



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

February 16, 1995

ANDREW KEAN, ESQ.
120 WEST GRAND AVE.
ESCONDIDO, CA 92025-9881

SUBJECT: WINDSOR REAL ESTATE INVESTMENT TRUST 8
Ref. Number: W95000003574

We have received your document for WINDSOR REAL ESTATE INVESTMENT TRUST 8 and your check(s) totaling \$350.00. However, the document has not been filed and is being retained in this office for the following:

Each Declaration of Trust must be in compliance with chapter 609, Florida Statutes. The Declaration of Trust must be sworn to by the Chairman of the Board as being a true and correct copy and must be notarized.

The Declaration of Trust certification must be notarized.

According to section 607.0202(1)(b) or 617.0202(1)(b), Florida Statutes, you must list the corporation's principal office, and if different, a mailing address in the document. If the principal address and the registered office address are the same, please indicate so in your document.

The designation of the registered office and the registered agent, both at the same Florida street address, must be contained within the document pursuant to Florida Statutes. The registered agent must sign accepting the designation as required by Florida Statutes.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (904) 487-6931.

Steven Godfrey
Corporate Specialist

Letter Number: 895A00007025

CERTIFICATE OF DECLARATION OF TRUST OF WINDSOR REAL ESTATE INVESTMENT TRUST 8

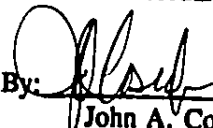
I, John A. Coseo, Jr., certify:

1. I am the Chairman of the Board of Windsor Real Estate Investment Trust 8, an unincorporated California business trust.
2. Attached hereto is a true and correct copy of Windsor Real Estate Investment Trust 8's Declaration of Trust.
3. The name and address of the Trust's statutory registered agent in Florida is:

David S. Bernstein, Esq.
150 Second Avenue North, 17 Floor
St. Petersburg, FL 33701
4. The address of the Trust's principal place of business in Florida is 03896 Picciola Road, Fruitland, Florida.

I declares under penalty of perjury under the laws of the states of California and Florida that the statements contained in the foregoing Certificate are, by my own personal knowledge, true and correct.

Dated: 24 February 1995 in Escondido, California.


By: 
John A. Coseo, Jr.
Chairman of the Board of
Windsor Real Estate Investment Trust 8

FILED
CLERK OF COURT
JAN 16 1995
ST. PETERSBURG, FL 33701

WRITTEN ACCEPTANCE BY REGISTERED AGENT

I, Davis S. Bernstein, am familiar with and hereby accept the duties and responsibilities as registered agent in the State of Florida for Windsor Real Estate Investment Trust 8, an unincorporated California business trust.

Dated: 3/3, 1995

By: 
David S. Bernstein

**CERTIFICATE OF DECLARATION OF TRUST OF
WINDSOR REAL ESTATE INVESTMENT TRUST 8**

The undersigned certifies and declares that:

1. I am the Chairman of the Board of Windsor Real Estate Investment Trust 8, an unincorporated California business trust.
2. Attached hereto is a true and correct copy of Windsor Real Estate Investment Trust 8's Declaration of Trust.

I declares under penalty of perjury under the laws of the states of California and Florida that the statements contained in the foregoing Certificate are, by my own personal knowledge, true and correct.

Executed February 1, 1995 in Escondido, California.

By: 

John A. Coseo, Jr.
Chairman of the Board of
Windsor Real Estate Investment Trust 8

FILED
CLERK OF STATE
55 MAR 14 AM 8:49

State of California

County of San Diego

On 2/24/95 before me, Sally Barnhard, Notary Public
(DATE) (NAME, TITLE OF OFFICER - I.E., "JANE DOE, NOTARY PUBLIC")

personally appeared John A. Casco Jr
(NAME(S) OF SIGNER(S))

CAPACITY CLAIMED BY SIGNER(S)

- ☐ INDIVIDUAL(S)
☐ CORPORATE OFFICER(S) (TITLE(S))
☐ PARTNERS
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



OFFICIAL NOTARY SEAL
SALLY BARNHARD
Notary Public - California
SAN DIEGO COUNTY
My Comm. Expires MAY 12 1995

(SEAL)

Sally Barnhard
(SIGNATURE OF NOTARY)

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

WREITS

ATTENTION NOTARY: The information requested below is **OPTIONAL**. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

**THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:**

Title or Type of Document Cert of Declaration of Trust
Number of Pages 1 Date of Document 2/24/95
Signer(s) Other Than Named Above David S. Bernstein

**DECLARATION OF TRUST
AS AMENDED AND RESTATED**

of

**WINDSOR REAL ESTATE INVESTMENT TRUST 8
(an unincorporated California business trust)**

WINDSOR REAL ESTATE INVESTMENT TRUST 8

Declaration of Trust Index

ARTICLE I	Definitions
ARTICLE II	Trustees
ARTICLE III	Trustees Powers
ARTICLE IV	Advisor
ARTICLE V	Investment Policy
ARTICLE VI	The Shares
ARTICLE VII	Liability of Trustees, Shareholders and Officers, and Other Matters
ARTICLE VIII	Officers
ARTICLE IX	Meetings of Shareholders
ARTICLE X	Certificates and Transfers
ARTICLE XI	Trust Records and Reports; Inspections
ARTICLE XII	General Trust Matters
ARTICLE XIII	Real Estate Investment Trust
ARTICLE XIV	Transactions With Affiliates
ARTICLE XV	Advisory Contract
ARTICLE XVI	Advisor Compensation
ARTICLE XVII	Total Expenses
ARTICLE XVIII	Certain Voting and Initial Investment Provisions
ARTICLE XIX	Appraisal and Compensation Regarding Roll-Up
ARTICLE XX	Duration, Amendment, Termination and Qualification of Trust
ARTICLE XXI	Miscellaneous

WINDSOR REAL ESTATE INVESTMENT TRUST 8

**DECLARATION OF TRUST
AS AMENDED AND RESTATED**

This Agreement and DECLARATION OF TRUST is made at Escondido, San Diego County, California, by the undersigned persons, as declarants and Trustees, and on the date set forth above their signatures.

WHEREAS, the Trustees desire to form a business trust for the purpose of acquiring, holding, improving and dealing with and disposing of property, both real and personal, wherever situated; and

WHEREAS, in furtherance of such purpose, property may from time to time hereafter be transferred to or acquired by the Trustees to be held, invested and distributed in the manner hereinafter stated; and

WHEREAS, the Trustees desire that the Trust qualify as a "real estate investment trust" under the REIT Provisions of the Internal Revenue Code; and

WHEREAS, the beneficial interest in this Trust and in the trust estate held by the Trustees shall be divided into transferable shares of beneficial interest to be evidenced by certificates therefor, as hereinafter provided;

NOW, THEREFORE, this Declaration witnesseth and it is hereby agreed and declared, that the Trustees shall hold the property at any time acquired or received by them or their successors as Trustees hereinunder, including without limitation of the generality of the foregoing, all choses in action and all rights, powers and privileges arising out of or in connection with the said property or the business of this Trust, together with all rents and other income therefrom and the proceeds thereof - all of the foregoing while so held being hereinafter generally called the Trust Estate - in trust in the manner herein provided subject to the powers and provisions contained in this instrument and any amendments thereto concerning the same for the benefit of the holders of the shares of the beneficial interest in this Trust, according to their respective interests.

ARTICLE I

The Trust; Definitions

1.1 Name. The name of this Trust shall be "Windsor Real Estate Investment Trust 8". As far as practicable and except as otherwise provided in this Declaration, the Trustees shall conduct the Trust's activities, execute all documents, and sue or be sued in the name of Windsor Real Estate Investment Trust 8, or in their names as Trustees of Windsor Real Estate Investment Trust 8. If the Trustees determine that the use of such name is not practicable, legal or convenient, they may use such other designation or may adopt another name under which the Trust may hold property or conduct its activities.

1.2 Place of Business. The principal office of the Trust shall be in Escondido, California. However, the Trustees may, from time to time, change such location and maintain other offices or places of business.

1.3 Nature of Trust. The Trust is an unincorporated business trust and is organized under the laws of the State of California. It is intended that the Trust will elect to be treated for tax purposes, and shall carry on business as a "real estate investment trust" (hereinafter called "REIT") as described in the REIT Provisions of the Internal Revenue Code. The Trust is not a general partnership, limited partnership, joint venture, corporation, or joint stock company or association (but nothing herein shall preclude the Trust from being taxed as an association under the REIT Provisions of the Internal Revenue Code) nor shall the Trustees or Shareholders or any of them for any purpose be, nor be deemed to be, nor treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Shareholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration.

1.4 Definitions. The terms defined in this Section 1.4 whenever used in this Declaration shall, unless the context otherwise requires, have the respective meanings hereinafter specified in this Section 1.4; words in the singular number include the plural and in the plural number include the singular.

(a) "Administrator" is the official or agency administering the securities laws of a jurisdiction.

(b) *"Advisor"* shall mean any Person appointed, employed or contracted with by the Trustees under the provisions of Article IV hereof; and shall mean the person(s) or entity responsible for directing or performing the day-to-day business affairs of the Trust, including a person or entity to which an Advisor subcontracts substantially all such functions.

(c) *"Adjusted Price Per Share"* means, with respect to Common Shares and Preferred Shares, \$25.00 per share less all dividends or other distributions paid out of Cash From Sale or Financing of Properties; and adjusted for any stock split, share dividends or combinations or reclassifications resulting in a decrease in the number of Shares outstanding.

(d) *"Affiliate"* means (i) any person directly or indirectly controlling, controlled by or under common control with another person (ii) any person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of such other person, (iii) any officer, director, trustee, general partner of such person, and (iv) if such other person is an officer, director, trustee or partner of another entity, then the entity for which that person acts in any such capacity.

(e) *"Cash From Operations"* means cash flow generated from operations (including taxable income and non taxable cash flow) exclusive of Cash From Sale or Financing of Properties.

(f) *"Cash From Sale or Financing of Properties"* means net cash realized by the Trust (i) from the sale or disposition of property (after retirement of applicable secured debt, if any) and (ii) from mortgage financing of Trust properties, after payment of all related transaction expenses.

(g) *"Close of the Offering"* means the first day of January nearest to the date, as fixed by the Trustees, that the Trust's initial public offering of its Shares shall close.

(h) *"Common Shareholders"* shall mean, as of any particular time, all holders of record of outstanding Common Shares at such time.

(i) *"Common Shares"* shall mean Common Shares of Beneficial Interest of the Trust as described in Article VI.

(j) *"Declaration of Trust"* shall mean this Declaration of Trust and all amendments, restatements or modifications thereof. References in this Declaration of Trust to "herein", "hereof" and "hereunder" shall be deemed to refer to this Declaration of Trust and shall not be limited to the particular text, article or section in which such words appear. The Declaration of Trust is sometimes referred to herein as the Declaration.

(k) *"Independent Expert"* shall mean a person with no current or prior business or personal relationship with the Advisor or Trustees who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the Trust.

(l) *"Independent Trustees"* means Trustees who are not affiliated, directly or indirectly, with an Advisor whether by ownership of, ownership interest in, employment by, any material business or professional relationship with, or serves as an officer or director of, such Advisor or an affiliated business entity of such Advisor. A Trustee shall not be considered independent if he or she is serving as a director or trustee for more than three real estate investment trusts organized by a Sponsor of the Trust. Independent Trustees shall also mean those who perform no other services for the Trust, except as Trustees. An indirect relationship includes circumstances in which a member of the family of a Trustee has one of the foregoing relationships with an Advisor or the Trust for which he or she serves as Trustee.

(m) *"Initial Investment"* means that portion of the initial capitalization of the Trust contributed by the Advisor pursuant to Article XVIII.

(n) *"Leverage"* means the aggregate amount of indebtedness of the Trust for money borrowed (including purchase money mortgage loans) outstanding at any time, both secured and unsecured.

(o) *"Net Assets"* means the total assets (other than intangibles) at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

(p) *"Person"* shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other entities and governments and agencies and political subdivisions thereof.

(q) *"Preferred Shareholders"* shall mean, as of any particular time, all holders of record of outstanding Preferred Shares at such time.

(r) *"Preferred Shares"* shall mean Preferred Shares of Beneficial Interest of the Trust as described in Article VI, and all series thereof.

(s) *"Prospectus"* shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary Prospectus; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933, or in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

(t) *"Real Property"* shall mean and include land, rights in land, leasehold interests (including but not limited to interests of a lessor or lessee therein), and any buildings, structures, improvements, fixtures and equipment located on or used in connection with land, leasehold interests and rights in land or interests therein.

