

SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

UNIVERSAL HEALTH REALTY INCOME TRUST  
(Exact name of registrant as specified in its charter)

Maryland  
(State or other jurisdiction of  
incorporation or organization)

23-6858580  
(I.R.S. Employer  
Identification Number)

Universal Corporate Center  
367 South Gulph Road  
King of Prussia, Pennsylvania 19406-0958  
(610) 265-0688  
(Address, including zip code, and telephone number, including area code,  
of registrant's principal executive offices)

Kirk E. Gorman, President and Chief Financial Officer  
Universal Health Realty Trust  
Universal Corporate Center  
367 South Gulph Road  
King of Prussia, Pennsylvania 19406-0958  
(610) 265-0688  
(Name, address, including zip code, and telephone  
number, including area code, of agent for service for  
the registrant)

Copies of all communications, including all communications sent to the  
agent for service, should be sent to:  
Warren J. Nimetz, Esq.  
Fulbright & Jaworski L.L.P.  
666 Fifth Avenue  
New York, New York 10103  
(212) 318-3000

Approximate date of commencement of proposed sale to the public: From time to  
time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered  
pursuant to dividend or interest reinvestment plans, please check the following  
box: ☐

If any of the securities being registered on this Form are to be offered on a  
delayed or continuous basis pursuant to Rule 415 under the Securities Act of  
1933, other than securities offered only in connection with dividend or interest  
reinvestment plans, check the following box: ☒

If this Form is filed to register additional securities for an offering  
pursuant to Rule 462(b) under the Securities Act, please check the following box  
and list the Securities Act registration statement number of the earlier  
effective registration statement for the same offering. ☐ \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under  
the Securities Act, check the following box and list the Securities Act  
registration statement number of the earlier effective registration statement  
for the same offering. ☐ \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434,  
please check the following box. ☐

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Proposed maximum Aggregate offering price(1)	Amount of Registration fee
Shares of Beneficial Interest.....	\$100,000,000(2)	\$25,000

- (1) Estimated solely for the purpose of calculating the registration fee  
pursuant to Rule 457(o) under the Securities Act of 1933, as amended.  
(2) An indeterminate number of shares of beneficial interest, \$.01 par value,  
are covered by this registration statement.

The registrant hereby amends this registration statement on such date or dates  
as may be necessary to delay its effective date until the registrant shall file  
a further amendment which specifically states that this registration statement  
shall thereafter become effective in accordance with Section 8(a) of the  
Securities Act of 1933 or until the registration statement shall become  
effective on such date as the Commission, acting pursuant to said Section 8(a),

may determine.  
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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.  
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Subject to Completion, dated May 10, 2001

PROSPECTUS

\$100,000,000

UNIVERSAL HEALTH REALTY INCOME TRUST

Shares of Beneficial Interest

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We may offer to the public, from time to time in one or more issuances, our shares of beneficial interest.

This prospectus provides you with a general description of our shares of beneficial interest that we may offer. Each time we offer shares of beneficial interest, we will provide a prospectus supplement that will contain specific information about the terms of that offering. You should read this prospectus and each prospectus supplement carefully before you invest.

Our shares of beneficial interest currently trade on the New York Stock Exchange under the symbol "UHT."

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined that this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This prospectus is dated , 2001.

Unless the context otherwise requires, "Trust," "us," "our" and "we" refer to Universal Health Realty Income Trust and "UHS" refers to Universal Health Services, Inc.

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You should rely only on the information contained or incorporated by reference in this prospectus or in the prospectus supplement which is delivered with this prospectus, or which is referred to under "Where You Can Find Additional Information." We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. This prospectus is not an offer to sell or a solicitation of an offer to buy any securities other than the Trust's shares of beneficial interest which are referred to in the prospectus supplement. This prospectus is not an offer to sell or a solicitation of an offer to buy any securities other than the Trust's shares of beneficial interest in any circumstances in which an offer or solicitation is unlawful. You should not interpret the delivery of this prospectus, or any sale of the Trust's shares of beneficial interest, as an indication that there has been no change in our affairs since the date of this prospectus. You should be aware that information in this prospectus may change after this date.

