

declare and pay such dividends and distributions as shall be necessary for the Trust to qualify as a real estate investment trust under the REIT Provisions of the Internal Revenue Code. The Trustees may, in addition, from time to time in their discretion, declare and pay as dividends or other distributions such additional amounts, whether or not out of earnings, profits and surplus available therefor, sufficient to enable the Trust to avoid or reduce its liability for Federal income taxes, inasmuch as the computations of net income and gains for Federal income tax purposes may vary from the computations thereof on the books of the Trust. Any or all such dividends or other distributions may be made, in whole or in part, in cash, property, or other assets of the Trust, or in senior or subordinated, secured or unsecured, evidences of indebtedness of the Trust, as the Trustees may in their sole discretion from time to time determine. The Trustees may also distribute to the Shareholders additional Shares in such manner and on such terms and in such proportions as they may deem proper. The exercise of the powers and rights of the Trustees in this Section 11.1 and in Section 11.2 shall be subject to the provisions of any series of Preferred Shares at the time outstanding.

SECTION 11.2. *Retained Earnings.* The Trustees, except as provided in Section 11.1 hereof, may always retain from the net profits such amount as they may deem necessary to pay the debts or expenses of the Trust, to meet obligations of the Trust, to establish reserves or as they may deem desirable to use in the conduct of its affairs or to retain for future requirements or extensions of the business.

SECTION 11.3. *Source of Distributions.* Any distributions to Shareholders shall be accompanied by a statement in writing advising the Shareholders of the source of the funds so distributed so that distributions of ordinary income, return of capital, and capital gains income will be clearly distinguished, or, if the source of funds so distributed has not been determined, the communication shall so state, in which event the statement of the source of funds shall be forwarded to Shareholders promptly after the close of the fiscal year in which the distribution was made.

ARTICLE XII

RECORDING OF DECLARATION OF TRUST

SECTION 12.1. *Recording.* This Declaration of Trust and any amendment hereto (including any resolution adopted pursuant to Section 6.3) shall, as soon as reasonably practicable after its execution or adoption, be filed in the office of the Secretary of The Commonwealth of Massachusetts, which filing shall be a condition precedent to the effectiveness of any such amendment. The Trustees shall also cause to be filed in the aforementioned office and in all other offices in which recording of the amendment or instrument in question shall be required from time to time by the laws of The Commonwealth of Massachusetts or by any other applicable laws or in which such recording shall seem desirable to the Trustees, all amendments to this Declaration of Trust and appropriate instruments disclosing changes in the persons who are Trustees of the Trust but such filing shall not be deemed a condition to the effectiveness of, and (except as to the required filing of amendments in the office of the Secretary of The Commonwealth of Massachusetts) the failure to so file shall not be deemed to invalidate any such amendment or any election or appointment of any person as a Trustee or the resignation or removal of any Trustee.

ARTICLE XIII

AMENDMENT OR TERMINATION OF TRUST

SECTION 13.1. *Amendment or Termination.* Except for increases or decreases in the number of Preferred Shares in any series effected pursuant to the final paragraph of Section 6.3 and except as provided in the provisions of any series of Preferred Shares at the time outstanding, the provisions of this Declaration of Trust may be amended or altered (except as to the limitations of personal liability of the Shareholders and Trustees and the prohibition of assessments upon Shareholders), or the Trust may be terminated at any meeting of Shareholders called for the purpose, by the affirmative vote of the holders of Shares representing not less than two-thirds of the total number of votes authorized to be cast by