(u) *"REIT Provisions of the Internal Revenue Code"* shall mean Sections 856 through 860 of the Internal Revenue Code of 1986, as now enacted or hereafter amended, or successor statutes, and regulations and rulings promulgated thereunder.

(v) *"Roll-Up"* shall mean a transaction involving the acquisition, merger, conversion, or consolidation either directly or indirectly of the Trust and the issuance of securities of a Roll-Up Entity. Such term does not include:

- (i) a transaction involving securities of the Trust that have been for at least 12 months listed on a national securities exchange or traded through the National Association of Securities Dealers Automated Quotation National Market System; or
- (ii) a transaction involving the conversion to corporate, trust, or association form of only the Trust if, as a consequence of the transaction, there will be no significant adverse change in any of the following:

- (A) Shareholders' voting rights;
- (B) the term of existence of the Trust;
- (C) Sponsor or Advisor compensation;
- (D) the Trust's investment objectives.

(w) *"Roll-Up Entity"* shall mean a partnership, real estate investment trust, corporation, trust, or other entity that would be created or would survive after the successful completion of a proposed Roll-Up transaction.

(x) "*Securities*" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise or in general any instruments commonly known as "*securities*" or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire any of the foregoing.

(y) "*Shareholders*" shall mean, as of any particular time, all shareholders of record of outstanding Shares.

(z) "*Shares*" shall mean the Shares of Beneficial Interests (Common Shares and Preferred Shares) of the Trust as described in Article VI.

(aa) "*Sponsor*" means any person directly or indirectly instrumental in organizing, wholly or in part, the Trust, or any person who will manage or participate in the management of the Trust, and any Affiliate of any such person, but does not include (i) a person whose only relationship with the Trust, is that of an independent property manager, whose only compensation is as such, and (ii) wholly independent third parties such as attorneys, accountants and underwriters whose only compensation is for professional services.

(bb) "*Trust*" means Windsor Real Estate Investment Trust 8 as created by this Declaration of Trust.

(cc) "*Trustees*" shall mean, as of any particular time, Trustees holding office under this Declaration at such time, whether they be the Trustees name herein or additional or successor Trustees, and shall not include the officers, representatives or agents of the Trust, or the Shareholders, but nothing herein shall be deemed to preclude the Trustees from also serving as officers, representatives, or agents of the Trust, or owning Shares.

(dd) "*Trust Estate*" shall mean, as of any particular time, any and all property, real, personal, or otherwise, tangible or intangible, which is owned or held by the Trust or the Trustees, including, but not limited to, property which is transferred, conveyed or paid to the Trust or Trustees, and all rents, income, profits and gains therefrom.

ARTICLE II

Trustees

2.1 Number, Term of Office and Qualifications of Trustees. Each Trustee has a fiduciary relationship with and duty to the Trust and its Shareholders. There shall be no less than three nor more than five Trustees. Prior to the completion of the Trust's initial public offering of its Shares, the Trustees may fix the number of Trustees within the authorized number of three to five. Thereafter, the fixed number may be changed only by the vote or written consent of Shareholders entitled to exercise majority voting powers. Each Trustee shall hold office until the expiration of his term and until the election and qualification of his successor. The term of the Trustees executing this Declaration, or any successor to them, duly elected hereunder prior to the annual meeting of the Shareholders to be held following the close of the Trust's fiscal year ending December 31, 1992, shall expire at such annual meeting of the Shareholders. Thereafter, the term of each Trustee shall expire at the annual meeting of the Shareholders following the election of such Trustee. Trustees may be re-elected. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. A Trustee shall qualify as such when he has either signed this Declaration or agreed in writing to be bound by it. Unless otherwise required by law or by action of the Trustees, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees, in their capacity as trustees, shall not be required to devote their entire time to the business and affairs of the Trust.

2.2 Resignation, Removal and Death of Trustees. The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office, or removal of a Trustee. A Trustee may resign at any time by giving written notice in recordable form to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date such notice is given, or at any later time specified in the notice, without need for prior or subsequent accounting. A Trustee may be removed at any time, with or without cause, by vote or consent of holders of a majority of the outstanding Shares entitled to vote thereon, or, for cause, by all remaining Trustees. A Trustee judged incompetent or bankrupt, or for whom a guardian or conservator has been appointed, shall be deemed to have resigned as of the date of such adjudication or appointment. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his name, and shall account to the remaining Trustee or Trustees, as they shall require, for all property which he holds as Trustee. His legal representative shall perform the acts set forth in the preceding sentence and the discharge shall run to such legal representative and to the incapacitated Trustee or the estate of the deceased Trustee, as the case may be.

2.3 Successor and Additional Trustees. The right, title and interest of the Trustees in and to the Trust Estate shall also vest in successor and additional Trustees upon their qualification, and they shall thereupon have all the rights and obligations of Trustees hereunder. Such right, title and interest shall vest in the Trustees, whether or not conveyancing documents have been executed and delivered pursuant to Section 2.2, or otherwise.

2.4 Independent Trustees. A majority of Trustees of the Trust shall be Independent Trustees.

2.5 Experience of Trustees. A Trustee shall have had at least three years of relevant experience demonstrating knowledge and experience required to successfully acquire and manage the type of assets being acquired by the Trust. At least one of the Independent Trustees shall have three years of relevant real estate experience.

2.6 Standard of Care; Fiduciary Relationship.

(a) Standard of Care

1. Each Trustee shall perform his or her duties in good faith, in the manner such Trustee believes to be in the best interests of the Trust and its Shareholders, and with such care including reasonable inquiry, and using ordinary prudence, as a person in a like position would use under similar circumstances.

2. In performing the duties of a Trustee, a Trustee shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (A) One or more officers or employees of the Trust whom the Trustee believes to be reliable and competent in the matters presented,
- (B) Counsel, independent accountants or other persons as to matters which the Trustee believes to be within such person's professional or expert competence, or
- (C) A Committee of the Board upon which the Trustee does not serve, as to matters within its designated authority, which committee the Trustee believes to merit confidence,

so long as in any such case, the Trustee acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted; provided, however, that the Trustee's reliance will not be justified if such reliance constitutes either negligence or misconduct.

(b) Fiduciary Relationship

Each Trustee shall be deemed to be in a fiduciary relationship to the Trust's Shareholders and shall have a fiduciary duty to supervise the relationship of the Trust with the Advisor.

2.7 Vacancies.

(a) Vacancies in the Board of Trustees may be filled by a majority of the remaining Trustees, though less than a quorum, or by a sole remaining Trustee, except that a vacancy created by the removal of a Trustee by the vote or written consent of the Shareholders, or by court order, may be filled only by the vote of the majority of the Shares entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of holders of the majority of the outstanding Shares entitled to vote. Each Trustee so elected shall hold office until the next annual meeting of the Shareholders and until a successor has been elected and qualified.

(b) A vacancy in the Board of Trustees shall be deemed to exist in the event the Shareholders fail, at any meeting of the Shareholders at which any Trustees are elected, to elect the full number of authorized Trustees.

(c) No reduction of the authorized number of Trustees shall have the effect of removing any Trustee before the Trustee's term of office expires.

(d) Independent Trustees shall nominate replacements for vacancies amongst the Independent Trustees positions.

2.8 Place of Meetings; Conference Telephone.

(a) Regular meetings of the Board of Trustees shall be held at any place within or without the state that has been designated from time to time by resolution of the Board. In the absence of such resolution, regular meetings shall be held at the principal executive office of the Trust. Special meetings of the Board shall be held at any place within or without the state that has been designated in the notice of the meeting, or, if not stated in the notice or there is no notice, at the principal executive office of the Trust.

(b) Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Trustees participating in such meeting can hear one another, and all such Trustees shall be deemed to have been present in person at such meeting.

2.9 Annual Meetings.

Immediately following each annual meeting of Shareholders, the Board of Trustees shall hold a regular meeting for the purpose of organization, the election of officers and the transaction of other business. Notice of this meeting shall not be required.

2.10 Minutes.

Minutes of any meeting of the Board of Trustees, or any committee thereof, shall be maintained by the Secretary or other officer designated for that purpose.

2.11 Other Regular Meetings.

(a) Other regular meetings of the Board of Trustees shall be held without call at such time as shall from time to time be fixed by the Board of Trustees. Such regular meetings may be held without notice, provided the time and place of such meetings has been fixed by the Board of Trustees; and further provided that notice of any change in the time and/or place of such regular meeting shall be given to all the Trustees. Notice of a change in time and/or place of such regular meeting shall be given to each Trustee in the same manner as notice for special meetings of the Board of Trustees.

(b) If the day fixed for such regular meeting falls upon a holiday, such meeting shall be held on the next succeeding day thereafter.

2.12 Special Meetings/Notices.

(a) Special meetings of the Board of Trustees for any purpose or purposes may be called at any time by the Chairman of the Board or the President or any Vice President or the Secretary or any two Trustees.

(b) Notice of the time and place for special meetings shall be delivered personally or by telephone to each Trustee or sent by first class mail or telegram, charges prepaid, addressed to each Trustee at his or her address as it is shown in the records of the Trust. In case such notice is mailed, it shall be deposited in the United States mail at least seven (7) days prior to the time of holding of the meeting. In case such notice is delivered personally, or by telephone or telegram, it shall be delivered personally or by telephone or telegram company at least

seventy-two (72) hours prior to the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated to either the Trustee or to a person at the office of the Trustee who the person giving the notice has reason to believe will promptly communicate such notice to the Trustee. The notice need not specify the purpose of the meeting, nor the place, if the meeting is to be held at the principal executive office of the Trust.

2.13 Waiver of Notice.

The transactions of any meeting of the Board of Trustees, however called, noticed, or wherever held, shall be as valid as though had at a meeting duly held after the regular call and notice if a quorum be present and if, either before or after the meeting, each of the Trustees not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. Waiver of notices or consents need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the Trust records or made part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Trustee who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Trustee.

2.14 Quorum.

A majority of the authorized number of Trustees shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 2.15 hereof; provided, however, that a quorum must include a majority of the Independent Trustees. Every act or decision done or made by a majority of the Trustees present at a meeting duly held at which a quorum was present is the act of the Board of Trustees. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees, if any action taken is approved by at least a majority of the required quorum for that meeting.

2.15 Adjournment.

A majority of the Trustees present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

2.16 Notice of Adjournment.

Notice of the time and place of the holding of an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of such time and place shall be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of the adjournment.

ARTICLE III

Trustees Powers

3.1 Power and Authority of Trustees. The Trustees, subject only to the specific limitations contained in this Declaration, shall have, without further or other authorization, and free from any power or control on the part of the Shareholders, full, absolute and exclusive power, control and authority over the Trust Estate and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof in their own right, and may do all such acts and things as in their sole judgment and discretion are necessary for or incidental to or desirable for the carrying out of any of the purposes of the Trust or the conducting of the business of the Trust. Any determination made in good faith by the Trustees of the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive. In construing the provisions of this Declaration, presumption shall be in favor of the grant of powers and authority of the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein upon the Trustees.

3.2 Specific Powers and Authorities. Subject only to the express limitations contained in this Declaration and in addition to any powers and authorities conferred by this Declaration or which the Trustees may have by virtue of any present or future statute or rule or law, the Trustees without any action or consent by the Shareholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgement and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

(a) To retain, invest and reinvest the capital or other funds of the Trust in real or personal property in accordance with Article V, all without regard to whether any such property is authorized by law for the investment of trust funds or whether any investments may mature before the possible termination of the Trust, and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Estate and to increase the capital of the Trust at any time by the issuance of additional Shares for such consideration as they deem appropriate.

(b) For such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Shares or through the issuance of notes, debentures, bonds or other obligations of the Trust and hold for investment real, personal or mixed, tangible or intangible, property as described in Article V wherever located in the United States, including without limitation (a) the entire or any participating interest in rents, lease payments or other income from, or the entire or any participating interest in the profits from, or the entire or any participating

interest in the equity or ownership of, Real Property; (b) in connection with any such investment, purchase or acquisition, a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of Real Property, either directly or through joint venture, general or limited partnership, or other lawful combinations or associations; (c) Securities of every nature.

(c) To sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any and all of the Trust Estate by deeds, trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust.

(d) To issue Shares, bonds, debentures, notes or other evidences of indebtedness which may be secured or unsecured and may be subordinated to any indebtedness of the Trust and may be convertible into Shares and which may include options, warrants and right to subscribe to, purchase or acquire any of the foregoing, all without vote of or other action by the Shareholders to such Persons for such cash, property or other consideration (including Securities issued or created by, or interests in any Person) at such time or times and on such terms as the Trustees may deem advisable and to list any of the foregoing Securities issued by the Trust on any securities exchange or automated quotation system and to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any of such Securities.