#### WHERE YOU CAN FIND ADDITIONAL INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our file number is 1-9321. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file at the SEC's public reference room located at 450 Fifth Street, N.W., Washington, DC 20549, as well as at the regional offices of the SEC located at 7 World Trade Center, New York, New York 10048 and Citicorp Center, 500 West Madison Street, Chicago, Illinois 60661. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms and their copy charges.

The Trust's shares of beneficial interest are listed on the New York Stock Exchange. You may also inspect the information we file with the SEC at the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

We are "incorporating by reference" specified documents that we file with the SEC, which means:

- . incorporated documents are considered part of this prospectus;
- . we are disclosing important information to you by referring you to those documents; and
- . information that we file in the future with the SEC will automatically update and supersede the information in this prospectus.

We incorporate by reference the documents listed below, and any documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus and prior to the termination of this offering:

- . our annual report on Form 10-K for the year ended December 31, 2000.
- . the description of the Trust's shares of beneficial interest contained in the Trust's Registration Statement on Form 8-A filed with the SEC on November 12, 1986.

You may also request a copy of these filings, at no cost, by writing or telephoning our chief financial officer at the following address:

Universal Health Realty Income Trust  
Universal Corporate Center  
P.O. Box 61558  
367 South Gulph Road  
King of Prussia, Pennsylvania 19406-0958  
Attention: Chief Financial Officer  
Telephone: (610) 265-0688

## THE TRUST

The Trust is a Maryland real estate investment trust organized in August 1986 to invest in income-producing, health care-related properties. The Trust has investments in 41 facilities located in 15 states. These investments include:

- . ownership of four acute care, one rehabilitation and one behavioral hospital facilities leased to subsidiaries of UHS;
- . ownership of ten medical care office buildings, four preschool childcare centers, and one subacute care and one rehabilitation hospital facility leased to unaffiliated third parties; and
- . varying non-controlling equity interests ranging from 33% to 99% in limited liability companies which own the real estate assets of an aggregate of 19 medical care office buildings.

Included in the Trust's portfolio is ownership of eight hospital facilities (aggregate investment of \$130 million) which contain an aggregate of 1,149 licensed beds. The leases with respect to hospital facilities comprised 72% of the Trust's 2000 revenues (excluding revenues derived from the Trust's non-controlling limited liability company interests), have fixed terms with an average of 3.6 years remaining and provide for renewal options for up to six five-year terms.

For the eight hospital facilities owned by the Trust (excluding from all three years the facility sold to a subsidiary of UHS in December, 2000), the combined ratio of earnings before interest, taxes, depreciation, amortization and lease and rental expense (EBITDAR) to minimum rent plus additional rent payable to the Trust was approximately 5.6, 5.3 and 5.4 for the years ended December 31, 2000, 1999 and 1998, respectively. The coverage ratio for individual facilities varies.

The Trust's principal executive offices are located at Universal Corporate Center, 367 South Gulph Road, P.O. Box 61558, King of Prussia, Pennsylvania 19406-0958. The Trust's telephone number is (610) 265-0688.

## THE TRUST'S RELATIONSHIP TO UHS

UHS' principal business is owning and operating acute care hospitals, behavioral health centers, ambulatory surgery centers, radiation oncology centers and women's centers. At December 31, 2000, UHS operated 59 hospitals, consisting of 23 acute care hospitals, 35 behavioral health centers, and one women's center. As part of UHS' Ambulatory Treatment Centers Division, at December 31, 2000 UHS owned, either outright or in partnership with physicians, and operated or managed 25 surgery and radiation oncology centers located in 12 states and the District of Columbia. UHS' facilities are located in Arkansas, California, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New Jersey, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah and Washington.

For the year ended December 31, 2000, UHS had assets of \$1,742,377,000, revenues of \$2,242,444,000 and net income of \$93,362,000. In 2000, UHS' acute care hospitals, ambulatory

surgery centers, radiation oncology centers and women's center contributed approximately 84% of UHS' consolidated net revenues and UHS' behavioral health centers contributed approximately 16% of UHS' consolidated net revenues.

