or its Shareholders for any act or omission in the performance of his duties unless:



(1) The Trustee or officer actually received an improper benefit in money, property or services (in which case, such liability shall be for the amount of the benefit in money, property or services actually received); or

(2) 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 being adjudicated.

**Section 2. Conflicts.** In the event that any provision or portion of a provision of this Article 9 is determined to be in conflict with any applicable statute, such provision or portion thereof shall be inapplicable to the extent of such conflict.

**Section 3. Severability.** In the event that any provision or portion of a provision of this Article 9 is determined to be invalid, void, illegal or unenforceable, the remainder of the provisions of this Article 9 shall continue to be valid and enforceable and shall in no way be affected, impaired or invalidated.

**Section 4. No Impairment.** Nothing in this Article 9 shall be construed to diminish, limit or impair any rights or defenses afforded to officers or Trustees by common law, statute, other provisions of this Declaration of Trust, the Bylaws of the Trust or otherwise, and the provisions of this Article 9 shall be deemed to be cumulative thereto.

**Section 5. References.** References in this Article 9 to Trustees or officers shall be deemed to refer to any person who is or was a Trustee or officer of the Trust and any person who, while a Trustee or officer of the Trust, is or was serving at the request of the Trust as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

**Section 6. Indemnification and Insurance.** Notwithstanding any other provisions of this Declaration of Trust, the Trust, for the purpose of providing indemnification for its Trustees and officers, shall have the authority, without specific Shareholder approval, to enter into insurance or other arrangements to indemnify all Trustees and officers of the Trust against any and all liabilities and expenses incurred by them by reason of their being Trustees or officers of the Trust, whether or not the Trust would otherwise have the power under this Declaration of Trust or under Maryland law to indemnify such persons against such liability. Without limiting the power of the Trust to procure or maintain any kind of insurance or other arrangement, the Trust may, for the benefit of persons indemnified by it, (i) create a trust fund, (ii) establish any form of self-insurance, (iii) secure its indemnity obligation by grant of any security interest or other lien on the assets of the Trust, or (iv) establish a letter of

credit, guaranty or surety arrangement. Any such insurance or other arrangement may be procured, maintained or established within the Trust or with any insurer or other person deemed appropriate by the Board of Trustees regardless of whether all or part of the stock or other securities thereof are owned in whole or in part by the Trust. In the absence of fraud, the judgment of the Board of Trustees as to the terms and conditions of insurance or other arrangement and the identity of the insurer or other person participating in any arrangement shall be conclusive, and such insurance or other arrangement shall not be subject to voidability, nor subject to the Trustees' approval, such insurance or other arrangement to liability, on any ground, regardless of whether Trustees participating and approving such insurance or other arrangement shall be beneficiaries thereof.

IN WITNESS WHEREOF, the undersigned, constituting all of the present Trustees of Amli Residential Properties Trust, have each executed this Declaration of Trust as Trustees.

Gregory T. Metz  
Gregory T. Metz

John E. Allen  
John E. Allen

Allan J. Sweet  
Allan J. Sweet

IN WITNESS WHEREOF, the undersigned, as the sole shareholder of Amli Residential Properties Trust, consents to the adoption of this Amended and Restated Declaration of Trust as an Amendment and restatement in its entirety of the Declaration of Trust dated December 15, 1993.

ANLI REALTY CO.

By: John E. Allen  
John E. Allen  
Title: President

STATE OF ILLINOIS )  
COUNTY OF COOK )

On the 31 day of January, 1994, before me, the undersigned, a notary public in and for Cook County, Illinois, personally appeared Gregory T. Mutz known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



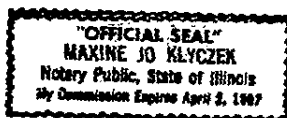
Maxine Jo Klyczek  
Notary Public In and For The  
State of Illinois

My commission expires: 4-2-97

STATE OF ILLINOIS )  
COUNTY OF COOK )

On the 31 day of January, 1994, before me, the undersigned, a notary public in and for Cook County, Illinois, personally appeared John E. Allen known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



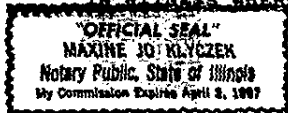
Maxine Jo Klyczek  
Notary Public In and For The  
State of Illinois


My commission expires: 4-2-97

STATE OF ILLINOIS )  
COUNTY OF COOK )

On the 31 day of January, 1994, before me, the undersigned, a notary public in and for Cook County, Illinois, personally appeared Allan J. Sweet known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



  
Notary Public In and For The  
State of Illinois

My commission expires: 4-2-97

**SCHEDULE A**

**TRUSTEES**

<b>Name</b>	<b>Class</b>	<b>Address</b>
Gregory T. Muts	II	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606
John E. Allen	I	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606
Allan J. Sweet	III	125 South Wacker Drive Suite 3100 Chicago, Illinois 60606