(e) To enter into leases, contracts, obligations, and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term. Debt securities may not be issued unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt.

(f) To borrow money and give negotiable or non-negotiable instruments, therefore; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Estate to secure any of the foregoing.

(g) To lend money, whether secured or unsecured.

(h) To create reserve funds for any purpose.

2.17 Trustees Acting by Unanimous Written Consent.

Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting with the same force and effect as if taken by unanimous vote of Trustees, if authorized by a writing signed individually or collectively by all members of the Board. Such consents shall be filed with the regular minutes of the Board.

2.18 Fees and Compensation of Trustees.

Trustees and members of a Trustees Committee may receive such compensation, if any, for their services, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Trustees. Nothing herein contained shall be construed to preclude any Trustee, except Independent Trustees, from serving the Trust in any other capacity as an officer, employee, or otherwise, and receiving compensation for such services.

2.19 Committees.

(a) Committees of the Board of Trustees may be appointed by resolution passed by a majority of the whole Board of Trustees. Committees shall be composed of two or more members of the Board of Trustees and shall have such powers of the Board of Trustees as may be expressly delegated to them by resolution of the Board of Trustees. The Board of Trustees may designate one or more Trustees as alternate members of any committee. Only Independent Trustees may act as alternates for other Independent Trustees.

(b) A majority of the members of each committee shall be Independent Trustees. If only two Trustees are members of a committee, both of those Trustees must be Independent Trustees.

2.20 Meetings and Action of Committees.

Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Sections 2.8, 2.10, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16 and 2.17, with such changes in the context of those Sections as are necessary to substitute the committee and its members for the Board of Trustees and its members, except that the time of the regular meetings of committees may be determined by resolution of the Board of Trustees as well as the committee, and special meetings of committees may also be called by resolutions of the Board of Trustees and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Trustees may adopt rules for the government of any committee not inconsistent with the provisions of these Trustees Regulations.

(i) To incur and pay out of the Trust Estate any charges or expenses, and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary for or incidental to or desirable for the carrying out of any of the purposes of the Trust or the conducting of the business of the Trust, including without limitation taxes and other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the Trust Estate or upon or against the Trust Estate or any part thereof, and for any of the purposes herein.

(j) To deposit funds or Securities held by the Trust in banks, trust companies, and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine.

(k) To possess and exercise all rights, powers and privileges appertaining to the ownership of all or any interests in, or Securities issued or created by, any Person, forming part of the Trust Estate, to the same extent that an individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action, and may include the exercise of discretionary powers.

(l) To enter into joint ventures, general or limited partnerships and any other lawful combinations or association.

(m) To elect, appoint, engage or employ such officers for the Trust as the Trustees may determine, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms and at such compensation, as may be prescribed by the Trustees or by the Trustees Regulations; to engage or employ any Persons (including, subject to the provisions hereof and in the Trustees Regulations, any Trustee or officer and any Person in which any Trustee or officer is directly or indirectly interested or with which he is directly or indirectly connected) as agents, representatives, employees, or independent contractors (including without limitation, real estate advisors, investment advisors, transfer agents, registrars, underwriters, accountants, attorneys at law, real estate agents, property managers, appraisers, brokers, architects, engineers, constructions managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Person may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons.

(n) To determine whether moneys, Securities or other assets received by the Trust shall be charged or credited to income or capital or allocated between income and capital, including the power to amortize or fail to amortize any part or all of any premium or discount, to treat any part or all of the profit resulting from the maturity or sale of any asset, whether purchased at a premium or at a discount, as income or capital or apportion the same between income and capital to apportion the sale price of any asset between income and capital, and to determine in what manner any expenses or disbursements are to be borne as between income and capital, whether or not in the absence of the power and authority conferred by this subsection such moneys, Securities or other assets would be regarded as income or as any dividend or other distribution on any investment as income or capital or apportion the same between income and capital; to provide or fail to provide reserves for depreciation, amortization or obsolescence in respect of all or any part of the Trust Estate subject to depreciation, amortization or obsolescence in such amounts and by such methods as they shall determine; to allocate to the share of beneficial interest accounts less than all of the considered received for Shares and to allocate the balance thereof to paid-in capital; to charge or allocate selling commissions and discounts and expenses of offering with respect to offerings of Shares to, or with reference thereto to restrict, paid-in or capital surplus which resulted from the issuance of any Shares; and to determine the method or form in which the accounts and records of the Trust shall be kept and to change from time to time such method or form.

(o) To determine from time to time, the value of all or any part of the Trust Estate and of any services, Securities, assets, or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue all or any part of the Trust Estate in accordance with such appraisals or other information as are, in the Trustees' sole judgment, necessary and/or satisfactory.

(p) To collect, sue for, and receive all sums of money or other assets coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compound, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Trust, the Trust Estate or the Trust's affairs, and to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof.

(q) To renew, modify, release, compromise, extend, consolidate, or cancel, in whole or in part, any obligation to or of the Trust.

(r) To purchase and pay for out of the Trust Estate insurance contracts and policies insuring the Trust Estate against any and all risks and insuring the Trust and/or any or all of the Trustees, the Shareholders, officers, employees, agents, investment advisors or independent contractors of the Trust against any and all claims and liabilities of every nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by any such person as Trustee, Shareholder, officer, employee, agent, investment advisor or independent contractor. The Trust may not purchase insurance for any liability for which the Trust is prohibited from paying indemnification.

(s) To cause legal title to any of the Trust Estate to be held by and/or in the name of the Trustees, or except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other Person on such terms, in such manner, with such powers in such Person as the Trustees may determine, and with or without disclosure that the Trust or Trustees are interested therein.

(t) To adopt and use a seal (but the use of a seal shall not be required for the execution of instruments or obligations of the Trust).

(u) To make, perform, and carry out, or cancel and rescind, contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, trust, association, corporation, municipality, county, parish, state, territory, government or other municipal or governmental subdivision. These contracts shall be for such duration and upon such terms as the Trustees in their sole discretion shall determine.

(v) To do all other such 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 for which the Trust is formed, and to carry out the provisions of this Declaration.

3.3 Trustees Regulations. The Shareholders may make and adopt regulations (the "Trustees Regulations") 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 with this Declaration. Such Trustees Regulations, when adopted, may be amended or repealed and/or new provisions may be adopted only by the Shareholders.

3.4 Additional Powers. The Trustees shall additionally have and exercise all the powers conferred by the laws of California upon business trusts or real estate investment trusts formed under such laws. The provisions of this Declaration shall control insofar as such provisions are not in conflict with such laws.

3.5 Incorporation. Upon a vote of two-thirds (2/3) of the Trustees, and with the approval of the holders of a majority of the Shares entitled to vote, the Trustees shall have the power to cause to be organized or assist in organizing a corporation or corporations under the laws of any jurisdiction or any other trust, partnership, association, or other organization to take over the Trust Estate or any part or parts thereof or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, convey and transfer the Trust Estate or any part or parts thereof to any such corporation, trust, association, or organization in exchange for the shares or securities thereof or otherwise, and to lend money to, subscribe for the shares or Securities of, and enter into any contracts with any such corporation, trust, association, or organization, or any corporation, trust, partnership, association, or organization in which the Trust holds or is about to acquire shares or any other interest.

ARTICLE IV

Advisor

4.1 Employment of Advisor. The Trustees are responsible for the general policies of the Trust and for such general supervision of the business of the Trust conducted by all officers, agents, employees, advisors, managers or independent contractors of the Trust as may be necessary to insure that such business conforms to the provisions of this Declaration. However, the Trustees shall not be required personally to conduct all the business of the Trust, and consistent with their ultimate responsibility as stated above, the Trustees shall have the power to appoint, employ or contract with any Person (including subject to the provisions of Section 2.4, one or more of themselves or any corporation, partnership, or trust in which one or more of them may be directors, officers, stockholders, partners or trustees) as the Trustees may deem necessary or proper for the transaction of the business of the Trust. The Trustees may therefor employ or contract with such Person (herein referred to as the "Advisor") and the Trustees may grant or delegate such authority to the Advisor as the Trustees may in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees.

ARTICLE V

Investment Policy

5.1 General Statement of Policy. While the Trustees are authorized pursuant to Article III hereof to invest the Trust Estate in a wide variety of investments, the Trustees intend to invest the Trust Estate as follows:

(a) The Trust will invest in existing, substantially developed and occupied manufactured home communities. The Trust plans to concentrate acquisitions in four major areas: Florida, parts of the Midwest including Michigan, Indiana and Illinois, the Northwest including Washington and Oregon and the Southwest including California, Nevada and Arizona. Although the Trust will concentrate on these four major areas, it will consider and may acquire properties located throughout the United States.

(b) The Trust will pay all cash for properties acquired, and generally will not assume, or take subject to, mortgages secured by the property. However, for the limited purposes of (i) negotiating a possible discount for the early payment of a mortgage balance or (ii) accommodating a seller's need for a federal income tax installment sale, or (iii) protecting Trust deposits committed for a property purchase, the Trust may acquire property subject to a mortgage. In any such event, the Trust will pay off all such mortgages within approximately one year after acquisition. The Trustees believe this procedure and flexibility will aid in obtaining for the Trust the lowest overall cost of the acquired property.

(c) The investment objectives of the Trust are to provide to its Shareholders (i) preservation, protection and eventual return of the Shareholder's investment; (ii) quarterly distributions of Cash From Operations, some of which may be a return of capital for tax purposes rather than taxable income; (iii) realization of long-term appreciation in value of the properties acquired by the Trust; and (iv) a hedge against inflation.

(d) The Trustees may participate in investments with other investors, and the Advisor may act as advisor to such other investors, including investors who have investment policies similar to those of the Trust and who agree to participate with the Trust in making investments on substantially the same terms and conditions and in a predetermined ratio.

(e) To the extent the Trust's funds are not fully invested as described above, the Trustees may invest its funds in Government Securities, Securities of Government agencies, and other short-term investment securities and certificates of deposit of and deposits in commercial banks.

(f) There is no restriction on the portion of total Trust assets that may be invested in any one transaction. The Trustees shall make such determination from time to time taking into consideration available investment opportunities, general business conditions and other relevant factors.

(g) Pending investment in manufactured home communities, the net proceeds of the Trust's public offering of its Shares will be temporarily invested in short term government securities (including GNMA, FNMA and FHLMC mortgage backed securities) or in certificates of deposit, deposits in commercial banks, bankers' acceptances or other interest-bearing investments in such a manner as to comply with the REIT Provisions of the Internal Revenue Code requirements regarding composition of investments and the derivation of income.

ARTICLE VI

The Shares

6.1 Shares of Beneficial Interest.

(a) *Shares.* The Beneficial Interest in the Trust will be divided into and shall be designated as Shares. The certificates evidencing the Shares shall be in such form and signed (manually or by facsimile) on behalf of the Trust in such manner as the Trustees may from time to time prescribe or as may be prescribed in the Trustee's Regulations. The certificates shall be negotiable and title thereto and to the Shares represented thereby shall be transferred by assignment and delivery thereof to the same extent and in all respects as a share certificate of a California corporation. The Shares may be issued for such consideration as the Trustees shall determine or by way of share dividend or share split in the discretion of the Trustees. Shares reacquired by the Trust shall no longer be deemed outstanding and shall have no voting or other rights unless and until reissued. Shares reacquired by the Trust may be canceled and restored to the status of authorized and unissued Shares by action of the Trustees. All Shares shall be fully paid and non-assessable by or on behalf of the Trust upon receipt of full consideration for which they have been issued or without additional consideration if issued by way of share dividend or share split. The Shares shall not entitle the holder to any pre-emptive rights.

(b) *Classes.* The Shares shall be two classes of Beneficial Interest in the Trust:

1. Common Shares of Beneficial Interest ("Common Shares"). There shall be no limit upon the number of Common Shares that may be issued.
2. Preferred Shares of Beneficial Interest ("Preferred Shares"). There shall be no limit upon the number of Preferred Shares that may be issued.

(c) *Voting.*

1. The Common Shares and the Preferred Shares will vote together as one class with each Share being entitled to one vote on all matters submitted to a vote of Shareholders, except with respect to class voting as provided in 3 below.
2. As shall be set forth in the Trustees Regulations, cumulative voting will apply to elections of Trustees.
3. No amendment to the Declaration or the Trustees Regulations which would change any rights with respect to any outstanding class of Shares, by reducing the amount payable upon liquidation of the Trust, or by diminishing or eliminating any voting rights pertaining thereto, may be made unless approved by a vote or written consent of the holders of two-thirds of the outstanding Shares of such class.