Services provided by UHS' hospitals include general surgery, internal medicine, obstetrics, emergency room care, radiology, oncology, diagnostic care, coronary care, pediatric services and behavioral health services. UHS' facilities benefit from shared centralized services, such as central purchasing, information services, finance and control systems, facilities planning, physician recruitment services, administrative personnel management, marketing and public relations.

Leases. Subsidiaries of UHS lease six of the eight hospital facilities owned by the Trust with terms expiring in 2001 through 2006. The leases to the subsidiaries of UHS are guaranteed by UHS and are cross-defaulted with one another. Each of the leases contains renewal options of up to six five-year periods. These leases accounted for 70% of the total revenue of the Trust for the five years ended December 31, 2000 (63% for the year ended December 31, 2000). Including 100% of the revenues generated at the unconsolidated limited liability companies in which the Trust has various non-controlling equity interests ranging from 33% to 99%, the UHS leases accounted for 45% of the combined consolidated and unconsolidated revenue for the five years ended December 31, 2000 (35% for the year ended December 31, 2000).

For the six hospital facilities owned by the Trust and leased to subsidiaries of UHS, the combined ratio of EBITDAR to minimum rent plus additional rent payable to the Trust (excluding from all three years the facility sold to a subsidiary of UHS in December, 2000) was approximately 5.7, 5.6 and 5.5 for the years ended December 31, 2000, 1999 and 1998, respectively. The coverage ratio for individual facilities vary and range from 2.7 to 8.3 in 2000, 1.1 to 9.0 in 1999 and 1.1 to 8.6 in 1998. Management of the Trust cannot predict whether the leases with subsidiaries of UHS, which have renewal options at existing lease rates, or any of the Trust's other leases, will be renewed at the end of their lease terms. If the leases are not renewed at their current rates, the Trust would be required to find other operators for those facilities and/or enter into leases on terms potentially less favorable to the Trust than the current leases.

Pursuant to the terms of the leases with UHS, the lessees have rights of first refusal to:

- . purchase the respective leased facilities during and for 180 days after each lease term at the same price, terms and conditions of any third-party offer, or;
- . renew the lease on the respective leased facility at the end of, and for 180 days after, the lease term at the same terms and conditions pursuant to any third-party offer.

Each lease also grants the lessee options, exercisable on at least six months notice, to purchase the leased facility at the end of the lease term or any renewal term at the facility's then fair market value. The terms of the leases also provide that in the event UHS discontinues operations at the leased facility for more than one year, or elects to terminate its lease prior to the expiration of its term for prudent business reasons, UHS is obligated to offer a substitution property. If the Trust does not accept the substitution property offered, UHS is obligated to purchase the leased facility back from the Trust at a price equal to the greater of its then fair market value or the original purchase price paid by the Trust. As noted below, transactions with UHS must be

approved by a majority of the trustees who are unaffiliated with UHS. The purchase options and rights of first refusal granted to the respective lessees to purchase or lease the respective leased facilities, after the expiration of the lease term, may adversely affect the Trust's ability to sell or lease a facility, and may present a potential conflict of interest between the Trust and UHS since the price and terms offered by a third-party are likely to be dependent, in part, upon the financial performance of the facility during the final years of the lease term.

**Advisory Agreement.** UHS of Delaware, Inc., a wholly-owned subsidiary of UHS, serves as advisor to the Trust under an Advisory Agreement, dated December 24, 1986, between the parties. Under the Advisory Agreement, UHS of Delaware is obligated to:

- . present an investment program to the Trust;
- . use its best efforts to obtain investments suitable for that program (although it is not obligated to present any particular investment opportunity to the Trust); and
- . provide administrative services to the Trust and to conduct the Trust's day-to-day affairs.