6.2 Common Shares.

Common Shares have no preference, conversion or exchange rights. All Common Shares participate pro-rata in dividends and distributions of Cash From Operations as and when declared by the Trustees as payable to Common Shares. All Common Shares participate pro-rata in dividends and distributions of Cash From Sale or Financing of Properties and any other liquidating distributions as and when declared by the Trustee as payable to Common Shares. All dividends and distributions to Common Shares are junior to the priority of Preferred Shares as described below.

6.3 Preferred Shares.

The preferences and participating rights, qualifications, limitations, and restrictions of Preferred Shares are as follows:

(a) *Distributions of Cash From Operations.*

1. Until the Trust has invested substantially all (90% or more) of the net proceeds from the initial public offering of its Shares in Real Property, all dividends will be paid ratably and equally on all Preferred Shares and Common Shares as one class. After such net proceeds have been substantially all invested in Real Property, then beginning with the next January 1 the following provisions 2, 3 and 4 shall become effective. The Trustees, including a majority of the Independent Trustees, shall

reasonably and in good faith determine when such net proceeds have been substantially invested in Real Property as aforesaid.

2. **Preferred Shares Annual Dividend Preference.** The Preferred Shares Annual Dividend Preference rate will be fixed annually by the Trustees at a rate not less than 6% nor more than 7% of the Adjusted Price Per Share of the Preferred Shares.
 3. **Cumulative Preferred Shares Dividend.** Preferred Shares shall be paid each year their Preferred Shares Annual Dividend Preference cumulative (non compounded) before (subject to the provisions in paragraph 2) any dividends may be paid on Common Shares.
 4. **Common Shares Dividend and Participating Preference Dividend.** After the Preferred Share Annual Dividend Preference has been declared and either paid or funds therefore set aside, then dividends may be declared and paid on Common Shares non cumulative up to an amount per Common Share that is equal to the per share amount of Preferred Share Annual Dividend Preference for that year; provided, however, that quarterly dividends may be paid on Common Shares if the Trustees, including a majority of the Independent Trustees, reasonably and in good faith determine that the Preferred Shares Annual Dividend Preference will be covered and paid for the year, and if it later appears that a shortfall in said Dividend Preference may occur, it will then be made up before any further Common Shares quarterly or other dividend may be declared and paid. Thereafter, the balance of dividends for that year, if any, will be paid equally per share on all Common Shares and Preferred Shares as one class.
- (b) *Distribution of Cash From Sale or Financing of Properties.* The distributions of Cash From Sale or Financing of Properties will be computed and distributed as follows.
1. *Determine the Amount of Capital Invested in the Property.* For purposes of this computation, the cost of the property as paid from the net proceeds of this offering will be adjusted upwards to reflect the offering organization and offering expenses (13.5% of gross proceeds) of this offering applicable thereto.
 2. *Allocate Capital Among Preferred Shares and Common Shares.* The amount determined in paragraph 1 will be allocated to Preferred Shares capital and Common Shares capital in ratio to the gross proceeds of Shares, sold in the Trust's initial public offering of its Shares, that is represented by Preferred Shares sold and Common Shares sold. For

example, if Preferred Shares sold represented 65% of all Shares sold in such offering, then the Preferred Shares liquidating preference with respect to the net/proceeds of any property sold or financed would be 65% of the amount computed in paragraph 1. This is designated the Preferred Share Liquidation Preference. The balance of the amount determined in paragraph 1 is designated the Common Share Liquidation Preference.

3. *Preferred Share Distribution.* The net proceeds of Cash From Sale or Financing of Properties will be distributed first to Preferred Shares in an amount equal to:
 - (i) The Preferred Share Liquidation Preference (as computed in paragraph 2), plus
 - (ii) 8% per annum cumulative (not compounded) times the Preferred Share Liquidation Preference from the Close of This Offering, less all prior distributions of Cash From Operations to Preferred Shares reduced by multiplying such distributions by a fraction the numerator of which is the Preferred Share Liquidation Preference and the denominator of which is the total gross offering proceeds of all Preference Shares sold in the Trust's initial public offering.
4. *Common Share Distribution.* The balance, if any, of Cash From Sale or Financing Properties will be distributed to Common Shares in an amount equal to:
 - (i) the Common Share Liquidation Preference (not compounded as computed in paragraph 2), plus
 - (ii) 11% per annum cumulative times the Common Share Liquidation Preference from the Close of This Offering, less all prior distributions of Cash From Operations to Common Shares reduced by multiplying such distributions by a fraction the number of which is the Common Share Liquidation Preference and the denominator of which is the total gross offering proceeds of all Common Shares sold in this Offering.
5. *Balance.* The balance, if any, of the net proceeds of Cash From Sale or Financing of Properties will be distributed and paid as follows:

(i) 85% of the balance will be allocated to Preferred Shares and Common Shares in direct ratio to the Preferred Share Liquidation Preference and Common Share Liquidation Preference. The amount so allocated to Preferred Shares will be distributed pro-rata among Preferred Shares. The amount so allocated to Common Shares will be distributed pro-rata among Common Shares.

(ii) 15% of the balance, if any, may be paid to the Advisor(s) as an incentive fee, pursuant to advisory agreement(s) with advisor(s); provided, however, that the Advisor(s) will not be paid an incentive fee on a property-by-property basis and will be paid such incentive fee only after the sale of all the Trust's properties has occurred and it can then be determined that all Preferred Shares and Common Shares have first received 100% of their Adjusted Price Per Share plus a return from (i) Cash From Sale or Financing of Properties and (ii) Cash From Operations equal in the aggregate to 8% per annum cumulative for Preferred Shares and 11% per annum cumulative for Common Shares on their respective Adjusted Price Per Share from the Close of the Offering.

6.4 Legal Ownership of Trust Estate. The legal ownership of the Trust Estate and the right to conduct the business of the Trust are vested exclusively in the Trustees and the Shareholders shall have no interest therein other than beneficial interest in the Trust conferred by their Shares issued hereunder and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the Trust Estate, other than their rights as exercised in a meeting of Shareholders or by written consent as provided herein.

6.5 Shares Deemed Personal Property. The Shares shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration and the Trustees Regulations. The death, insolvency or incapacity of a Shareholder shall not dissolve or terminate the Trust or affect its continuity nor give his or her legal representative any rights whatsoever, whether against or in respect to other Shareholders, the Trustees or the Trust Estate or otherwise except the sole right to demand and, subject to the provisions of this Declaration, the Trustee's Regulations and any requirements of law, to receive a new certificate for Shares registered in the name of such legal representative, in exchange for the certificate held by such Shareholder.

6.6 Dividends to Shareholders. The Trustees may from time to time declare and pay to Shareholders such dividends in cash out of current or accumulated earnings and profits, capital, capital gains, principal, surplus, proceeds from the financing of the Trust properties, or from the sale of portions (or all) of the Trust Estate or from any other source as the Trustees in their discretion shall determine. Except as otherwise provided herein, Shareholders shall have no right to any dividend unless and until declared by the Trustees. The Trustees shall furnish the Shareholders at the time of each such dividend with a statement in writing advising as to the source of the funds so distributed or, if the source thereof has not then been determined, the statement as to such source shall be sent to the Shareholders not later than sixty (60) days after the close of the fiscal year for which the dividend was paid. The term "dividend" includes "distribution".

6.7 Limit on the Number of Shares Owned By Any Person. After the initial public offering of Trust Shares, and with respect to Shares sold therein, no Person may own over 9.8% of the outstanding Shares entitled to vote. Provisions with respect to restrictions on transfer of Shares which would violate the provisions of the preceding sentence and provide for redemption of Shares in the event of any such violation are set forth in Article X. Such provisions are deemed reasonable and necessary to protect the REIT tax status of the Trust.

ARTICLE VII

Liability of Trustees, Shareholders and Officers, and Other Matters

7.1 Exculpation of Trustees. The Trustees and Officers shall have no liability to the Trust or to any Shareholder for any loss suffered by the Trust which arises out of the action or inaction of the Trustees or Officers if the Trustees or Officers, in good faith, determined that such course of conduct was in the best interests of the Trust and such course of conduct did not constitute negligence or misconduct of the Trustees or Officers.

7.2 Limitation of Liability of Shareholders, Trustees and Officers. The Trustees, officers, employees and agents of the Trust, in incurring any debts, liabilities or obligations or in taking or omitting any other actions for or in connection with the Trust are, and shall be deemed to be, acting as Trustees, officers, employees or agents of the Trust and not in their own individual capacities. Except to the extent provided in Section 7.1 no Trustee, officer, employee or agent shall, nor shall any Shareholder, be liable for any debt, claim, demand, judgment, decree, liability or obligation of any kind of, against or with respect to the Trust, arising out of any action taken or omitted for or on behalf of the Trust and the Trust shall be solely liable therefor and resort shall be had solely to the Trust Estate for the payment or performance thereof. Each Shareholder shall be entitled to pro rata indemnity from the Trust Estate if, contrary to the provisions hereof, such Shareholder shall be held to any personal liability.

7.3 Express Exculpatory Clauses and Instruments. In all agreements, obligations, instruments, and actions in regard to the affairs of this Trust, this Trust and not the Shareholders, officers, employees or agents shall be the principal and entitled as such to enforce the same, collect damages, and take all other action. All such agreements, obligations, instruments, and actions shall be made, executed, incurred, or taken by or in the name and on behalf of this Trust or by the Trustees as Trustees hereunder, but not personally. All such agreements, obligations, and instruments shall acknowledge notice of this paragraph or shall refer to this Declaration and contain a statement to the effect that the name of this Trust refers to the Trustees as Trustees but not personally, and that no Trustee, Shareholder, officer, employee or agent shall be held to any personal liability thereunder; and neither the Trustees nor any officer, employee or agent shall have any power or authority to make, execute, incur, or take any agreement, obligation, instrument or action unless the requirements of this paragraph are made; however, the omission of such provision from any such instrument shall not render the Shareholders or any Trustee, officer, employee or agent liable nor shall the Trustees or any officer, employee or agent of the Trust be liable to anyone for such omission.

7.4. Indemnification and Reimbursement of Trustees and Officers and Others.

(a) The Trustees, the Officers, the Advisor and Affiliates and underwriters selling the Trust's Shares (including broker-dealers selling the Trust's shares), herein each called Indemnitee, shall be indemnified by the Trust against any losses, judgement, liabilities, expenses and amounts paid in settlement of claims sustained by them, arising from the operation of the Trust, only if all of the following are met:

- A. The Indemnitee has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the Trust, and
- B. Such liability or loss was not the result of negligence or misconduct by the Indemnitee.
- C. Such indemnification or agreement to hold harmless is recoverable only out of the assets of the Trust and not from the Shareholders.

(b) Indemnification will not be allowed to the Indemnitee for any liability imposed by judgement, and costs associated therewith, including attorney's fees, arising from or out of a violation of state or federal securities laws associated with the offer and sale of Trust Shares. Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that a court either:

- A. Approves the settlement and finds that indemnification of the settlement and related costs should be made, or
- B. Approves indemnification of litigation costs if a successful defense is made.

Every application for registration of the Trust's securities must contain an undertaking that such parties seeking indemnification will apprise the court of the position of the Administrator and the United States Securities and Exchange Commission with respect to indemnification for securities laws violations, before seeking court approval for indemnification.

(c) The Trust shall, with respect to Trustees and Officers, and may, with respect to other Indemnitees, advance trust funds to the Indemnitee for legal expenses and other costs incurred as a result of any legal action only if the following conditions are satisfied: (i) the legal action relates to acts and omissions with respect to the performance of duties or services on behalf of the Trust, (ii) the legal action was initiated by a third party who is not a Shareholder, or the legal action is initiated by a Shareholder and a court of competent jurisdiction specifically approves such advancement, and (iii) the Indemnitee undertakes to repay the advanced funds, with interest, to the Trust in cases in which such Indemnitee is not entitled to indemnification under (b) above.

(d) The rights accruing to any Indemnitee under these indemnification provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything contained herein restrict such Person's right to contribution as may be available under applicable law. The Trust may enter into an indemnity agreement with each Indemnitee to the extent the provisions of such indemnity agreement is not inconsistent with this section 7.4. The Trust shall have power to purchase and maintain insurance on behalf of any Person entitled to indemnity hereunder against any liability asserted against him and incurred by him in a capacity mentioned above, or arising out of his status as such, but only if the Trust would have the power to indemnify him against such liability under the provisions hereof. Each agreement, if any, of the Trust providing indemnification of an Indemnitee thereof shall be approved by a majority of the Trustees (including a majority of Independent Trustees) not otherwise interested therein as being fair and reasonable to the Trust.

(e) The Trust's indemnification and hold harmless obligations hereunder continue with respect to any Indemnitee hereunder for three years after such Indemnitee is no longer serving as a Trustee, officer, employee, agent, Advisor or Affiliate of the Trust.

7.5 Right of Trustees, Officers and Others to Own Shares or Other Property and to Engage in Other Business. Any Trustee, officer, employee or agent of the Trust may acquire, own, 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, officer, employee or agent of the Trust. Any Trustee, officer, employee or agent of

the Trust may have personal business interests and may engage in personal business activities, which interests and activities may include the acquisition, syndication, holding, management, operation or disposition, for his own account or for the account of others, interests in Real Property or interests in Persons engaged in the real estate business. Any Trustee, officer, employee or agent may be interested as trustee, officer, director, stockholder, partner, member, advisor or employee, or otherwise have a direct or indirect interest in any Person who may be engaged to render advice or services to the Trust, and may receive compensation from such Person as well as compensation as Trustee, officer, or otherwise hereunder. None of these activities shall be deemed to conflict with his duties and powers as Trustee or officer.

7.6 Persons Dealing with Trustees or Officers. Any act of the Trustees or officers purporting to be done in their capacity as such, shall, as to any person dealing in good faith with such Trustees or officers, be conclusively deemed to be within the purposes of this Trust and within the powers of the Trustees and officers. No Person dealing in good faith with the Trustees or any of them, or with the authorized officers, employees, agents or representatives of the Trust, shall be bound to see to the application of any funds or property passing into their hands or control. The receipt of the Trustees, or any of them, or of authorized officers, employees, agents, or representatives of the Trust, for moneys or other consideration, shall be binding upon the Trust.

7.7 Income Tax Status. Anything to the contrary herein notwithstanding and without limitation of any rights of indemnification or non-liability of the Trustees herein, the Trustees by this Declaration make no commitment or representation that the Trust will qualify for the dividends paid deduction permitted by the REIT Provisions of the Internal Revenue Code, and the rules and regulations thereunder pertaining to real estate investment trusts, in any given year. The failure of the Trust to qualify as a real estate investment trust under the REIT Provisions of the Internal Revenue Code shall not render the Trustees liable to the Shareholders or to any other person or in any manner operate to annul the Trust.

ARTICLE VIII

Officers

8.1 Officers.

The principal officers of the Trust shall be a Chairman of the Board or a President or both, a Secretary and Chief Financial Officer who may also be called Treasurer. The Trust may also have, at the discretion of the Board of Trustees, one or more Vice Presidents, one or more Assistant Secretaries, and such other officers as may be appointed in accordance with the provisions of Section 8.3 of this Article. One person may hold two or more offices.

8.2 Election of Officers.

The principal officers of the Trust, except such officers as may be appointed in accordance with the provisions of Section 8.3 of this Article, shall be chosen by the Board of Trustees, and each shall serve at the pleasure of the Board of Trustees, subject to the rights, if any, of an officer under any contract of employment.

8.3 Subordinate Officers, Etc.

The Board of Trustees may empower the Chairman of the Board to appoint and remove such officers (other than the principal officers) as the business of the Trust may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided herein or as the Board of Trustees may from time to time determine.

8.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by a majority of the Trustees at that time in office, at any regular or special meeting of the Board, or , excepting the case of an officer chosen by the Board of Trustees, by any officer upon whom such power of removal may be conferred by the Board of Trustees.

8.5 Vacancies in Office.

A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed herein for regular appointments to such office.

8.6 Chairman of the Board.

The Chairman of the Board, if such an officer be elected, shall, if present, preside at all meetings of the Board of Trustees and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board of Trustees. The Chairman of the Board shall, in addition be the Chief Executive Officer of the Trust and shall, subject to the control of the Board of Trustees, have general supervision, direction and control of the business and the officers of the Trust. He or she shall preside at all the meetings of the Shareholders and at all meetings of the Board of Trustees. He or she shall have the general powers and duties of management usually vested in the Chief Executive Officer of a Trust, shall be ex officio a member of all the standing committees, including the executive committee, if any, and shall have

such other powers and duties as may be prescribed by the Board of Trustees.

8.7 President.

The President shall be the Chief Operating Officer of the Trust and shall have such powers and duties as may be prescribed by the Board of Trustees.

8.8 Vice President.

In the absence or disability of the President, the Vice Presidents, if any, in order of their rank as fixed by the Board of Trustees, shall perform all the duties of the President, and so acting shall have all the powers of, and be subject to the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Trustees, the President, or the Chairman of the Board.

8.9 Secretary.

(a) The Secretary shall keep or cause to be kept at the principal executive office or such other place as the Board of Trustees may order, a book of minutes of all meetings of Trustees, Committees of Trustees, and Shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at Trustees and Committee meetings, the number of shares present or represented at Shareholders meetings, and the proceedings thereof.

(b) The Secretary shall keep or cause to be kept at the principal office or at the office of the Trust's transfer agent, a share register, or duplicate share register, showing the names of the Shareholders and their addresses; the number of classes of Shares held by each; the number and date of certificates issued for the same; and the number and date of cancellation of every certificate surrendered for cancellation.

(c) The Secretary shall give or cause to be given notice of all meetings of the Shareholders and of the Board of Trustees required by this Declaration or by law to be given, shall keep the seal (if the Trust has a seal) of the Trust in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Trustees.

8.10 Chief Financial Officer.

(a) The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Trust, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any Trustee.

(b) The Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Trust with such depositories as may be designated by the Board of Trustees. He or she shall disburse the funds of the Trust as may be ordered by the Board of Trustees, shall render to the Chairman of the Board and to the Trustees, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the Trust, and shall have other powers and perform such other duties as may be prescribed by the Board of Trustees.

ARTICLE IX

Meetings of Shareholders

9.1 Meetings.

Meetings of Shareholders shall be held at any place convenient to Shareholders, within or without the State of California as designated by the Board of Trustees. In the absence of any such designation, Shareholders' meetings shall be held at the principal executive office of the Trust.

9.2 Annual Meetings.

(a) An annual meeting of the Shareholders shall be held. At the annual meeting, the Shareholders shall elect a Board of Trustees, receive a report of the affairs of the Trust, and transact such other business as may properly be brought before the meeting.

(b) The annual meeting of Shareholders shall be held each year, beginning in 1993, on a date in April or May and at a time as designated by the Board of Trustees upon proper notice to all Shareholders.

(c) The Trustees including the Independent Trustees shall take reasonable steps to assure that the annual meeting is held.

9.3 Special Meetings.

(a) A special meeting of the Shareholders, for any purpose or purposes whatsoever, may be called at any time by a majority of the Board of Trustees, or by a majority of the Independent Trustees or by the Chairman of the Board of Trustees, or by the President, or by one or more Shareholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at any such meeting.

(b) If a special meeting is called by any person or persons other than the Board of Trustees, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered or certified mail or by telegraphic or other facsimile transmission to the Chairman of the Board, the President, any Vice President or the Secretary of the Trust. The officer giving such request shall, within 10 business days after receipt of such request, forthwith cause written notice (either in person or by mail) of a meeting and the purpose of such meeting to be given to the Shareholders entitled to vote, in accordance with the provisions of Section 9.4 hereof, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than twenty (20) nor more than sixty (60) days after the receipt of the request. If the notice is not given within ten (10) days after receipt of request, the person or persons requesting the meeting may give the notice in the manner provided herein or upon application to the Superior Court. Nothing contained in this paragraph of this Section shall be construed as limiting, fixing or affecting the time when a meeting of Shareholders called by action of the Board of Trustees may be held.

(c) The call of the special meeting shall state the nature of the business to be transacted and that no other business shall be considered at the meeting.

9.4 Notice of Meetings; Reports.

(a) Notice of meetings, annual or special, shall be given in writing not less than twenty (20) nor more than sixty (60) days before the date of the meeting, to Shareholders entitled to vote thereat by the Secretary or the Assistant Secretary, or if there be no such officer, or in the case of his or her neglect or refusal, by any Trustee or Shareholder.

(b) Such notices or any reports shall be given personally or by mail, and shall be sent to the Shareholder's address appearing on the books of the Trust, or supplied by him or her to the Trust for the purposes of notice, and in absence thereof by posting notice at a place where the principal executive office of the Trust is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located.

(c) Notice of any meeting of Shareholders shall specify the place, date and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (ii) in the case of an annual meeting, those matters which the Board of Trustees, at the date of the mailing of notice, intends to present for action by the Shareholders. At any meetings where Trustees are elected, notice shall include the names of the nominees, if any, intended at the date of notice to be presented by the Trustees for election.

(d) If action is proposed to be taken at any meeting for approval of (i) contracts or transactions in which a Trustee has a direct or indirect financial interest, (ii) an amendment to the Declaration of Trust, or (iii) termination of the Trust, the notice shall also state the general nature of such proposal.

9.5 Quorum.

The presence in person or by proxy of the holders of a majority of the Shares entitled to vote at any meeting of Shareholders shall constitute a quorum for the transaction of business. The Shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least majority of the Shares required to constitute a quorum.

9.6 Adjourned Meeting and Notice Thereof.

(a) Any Shareholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the Shares represented at such meeting, either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting.

(b) When any meeting of Shareholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is fixed, or unless the adjournment is for more than forty-five (45) days from the date set for the original meeting, in which case the Board of Trustees shall set a new record date. Notice of any such adjourned meeting shall be given to each Shareholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Section 9.4. At any adjourned meeting the Trust may transact any business which might have been transacted at the original meeting.

9.7 Waiver of Notice or Consent by Absent Shareholders.

(a) The transactions at any meeting of Shareholders, either annual or special, however, called and noticed, and wherever held, shall be as valid as though had a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to a holding of the meeting, or any approval of the minutes thereof. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any regular or special meeting of Shareholders, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 9.4 (d), the waiver of notice or consent shall state the general nature of such proposal. All such waivers, consents or approvals shall be filed with the Trust records or made a part of the minutes of the meeting.

(b) Attendance of a person at a meeting shall also constitute a waiver of notice of such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice if such objection is expressly made at the meeting

9.8 Shareholders Acting Without a Meeting; Filling Vacancies on Board.

Any action which may be taken at a meeting of the Shareholders may be taken without a meeting or notice of meeting if authorized by a writing signed by all of the Shareholders entitled to vote at a meeting for such purpose and filed with the Secretary of the Trust; provided, that, as to vacancy created by death, resignation or other causes, if the Trustees fail to fill a vacancy, then a Trustee to fill that vacancy may be elected by the written consent of persons holding a majority of shares entitled to vote for the election of Trustees.

9.9 Voting Rights; Cumulative Voting.

(a) Only persons in whose names Shares entitled to vote stand on the stock records of the Trust on the day fixed by the Board of Trustees for the determination of the Shareholders of record, shall be entitled to vote at any Shareholders' meeting.

(b) Except as provided in paragraph (c), each outstanding Share is entitled to one vote on each matter submitted to a vote of shareholders.

(c) Provided the candidate's name has been placed in nomination prior to the voting and one or more Shareholders have given notice at the meeting prior to voting of the Shareholders intent to cumulate the Shareholders votes, every Shareholder entitled to vote at any election for Trustee may cumulate his or her votes and give one candidate a number of votes equal to the number of Trustees to be elected multiplied by the number of votes to which his or her Shares are entitled, or distribute his or her votes to which his or her Shares are entitled on the same principle among as many candidates as he or she thinks fit. The candidates receiving the highest number of votes up to the number of Trustees to be elected are elected.

9.10 Proxies.

Every Shareholder entitled to vote for Trustees or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Trust. A proxy shall be deemed signed if the Shareholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the Shareholder or the Shareholder's attorney in fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the Trust stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting and voting in person by the person executing the proxy; provided, however, that no such proxy shall be valid after the expiration of eleven (11) months from the date of such proxy, unless otherwise provided in the proxy.

9.11 Chairman and Secretary of Meeting.

The Chairman of the Board, or in the absence of the Chairman of the Board, the President, shall call the meeting of the Shareholders to order, and shall act as Chairman of the meeting. In the absence of the Chairman of the Board and the President, Shareholders shall appoint a Chairman at such meeting. The Secretary of the Trust shall act as Secretary of all meetings of the Shareholders, but in the absence of the Secretary at any meeting of the Shareholders, the presiding officer shall appoint any person to act as such Secretary of the meeting.