In performing its services under the Advisory Agreement, UHS of Delaware may utilize independent professional services, including accounting, legal and other services, for which it is reimbursed directly by the Trust. The Advisory Agreement expires on December 31 of each year; however, it is renewable by the Trust, subject to a determination by the trustees who are unaffiliated with UHS that UHS of Delaware's performance has been satisfactory. The Advisory Agreement may be terminated for any reason upon sixty days written notice by either party. The Advisory Agreement has been renewed for 2001. All transactions with UHS must be approved by a majority of the trustees who are unaffiliated with UHS. The Advisory Agreement provides that UHS of Delaware is entitled to receive an annual advisory fee equal to .60% of the average invested real estate assets of the Trust, as derived from its consolidated balance sheet from time to time. In addition, UHS of Delaware is entitled to an annual incentive fee equal to 20% of the amount by which cash available for distribution to shareholders for each year, as defined in the Advisory Agreement, exceeds 15% of the Trust's equity as shown on its balance sheet, determined in accordance with generally accepted accounting principles without reduction for return of capital dividends. No incentive fees were paid during 2000, 1999 and 1998. The advisory fee is payable quarterly, subject to adjustment at year end based upon audited financial statements of the Trust.

**Share Purchase Option.** UHS has the option to purchase shares of beneficial interest in the Trust at fair market value to maintain a 5% interest in the Trust. As of March 31, 2000, UHS owned 8.5% of the Trust's outstanding shares of beneficial interest.

#### USE OF PROCEEDS

Unless otherwise provided in the prospectus supplement that accompanies this prospectus, the Trust intends to add the net proceeds from the sale of its shares of beneficial interest to the Trust's general funds. The Trust expects to use the proceeds for general operating purposes, including working capital, capital expenditures and the repayment of borrowings. Before the Trust uses the proceeds for these purposes, the Trust may invest the proceeds in interest-bearing time deposits or short-term marketable securities.



## DESCRIPTION OF THE TRUST'S SHARES OF BENEFICIAL INTEREST

The summary of the terms of the Trust's shares of beneficial interest set forth below does not purport to be complete and is subject to and qualified in its entirety by reference to the Declaration of Trust, as amended and/or restated from time to time, and the Amended and Restated Bylaws, as amended and/or restated from time to time, each of which is incorporated herein by reference.

The Trust's authorized capital stock consists of 95,000,000 shares of beneficial interest, par value \$0.01 per share, and 5,000,000 preferred shares of beneficial interest, par value \$0.01 per share. The Trust has agreed to issue to UHS, one of its shareholders, additional shares of beneficial interest from time to time in the future, at their then fair market value, sufficient for UHS to maintain a 5% interest in the Trust.

**Shares of Beneficial Interest.** Except as otherwise determined by the trustees of the Trust with respect to any class of or series of preferred shares of beneficial interest, all shares of beneficial interest will participate equally in distributions payable to shareholders when and as declared by the trustees of the Trust and in net assets available for distribution to shareholders, on liquidation or dissolution, will have one vote per share on all matters submitted to a vote of the Trust's shareholders and will not have cumulative voting rights in the election of the Trust's trustees. The shares of beneficial interest offered hereby will be validly issued, fully paid and, except as set forth below, non-assessable by the Trust upon issuance, and will have no preference, conversion, exchange or pre-emptive rights.

**Preferred Shares of Beneficial Interest.** No preferred shares of beneficial interest are presently outstanding. Preferred shares of beneficial interest may be issued from time to time by the Trust's trustees, without shareholder approval, in such series and with such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications or other provisions, as may be fixed by the trustees in the resolution authorizing their issuance.

**Redemption and Business Combination Provisions.** If the Trust's trustees shall, at any time and in good faith, be of the opinion that direct or indirect ownership of at least 9.8% in value of the outstanding shares of beneficial interest (taking into account the constructive ownership rules contained in Sections 318 and 544 of the Internal Revenue Code of 1986, or the Code) has or may become concentrated in the hands of one beneficial owner, the Trust's trustees shall have the power:

- . by lot or other means deemed equitable by them to call for the purchase from any such shareholder that number of the Trust's shares of beneficial interest sufficient, in the opinion of the trustees, to maintain or bring the direct or indirect ownership of the Trust's shares of beneficial interest of such owner to a level equal to 9.8% in value of the outstanding shares; and
- . to refuse to transfer or issue the Trust's shares of beneficial interest to any person whose acquisition of such shares would cause a person to hold in excess of 9.8% in value of the outstanding shares of beneficial interest.