9.12 Inspectors of Election.

(a) Before any meeting of Shareholders, the Board of Trustees may appoint any person other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are appointed, the Chairman of the meeting may, and on the request of any Shareholder or his or her proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more Shareholders or proxies, the holders of a majority of Shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the Board of Trustees before the meeting, or by the Chairman at the meeting.

(b) The duties of these inspectors shall be as follows:

- (1) Determine the number of shares outstanding and the voting power of each, the Shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- (2) Receive votes, ballots, or consents;
- (3) Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (4) Count and tabulate all votes or consents;
- (5) Determine the election result; and
- (6) Do any other acts that may be proper to conduct the election or vote with fairness to all Shareholders.

ARTICLE X

Certificates and Transfers

10.1 Certificates for Shares.

(a) Certificates for Shares shall be of such form as the Board of Trustees may designate and shall state the name of the record holder of the Shares represented thereby; its number and date of issuance; the number of Shares for which it is issued; a statement of the rights, privileges, preferences and restrictions, if any; a statement as to the redemption or conversion rights, if any; and a statement of liens or restrictions upon transfer or voting, if any;

a statement of redemption provisions; and a statement of the limitation on the number of Shares that may be owned by one Shareholder; provided, however, that the face of the certificate may refer to the Statement on the reverse side, and the Statement on the reverse side may set forth that a summary of the rights, preferences, privileges, and restrictions relating to each class of Shares, and transfer restrictions and redemption provisions, and limitation on the number of Shares that may be held by one Shareholder, and similar matters, may be obtained upon request, without charge from the Secretary or transfer agent of the Trust.

(b) Every certificate for Shares shall be signed in the name of the Trust by the Chairman of the Board, the President or a Vice President and a Secretary or an Assistant Secretary.

(c) No certificate or certificates for Shares shall be issued until such Shares are fully paid.

10.2 Facsimile Signature.

Any or all of the signatures on the certificates may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Trust with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

10.3 Transfer on the Books.

Upon surrender to the Secretary or transfer agent of the Trust of a certificate for Shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Trust to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction on its books.

10.4 Lost or Destroyed Certificates.

Any person claiming a certificate of Shares to be lost, stolen or destroyed shall make an affidavit or affirmation of that fact and shall, if the Board of Trustees so require, give the Trust a bond of indemnity, in the form and with one or more sureties satisfactory to the Board of Trustees, in at least double the value of the stock represented by said certificate, whereupon a new certificate may be issued in the same manner and for the same number of Shares as the one alleged to be lost, stolen or destroyed.

10.5 Transfer Agents and Registrars.

The Board of Trustees may appoint one or more transfer agents or transfer clerks and one or more registrars, which shall be appointed at such times and places as the requirements of the Trust may necessitate and the Trustees may designate. The Trust and its employees may serve as transfer agent and registrar to the extent permitted by law.

10.6 Record Date; Closing Stock Transfer Books.

(a) In order that the Trust may determine the Shareholders entitled to notice of any meeting or to vote or entitled to receive payment of any dividend or other distribution or allotment of any rights or entitled to exercise any rights in respect of any lawful action, the Board may fix in advance, a record date, which shall not be more than sixty (60) days nor less than thirty (30) days prior to the date of such meeting nor more than sixty (60) days prior to any other action. If no record date is fixed:

(1) The record date for determining Shareholders entitled to notice of or to vote at a meeting of Shareholders shall be at the close of the business on the business day next preceding the day on which the notice is given or, if notice is waived, at close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining Shareholders entitled to give consent to corporate action in writing without a meeting, when no prior action by the Board is necessary, shall be the day on which the first written consent is given.

(3) The record date for determining Shareholders for any other purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later.

(b) The Board of Trustees may close the books of the Trust to transfers of Shares during the whole or any part of such period.

10.7 Legend Condition.

In the event any Shares of this Trust are issued pursuant to a government agency permit or exemption therefrom requiring the imposition of a legend condition, the person or persons issuing or transferring said shares shall make certain said legend appears on the certificate and in the Share record book and shall not be required to transfer any Shares free of such legend unless the government agency imposing such legend condition authorizes such transfer.

10.8 Restricted Transfer Shares.

In the event any Shares of this Trust are issued pursuant to exemptions from registration or qualification under federal and state securities laws, the persons issuing or transferring such Shares shall make certain that an appropriate transfer restriction legend appears on the certificate and in the Share record book, and shall not be required to transfer any such Shares free of such transfer restriction legend without the approval of the officers of the Trust and without the concurring opinion of the Trust's counsel.

10.9 Right to Refuse to Transfer Shares.

Whenever it is deemed by them to be reasonably necessary to protect the tax status of the Trust, the Trustees may require a statement or affidavit from each Shareholder or proposed transferee of Shares setting forth the number of Shares already owned by him and any related person specific in the form prescribed by the Trustees for that purpose. If, in the opinion of the Trustees, which shall be conclusive upon any proposed transferor or proposed transferee of Shares, any proposed transfer (i) would result in one person owning more than 9.8% of the outstanding Shares entitled to vote in violation of Section 6.7 or jeopardize the status of the Trust as a REIT under the REIT Provisions of the Internal Revenue Code, as now enacted or as hereafter amended, the Trustees may refuse to permit such transfer. Any attempted transfer as to which the Trustees have refused their permission shall be void and of no effect to transfer any legal or beneficial interest in the Shares. All contracts for the sale or other transfer of Shares shall be subject to this provision.

10.10 Shareholders' Disclosures; Redemption of Shares.

The Shareholders shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of the Shares as the Trustees deem necessary to comply with the REIT Provisions of the Internal Revenue Code and the regulations thereunder as the same shall be from time to time amended or to comply with the requirements of any other taxing authority. If the Trustees shall at any time and in good faith be of the opinion that direct or indirect ownership of Shares of the Trust has or may become concentrated to an extent which (i) would result in one person owning more than 9.8% of the outstanding Shares entitled to vote, or (ii) which would otherwise prevent the Trust from qualifying as a real estate investment trust under the REIT Provisions of the Internal Revenue Code, the Trustees shall have the power by lot or other means deemed equitable by them to prevent the transfer of and/or call for redemption a number of such Shares sufficient in the opinion of the Trustees to maintain or bring the direct or indirect ownership of Shares of the Trust into conformity with this Declaration of Trust and with the requirements of the REIT Provisions of the Internal Revenue Code. The redemption price shall be (i) the last reported sale price of the Shares on the last business day prior to the redemption date on any securities exchange or NASD quotation system on which the Shares are listed or admitted to trading, or (ii) if the Shares are not listed or

admitted to trading, the average of the highest bid and lowest asked prices on such last business day as reported in any over-the-counter markets, if any, in which the Shares are traded, or (iii) if not determined as aforesaid, as determined in good faith by the Trustees. From and after the date fixed for redemption by the Trustees, the holder of any Shares so called for redemption shall cease to be entitled to dividends, distributions, voting rights and other benefits with respect to such Shares, excepting only to the right to payment of the redemption price fixed as aforesaid.

10.11 Redemption of Fractional and Small Lot Shares; Right to Refuse to Transfer Shares.

(a) If the Trustees shall at any time and in good faith be of the opinion, which shall be conclusive on all Shareholders, that it is not prudent or economical for the Trust to continue the maintenance of Shareholder records and payment of dividends on (i) fractional Shares, (ii) Common Shares held in lots of less than 4 Shares ("small lot Common Shares"), and/or (iii) Preferred Shares held in lots of less than 4 Shares ("small lot Preferred Shares"), then the Trustees may call for redemption such fractional Shares, small lot Common Shares, and/or small lot Preferred Shares. The redemption price shall be determined as in Section 10.10 above. From and after the date fixed for redemption by the Trustees, the holder of any Shares so called for redemption shall cease to be entitled to dividends, distributions, voting rights and other benefits with respect to such Shares, excepting only to the right to payment of the redemption price fixed as aforesaid. The Trustees may increase or decrease the number of Shares deemed to be "small lots" from time to time in the exercise of their reasonable and good faith judgment.

(b) If the Trustees have called Shares for redemption pursuant to (a) above, the Trustees may at the same time or at any later time refuse to permit the transfer of Shares in a manner which would result in the creation of new accounts for fractional Shares, small lot Common Shares, and/or small lot Preferred Shares. Any attempted transfer as to which the Trustees have refused their permission shall be void and of no effect to transfer any legal or beneficial interest in the Shares. All contracts for the sale or other transfer of Shares shall be subject to these provisions.

ARTICLE XI

Trust Records and Reports; Inspections

11.1 Records.

The Trust shall keep, adequate and correct books and records of its accounts and business and properties, and shall keep minutes of the proceedings of its Shareholders, Board of Trustees and committees of the Board of Trustees. All of such books, records, accounts and minutes shall be kept at the Trust's principal executive office in the State of California, as fixed by the Board of Trustees, from time to time, or shall be kept at such place or such places as designated by the Board of Trustees. The minutes shall be kept in written form and accounting books and records shall be kept in either written form or in any other form capable of being converted into written or in any other form capable of being converted into written form.

11.2 Access to Records.

Any Shareholder and any designated representative thereof shall be permitted access to all records of the Trust at all reasonable times, and may inspect and copy any of them. Inspection of the Trust and records by the Administrator shall be provided upon reasonable notice and during normal business hours.

(a) An alphabetical list of the names, addresses, and business telephone numbers of the Shareholders of the Trust along with the number of Shares held by each of them (the "Shareholder List") shall be maintained as a part of the books and records of the Trust and shall be available for inspection by any Shareholder or the Shareholder's designated agent at the principal executive office of the Trust upon the request of the Shareholders.

(b) The Shareholder List shall be updated at least quarterly to reflect changes in the information contained therein.

(c) A copy of the Shareholder List shall be mailed to any Shareholder requesting the Shareholder List within ten days of the request. The copy of the Shareholder List shall be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than 10-point type). A reasonable charge for copy work may be charged by the Trust.

(d) The purposes of which a Shareholder may request a copy of the Shareholder List include, without limitation, matters relating to Shareholders' voting rights under this Declaration of Trust, and the exercise of Shareholders' rights under federal proxy laws.

(e) If the Advisor or Trustees of the Trust neglects or refuses to exhibit, produce, or mail a copy of the Shareholder List as requested, the Advisor and the Trustees shall be liable to any Shareholder requesting the list for the costs, including attorney's fees, incurred by that Shareholder for compelling the production of the Shareholder List, and for actual damages suffered by any Shareholder by reason of such refusal or neglect. It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the Shareholder List is to secure such list of Shareholders or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a Shareholder relative to the affairs of the Trust. The Trust may request the Shareholder requesting the Shareholder List to represent that the list is not requested for a commercial purpose unrelated to the Shareholder's interest in the Trust. The remedies provided hereunder to Shareholders requesting copies of the Shareholder List are in addition to, and shall not in any way limit, other remedies available to Shareholders under federal law, or the laws of any state.

11.3 Annual Report to Shareholders.

(a) **Annual Report.** The Board of Trustees shall cause an Annual Report to be mailed or delivered to each Shareholder, as of record date after the end of each fiscal year (and each holder of any other publicly held security of the Trust) not later than 120 days after the close of the Trust's fiscal year to which it relates. This report shall contain a balance sheet as of the end of that fiscal year and an income statement and statement of changes in cash flows for that fiscal year, accompanied by a report thereon of independent accountants. The financial statements of the Trust shall be prepared in accordance with generally accepted accounting principles. The report shall be sent to Shareholders at least 30 days prior to the annual meeting of Shareholders to be held during the next fiscal year.

(b) **Other Items Included in the Annual Report.** The Trust shall include in its Annual Report:

- (1) The ratio of the costs of raising capital during the period to the capital raised.
- (2) The aggregate amount of advisory fees and the aggregate amount of other fees paid to the Advisor and all Affiliates of the Advisor by the Trust and including fees or charges paid to the Advisor and all Affiliates of the Advisor by third parties doing business with the Trust.

- (3) Separately stated, full disclosure of all material terms, factors and circumstances surrounding any and all transactions involving the Trust and the Trustees, Advisors, Sponsors, and/or Affiliates thereof occurring in the year for which the Annual Report is made. Independent Trustees are charged with a duty to examine and comment in the Annual Report on the fairness of such transactions.

(c) **Trustees Duty.** The Trustees, including the Independent Trustees, shall take reasonable steps to assure that the Annual Report is prepared and delivered as provided in this Section.

ARTICLE XII

General Trust Matters

12.1 Checks, Drafts and Evidences of Indebtedness.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Trust, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Trustees.

12.2 Trust Contracts and Instruments, How Executed.

The Board of Trustees may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Trust, and such authority may be general or confined to specific instances; and, unless so authorized or ratified by the Board of Trustees or within the agency power of any officer, no officer, agent or employee shall have any power or authority to bind the Trust by any contract or engagement or to pledge its credit to render it liable for any purpose or to any amount.

12.3 Representation of Shares of Other Trusts and Corporations.

The Chairman of the Board, the President, or any Vice President, or any other person authorized by resolution of the Board of Trustees (herein "attorney-in-fact") is authorized to vote on behalf of the Trust any and all shares of any other trusts or corporations, foreign or domestic, standing in the name of the Trust. The authority herein granted to said attorney-in-fact to vote or represent on behalf of the Trust any and all shares held by the trust in any other trusts or corporations may be exercised by any such attorney-in-fact in person or by proxy.

ARTICLE XIII
Real Estate Investment Trust

13.1 Qualification as a Real Estate Investment Trust.

As soon as the Trust meets the requirements, the Trust plans to elect to be taxed as a real estate investment trust for federal and state taxation purposes.

13.2 Certain Limitations, Restrictions and Review of Investment Policies.

(a) Limitation on Borrowing. The Trust may not incur any indebtedness which would result in an aggregate amount of indebtedness in excess of 300% of the Trust's adjusted net worth. "Adjusted net worth," for purposes of this subsection, means the amount obtained by subtracting the Trust's total liabilities from its total assets as adjusted: total assets less any reasonable reserves but before provision for depreciation, and based on figures shown on the Trust's books in accordance with generally accepted accounting principles. The aggregate borrowings of the Trust, secured and unsecured, shall be reasonable in relation to the net assets of the Trust and shall be reviewed by the Trustees at least quarterly.

(b) Certain Investment Restrictions. The Trust will not engage in any of the following investment practices or activities:

- (1) Invest in commodities or commodity future contracts.
- (2) Invest more than 10% of its total assets in unimproved real property or indebtedness secured by a deed of trust or mortgage loan on unimproved real property. "Unimproved property" means property which has the following characteristics: (i) an equity interest in property which was not acquired for the purpose of producing rental or other operating income, (ii) has no development or construction in process on such land, and (iii) no development or construction on such land is planned in good faith to commence within one year.
- (3) Invest in or make mortgage loans.
- (4) Invest in contracts for the sale of real estate.
- (5) Engage in any short sale.

- (6) Borrow on an unsecured basis if such borrowings will result in an asset coverage of less than 300%. "Asset coverage", for the purpose of this subsection, means the ratio which the value of the total assets of the Trust, less all liabilities and indebtedness except indebtedness for unsecured borrowings, bears to the aggregate amount of all unsecured borrowings of the Trust.
- (7) Engage in trading as compared with investment activities.
- (8) Acquire securities in any company holding investments or engaging in activities prohibited by this section.
- (9) Engage in underwriting or the agency distribution of securities issued by others.
- (10) Issue equity securities redeemable at the option of the holder.
- (11) Issue debt securities unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt.
- (12) Invest in the equity securities of any non-governmental issuer, including other real estate investments trusts or limited partnerships for a period in excess of 18 months; or invest in such investments in entities affiliated with the Sponsor, Advisor, any Trustee, or affiliate thereof, unless a majority of Trustees (including a majority of Independent Trustees) not otherwise interested in such transactions, approve the transaction of being fair and reasonable to the Trust.
- (13) Issue shares of the Trust on a deferred payment basis or other similar arrangement.

(c) Monitored By The Trustees. The Trustees will monitor the administrative procedures, investment operations and performances of the Trust and the Advisor to assure that policies established by the Trustees are carried out.

(d) Review By The Independent Trustees. The Independent Trustees shall review the investment policies of the Trust with sufficient frequency and at least annually to determine that the policies being followed by the Trust at any time are in the best interests of the Shareholders. Each such determination and the basis thereof shall be set forth in the minutes of the Trustees.

(e) Appraisal. The consideration paid for real property acquired by the Trust shall ordinarily be based on the fair market value of the property as determined by a majority of the Trustees. In cases in which a majority of Independent Trustees so determine, and in all cases in which assets are acquired from the Advisor, any Trustee, Sponsor or Affiliates, such fair market value shall be determined by a qualified independent real estate appraiser selected by the Independent Trustees.

13.3 Warrants, Options, Etc.

(a) The Trust will not issue warrants, options or similar evidences of a right to buy its securities unless issued (i) to all of its Shareholders ratably, (ii) as part of a financing arrangement, or (iii) as part of a stock option plan to Trustees, officers or employees of the Trust which meets the conditions of Section 260.140.41 of the Rules of the California Commissioner of Corporations.

(b) Notwithstanding the provisions of subsection (a) above, the Trust will not issue warrants, options or similar evidences of a right to buy its shares to the Advisor, Trustees, Sponsors or Affiliates except on the same terms as such warrants, options or rights are sold to the general public. The Trust may issue such warrants, options or rights to persons not so connected with the Trust but not at an exercise price less than the fair market value of such securities on the date of grant and for such consideration (which may include services) that in the judgement of the Independent Trustees has a market value less than the value of such warrant, option or right on the date of grant. Warrants, options or rights issuable to the Advisor, Trustees, Sponsors or Affiliates shall not exceed an amount equal to 10% of the outstanding shares of the Trust on the date of grant thereof.

ARTICLE XIV

Transactions With Affiliates

14.1 In General.

Trustees occupy a fiduciary relationship with respect to transactions entered into by the Trust. The Trust will not engage in transactions with any Trustee, officer, Sponsor, Advisor, or any affiliates of such persons, except to the extent that each such transaction has, after disclosure of such affiliation, been approved by the affirmative vote of a majority of the Independent Trustees not affiliated with person who is a party to the transaction, and:

(a) The transaction is fair and reasonable to the Trust and its Shareholders.

(b) The terms of such transaction are at least as favorable as the terms of any comparable transactions made on an arms length basis and known to the Trustees.

(c) The total consideration is not in excess of the appraised value of the property being acquired, if an acquisition is involved.

(d) Payments to the Advisor, its Affiliates and the Trustees for services rendered in a capacity other than that as Advisor or Trustee may only be made upon a determination by the Independent Trustees that:

- (1) The compensation is not in excess of their compensation paid for any comparable services; and
- (2) The compensation is not greater than the charges for comparable services available from others who are competent and not affiliated with any of the parties involved.

14.2 Certain Limitations.

Notwithstanding the provisions of Section 14.1, the following limitations shall apply:

(a) The Trust shall not purchase property from the Sponsor, Advisor, any Trustee or Affiliates thereof unless a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in such transaction approve the transaction as being fair and reasonable to the Trust and at a price to the Trust no greater than the cost of the asset to such Sponsor, Advisor, Trustee or Affiliate thereof, or, if the price to the Trust is in excess of such cost, that substantial justification for such excess exists and such excess is reasonable. In no event shall the cost of such asset to the Trust exceed its current appraised value.

(b) The Trust shall not sell property to the Sponsor, Advisor, any Trustee or Affiliates thereof.

(c) The Trust may not make loans to or borrow money from the Sponsor, Advisor, any Trustee, or Affiliates thereof, unless a majority of Trustees (including a majority of the Independent Trustees) not otherwise interested in such transaction approve the transaction as being fair, competitive, and commercially reasonable and no less favorable to the Trust than loans between unaffiliated lenders and borrowers under the same circumstances.

(d) The Trust will not invest in joint ventures with the Sponsor, Advisor, any Trustee, or affiliates thereof, unless a majority of Trustees (including a majority of the Independent Trustees) not otherwise interested in such transaction, approve the transaction as being fair and reasonable to the Trust and as being on substantially the same terms and conditions as those received by the other joint venturers.

(e) When the Sponsor, Advisor, any Trustee or Affiliates thereof have sponsored other investment programs with similar investment objectives which have investment funds available at the same time as the Trust, the Trust's Prospectus shall describe a reasonable method by which properties are allocated to the competing investment entities. It shall be the duty of the Trustees (including the Independent Trustees) to assure such method is applied fairly to the Trust.

(f) All other transactions between the Trust and the Sponsor, Advisor, any Trustee, or Affiliates thereof, shall require approval by a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in such transactions as being fair and reasonable to the Trust and on terms and conditions not less favorable to the Trust than those available from unaffiliated third parties.

ARTICLE XV

Advisory Contract

15.1 Trustees Duty.

It is the duty of the Trustees to evaluate the performance of the Advisor before entering into or reviewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of the Trustee's meeting relating to such evaluation.

15.2 Term of Advisory Contract.

Each contract for the services of an Advisor shall have a term of no more than one year. Each advisory contract shall be terminable by a majority of the Independent Trustees or the Advisor on 60 days written notice without cause. The advisory contract will provide that in the event of the termination of such contract, the Advisor will cooperate with the Trust and take all reasonable steps requested to assist the Trustees in making an orderly transition of the advisory function.

15.3 Advisor Qualifications.

The qualifications of the Advisor will be set forth in the Prospectus relating to the initial public offering of shares of the Trust and the Trustees shall determine that any successor Advisor possess sufficient qualifications (i) to perform the advisory function for the Trust, and (ii) to justify the compensation provided for in its contract with the Trust.

ARTICLE XVI

Advisor Compensation

16.1 Duty of Independent Trustees.

The Independent Trustees shall determine from time to time and at least annually that the compensation which the Trust contracts to pay to the Advisor is reasonable in relation to the nature and quality of services performed and that such compensation is within the limits prescribed herein. The Independent Trustees shall also supervise the performance of the Advisor and compensation paid to it by the Trust to determine that the provisions of the advisory contract are being carried out. Each such determination shall be based on the factors set forth below and all other factors the Independent Trustees may deem relevant and the findings of the Trustees on each of such factors shall be recorded in the minutes of the Trustees:

- (a) The size of the advisory fee in relation to the size, composition and profitability of the portfolio of the Trust.
- (b) The success of the Advisor in generating opportunities that meet the investment objectives of the Trust.
- (c) The rates charged to other real estate investment trusts and to investors other than real estate investors by advisors performing similar services.
- (d) Additional revenues realized by the Advisor and its Affiliates through their relationship with the Trust, including loan administration, underwriting or broker commissions, servicing, engineering, inspection and other fees, whether paid by the Trust or by others with whom the Trust does business.
- (e) The quality and extent of service and advice furnished by the Advisor.

- (f) The performance of the investment portfolio of the Trust, including income, conservation or appreciation of capital, frequency of problem investments and competence in dealing with distress situations.
- (g) The quality of the portfolio of the Trust in relationship to the investments generated by the Advisor for its own account.

16.2 Real Estate Brokerage Commission.

If the Advisor, a Trustee, Sponsor or Affiliate provides a substantial amount of services in the effort to sell the property of the Trust, then he or she or it may receive up to one-half of the brokerage commission paid but in no event to exceed an amount equal to 3% of the contracted for sales price. In addition, the amount paid when added to the sums paid to unaffiliated parties in such capacity shall not exceed the lesser of a "competitive real estate commission" or an amount equal to 6% of the contracted for sale price. "Competitive real estate commission" means that real estate or brokerage commission paid for the purchase or sale of a property which is reasonable, customary and competitive in light of the size, type and location of such property.

16.3 Incentive Fees.

(a) An interest in the gain from the sale of assets of the Trust, for which full consideration is not paid in cash or property of equivalent value, shall be allowed to an Advisor provided the amount or percentage of such interest is reasonable. Such an interest in gain from the sale of the Trust's assets shall be presumed reasonable if it does not exceed 15% of the balance of such gain remaining after payment to Shareholders, in the aggregate, of an amount equal to 100% of the original issue price of the Trust's shares, plus an amount equal to 6% of the original issue price of the Trust's shares (reduced by prior distribution of gain from the sale of Trust assets) per annum cumulative.

(b) In the case of multiple Advisors, Advisors and Affiliates shall be allowed incentive fees provided such fees are distributed by a proportional method reasonably designed to reflect the value added to Trust assets by each respective Advisor or Affiliate. Distribution of incentive fees to Advisors/Affiliates in proportion to the length of time served as Advisor while such property was held by the Trust or in ratio to the fair market value of the asset at the time of the Advisor's termination and the fair market value of the asset upon its disposition by the Trust shall be considered reasonable methods by which to apportion incentive fees. Each advisory contract executed by the Trust shall set forth the method of apportioning incentive fees, if any such fees are therein provided.

ARTICLE XVII
Total Expenses

17.1 Duty of Independent Trustees.

The Independent Trustees shall determine, from time to time but at least annually, that the total fees and expenses of the Trust are reasonable in light of investment experience of the Trust, its net assets, its net income and the fees and expenses of other comparable advisors in real estate. Each such determination shall be reflected in the minutes of the meeting of the Trustees.

17.2 Offering and Organization Expenses.

(a) The Offering and Organization Expenses paid in connection with the Trust's formation and distribution of its Shares shall be reasonable and shall in no event exceed an amount equal to 15% of the proceeds raised from an offering of its Shares.

(b) "Offering and Organization Expenses" means those expenses incurred in connection with and in preparing the Trust for registration and subsequently offering and distributing its Shares to the public, including sales commissions paid to broker-dealers in connection with the distribution of the Shares and all advertising expenses.

17.3 Acquisition Expense and Fees.

(a) The total of all Acquisition Fees and Acquisition Expenses paid by the Trust in connection with the purchase of a property by the Trust shall be reasonable and shall in no event exceed an amount equal to 5% of the Contract Price for the Property, unless a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in the transaction approve the transaction as being commercially competitive, fair and reasonable to the Trust.

(b) "Acquisition Fees" means the total of all fees and commissions paid by any party in connection with the purchase or development of property by the Trust, except a development fee paid to a person not affiliated with a Sponsor in connection with the actual development of a project after acquisition of the land by the Trust. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated.

(c) "Acquisition Expenses" means expenses including but not limited to legal fees and expenses, travel and communication expenses, costs of appraisals, non-refundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether acquired or not.

(d) "Contract Price for the Property" means the amount actually paid or allocated to the purchase, development, construction or improvement of a property exclusive of Acquisition Fees and Acquisition Expenses.

17.4 Total Operating Expenses.

(a) The Total Operating Expenses of the Trust shall not exceed in any fiscal year the greater of (i) 2% of the Trust's Average Invested Assets, or (ii) 25% of the Trust's Net Income for such year.

(b) The amount of Total Operating Expenses may exceed the amount as determined in paragraph (a) only if a majority of Trustees, including a majority of Independent Trustees, make a finding, based upon such unanticipated, unusual or non-recurring factors as they deem sufficient, that a higher amount is justified, and the higher amount of expense cannot be allowed unless the prior consent of the California Commissioner of Corporations is obtained to the higher amount. Any such finding of the Trustees and the reasons in support thereof shall be reflected in the minutes of the meeting of Trustees.

(c) Within 60 days after the end of any fiscal quarter of the Trust for which Total Operating Expenses (for the 12 months then ended) exceeded the greater of (i) 2% of the Trust's Average Invested Assets, or (ii) 25% of the Trust's Net Income for such 12 months, there shall be sent to the Shareholders a written disclosure of such fact, together with an explanation of the factors the Independent Trustees considered in arriving at the conclusion that such higher Total Operating Expenses were justified.

(d) In the event the Independent Trustees do not determine as provided in paragraph (c) that such excess Total Operating Expenses are justified, the Advisor shall reimburse the Trust within 60 days after the end of the said 12 month period the amount by which Total Operating Expenses paid or incurred by the Trust exceed the limit herein provided.

(e) "Average Invested Assets" for any period means the average of the aggregate book value of the assets of the Trust invested, directly or indirectly, in equity interests in and loans secured by real estate, before reserved for depreciation or bad debts or similar non-cash reserves, computed by taking the average of such values at the end of each month during such period.

(f) "Net Income" for any period means the total revenues (subject to the provisions of paragraph (g) next following) applicable to such period, less expenses applicable to such period other than additions to reserves for depreciation or bad debts or other similar non-cash reserves.

(g) If the Advisor receives an incentive fee, then "Net Income" shall exclude the gain from the sale of the Trust's assets.

(h) "Total Operating Expenses" for any period shall mean all-cash operating expenses, including additional expenses paid by third parties to the Advisor and its Affiliates based upon its relationship with the Trust, including loan administration, servicing, engineering, inspection and all other expenses paid by the Trust, except the expenses related to raising capital, for interest and direct property acquisition, operation and management costs, and the Advisor incentive fees provided for in Section 16.3.

ARTICLE XVIII

Certain Voting and Initial Investment Provisions

18.1 Minimum Initial Investments.

Prior to the initial public offering, the Advisor shall contribute to the Trust \$200,000 as an Initial Investment. The Advisor may not withdraw this Initial Investment for a period of one year following completion of the public offering and may only sell Shares representing this Initial Investment through the market on which the Trust Shares are normally traded.

18.2 Voting of Advisor and Trustee Shares.

After the commencement of the Trust's initial public offering, which will be deemed to commence when the Securities and Exchange Commission declares the Trust's registration statement effective, then the remainder of this Section 18.2 shall become effective and continue thereafter in effect. With respect to Shares owned by the Advisor, the Trustees, or their Affiliates, neither the Advisor, nor the Trustees, nor their Affiliates may vote or consent on matters submitted to the Shareholders regarding the removal of the Advisor, the Trustees or their Affiliates, or regarding any transaction between the Trust and any of them. In determining the

requisite percentage in interest of Shares necessary to approve a matter on which the Advisor, the Trustees and their Affiliates may not vote or consent, any Shares owned by any of them shall not be included.

ARTICLE XIX

Appraisal and Compensation Regarding Roll-Up

19.1 In connection with a proposed Roll-Up, an appraisal of all Trust assets shall be obtained from a competent, Independent Expert. If the appraisal will be included in a Prospectus used to offer the securities of a Roll-Up Entity, the appraisal shall be filed with the SEC and the states as an Exhibit to the Registration Statement for the offering. Accordingly, an issuer using the appraisal shall be subject to liability for violation of Section 11 of the Securities Act of 1933 and comparable provisions under state laws for any material misrepresentations or material omissions in the appraisal. Trust assets shall be appraised on a consistent basis. The appraisal shall be based on an evaluation of all relevant information, and shall indicate the value of the Trust's assets as of a date immediately prior to the announcement of the proposed Roll-Up transaction. The appraisal shall assume an orderly liquidation of Trust assets over a 12 month period. The terms of the engagement of the Independent Expert shall clearly state that the engagement is for the benefit of the Trust and its investors. A summary of the independent appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to the investors in connection with a proposed Roll-Up.

19.2 In connection with a proposed Roll-Up, the Person sponsoring the Roll-Up shall offer to Shareholders who vote "no" on the proposal the choice of:

- (a) accepting the securities of the Roll-Up Entity offered in the proposed Roll-up; or
- (b) one of the following:
 - (A) remaining as Shareholders of the Trust and preserving their interests therein on the same terms and conditions as existed previously; or
 - (B) receiving cash in an amount equal to the Shareholders' pro-rata share of the appraised value of the net assets of the Trust.

19.3 The Trust shall not participate in any proposed Roll-Up which would result in Shareholders having democracy rights in the Roll-Up Entity that are less than those provided for under Sections 3, 6, 7, 10, 11, and 12 of the NASAA (North American Securities Administrators Association) Guidelines for Real Estate Investment Trusts.

19.4 The Trust shall not participate in any proposed Roll-Up which includes provisions which would operate materially impede or frustrate the accumulation of shares by any purchaser of the securities of the Roll-Up Entity (except to the minimum extent necessary to preserve the tax status of the Roll-Up Entity). The Trust shall not participate in any proposed Roll-Up which would limit the ability of an investor to exercise the voting rights of its securities of the Roll-Up entity on the basis of the number of Trust Shares held by that investor.

19.5 The Trust shall not participate in any proposed Roll-Up in which investors' rights of access to the records of the Roll-Up Entity will be less than those provided for under Section 8 of the NASAA Guidelines for Real Estate Investment Trusts.

19.6 The Trust shall not participate in any proposed Roll-Up in which any of the costs of the transaction would be borne by the Trust if the Roll-Up is not approved by the Trust's Shareholders.

ARTICLE XX

Duration, Amendment, Termination and Qualification of Trust

20.1 **Duration of Trust.** Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in such manner that the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration, until December 31, 2006.

20.2 **Termination of Trust.** (a) The Trust may be terminated by the affirmative vote or written consent of the holders of a majority of all outstanding shares entitled to vote thereon, at any meeting of Shareholders. Upon termination of the Trust, either by vote of shareholders as provided in this Section 20.2(a) or by expiration of the duration of the Trust as provided in Section 20.1:

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

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer, or otherwise dispose of all or any part of the remaining Trust Estate to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, Securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; provided, that any sale, conveyance, assignment, exchange, transfer or other disposition of fifty percent (50%) or more than Trust Estate in one transaction shall require approval of the principal terms of the transaction and the nature and amount of the consideration by vote or consent of the holders of a majority of all the outstanding Shares entitled to vote thereon.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities, and refunding agreements as they deem necessary for their protection, the Trustees may distribute the remaining Trust Estate, in cash, among the Shareholders, according to their respective rights.

(b) After termination of the Trust and distribution to the Shareholders as herein provided, 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 rights and interests of all Shareholders shall thereupon cease.

20.3 Amendment Procedure.

(a) This Declaration may be amended by Shareholders holding a majority of the outstanding Shares entitled to vote thereon. The Trustees may also amend this Declaration without the vote or consent of the Shareholders to the extent the Trustees deem it necessary to conform this Declaration to the requirements of (i) the REIT Provisions of the Internal Revenue Code, or to other applicable federal laws, rulings or regulations, but the Trustees shall not be liable for failing to do so, or (ii) state securities Administrator's rules and regulations.

(b) No amendment may be made, under Section 20.3(a) above, which would change any rights with respect to any outstanding Shares of the Trust by reducing the amount payable thereon upon liquidation of the Trust, or by diminishing or eliminating any voting rights pertaining thereon, except with the vote or consent of the holders of two-thirds (2/3) of the outstanding Shares entitled to vote thereon.

(c) A certification, in recordable form, signed by a majority of the Trustees, setting forth an amendment and reciting that it was duly adopted by the Shareholders or by the Trustees as aforesaid, or a copy of the Declaration, as amended, or an amended and restated, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment when lodged among the records of the Trust.

(d) Nothing contained in this Declaration shall permit the amendment of this Declaration to impair the limitations on personal liability of the Shareholders.

20.4 Qualification Under the REIT Provision of the Internal Revenue Code. It is intended that the Trust shall qualify as a "real estate investment trust" under the REIT Provisions of the Internal Revenue Code during such period as the Trustees shall deem it advisable so to qualify the Trust. The Trustees will not abandon qualification of the Trust as a "real estate investment trust" without a vote of the holders of a majority of the outstanding Shares.

ARTICLE XXI

Miscellaneous

21.1 Applicable Law. This Declaration and the construction and effect hereof shall be subject to and construed according to statutes and laws of California.

21.2 Contents and Headings for Reference Only. The table of contents and the headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration.

21.3 Successors in Interest. This Declaration shall be binding upon and inure to the benefit of the undersigned Trustees and their successors, assigns, heirs, distributees and legal representatives, and every Shareholder and his successors, assigns, heirs, and distributees and legal representatives.

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

21.5 Provisions of the Trust in Conflict with Law or Regulations. (a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the REIT Provisions of the Internal Revenue Code, or with other applicable laws and regulations, the Conflicting Provisions shall be deemed never to have constituted a part of the Declaration; provided, however, that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Declaration or render invalid or improper any such action taken or omitted (including but not limited to the election of Trustees) prior to such determination, and provided further, that any such determination may require the vote or consent of the holders of a majority of the outstanding Shares entitled to vote thereon. A certification in recordable form signed by a majority of the Trustees, or a copy of this Declaration, with the Conflicting Provisions removed pursuant to such determination, in recordable form, signed by a majority of the Trustees, shall be conclusive evidence of such determination when lodged in the records of the Trust. The Trustees shall not be liable for failure to make any determination under this Section 21.5(a). Nothing in this Section 21.5(a) shall in any way limit or affect the right of the Trustees to amend this Declaration as provided in Section 20.3(a).

(b) If any provisions of this Declaration shall be held 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 this Declaration, and this Declaration shall be carried out as if any such invalid or unenforceable provision were not contained therein.

21.6 Certifications. The following certifications shall be final and conclusive as to any persons dealing with the Trust:

(a) A certification of a vacancy among the Trustees by reason of resignation, removal, increase in the number of Trustees, incapacity, death or otherwise, when made in writing by a majority of the remaining Trustees;

(b) A certification as to the persons holding office as Trustees or officers at any particular time, when made in writing by the Secretary of the Trust or by any Trustee;