Any transfer of the Trust's shares of beneficial interest that would create a direct or indirect owner of more than 9.8% in value of the outstanding shares of beneficial interest shall be

deemed void and the intended transferee shall be deemed never to have had an interest therein. The purchase price for any of the shares of beneficial interest so redeemed shall be equal to the fair market value of the shares reflected in the closing sales price for the shares, if then listed on a national securities exchange or traded in the Nasdaq National Market, or the average of the closing sales prices for the shares if then listed on more than one national securities exchange, or if the shares are not then listed on a national securities exchange, the latest bid quotation for the shares if then traded over-the-counter, on the last business day immediately preceding the day on which notices of such acquisition are sent by the Trust or, if no such closing sale prices or quotations are available, then the purchase price shall be equal to the net asset value of such shares as determined by the trustees in accordance with the provisions of applicable law. From and after the date fixed for purchase by the Trust's trustees, the holder of any shares of beneficial interest so called for purchase shall cease to be entitled to distributions, voting rights and other benefits with respect to such shares, except the right to payment of the purchase price for the shares.

If any person knowingly holds in excess of 9.8% in value of the outstanding shares of beneficial interest and the Trust loses its qualification as a real estate investment trust under the Code or becomes a personal holding company, that person would be required to indemnify the Trust for the full amount of any damages and expenses resulting from the loss of its qualification as a real estate investment trust or its becoming a personal holding company. These damages and expenses might include increased corporate taxes, attorneys' fees and administrative costs.

The Declaration of Trust permits the trustees to effect any merger or consolidation in accordance with applicable law, except any merger or consolidation with, or any sale, lease, transfer or other disposition of all or any substantial part of the assets of the Trust to, or from, a holder of shares of beneficial interest of the Trust representing, in the aggregate, 5% or more of the total number of votes authorized to be cast by holders of the Trust's shares of beneficial interest. Business combinations with these related persons must be approved by the affirmative vote of the holders of shares representing at least 95% of the total number of votes authorized to be cast by holders of the Trust's shares of beneficial interest unless:

- . the trustees by a vote or written consent of all but one of the trustees have expressly approved in advance the acquisition of the outstanding shares of the Trust that caused that person to become a related person or shall have approved the business combination prior to that person having become a related person; or
- . the business combination is solely between the Trust and another trust or corporation of which 100% of that entity's voting securities are owned directly or indirectly by the Trust.

Shareholder Liability. Title 8 of the Maryland General Corporation Law provides that a shareholder of a real estate investment trust shall have immunity from personal liability for the obligations of the real estate investment trust. This Title also provides that the declaration of a real estate investment trust may include any provision expanding or limiting the liability of its shareholders for money damages except for limiting the liability of its shareholders to the extent:

- . actual receipt of an improper benefit or profit in money, property or services is proved; or

- . active and deliberate dishonesty is established by a final judgment as being material to the cause of action.

The Declaration of Trust also provides that the Trust's shareholders shall not be subject to any liability for the acts or obligations of the Trust and that, as far as practicable, each of the Trust's written agreements creating an obligation of the Trust shall contain a provision to that effect. With respect to all types of claims in some jurisdictions, tort claims only in other jurisdictions, contract claims where shareholder liability is not disavowed as described above, and claims for taxes and certain statutory liabilities, a shareholder may be held personally liable to the extent that claims are not satisfied by the Trust. The Declaration of Trust provides that, upon payment of any such liability, the shareholder will be entitled to reimbursement from the Trust's general assets. There can be no assurance that, at the time any such liability arises, the Trust will have assets sufficient to satisfy this reimbursement obligation. The Trust's trustees intend to conduct the Trust's operations, with the advice of counsel, in such a way as to avoid, as far as practicable, the ultimate liability of the Trust's shareholders. The Trust's trustees do not intend to provide insurance covering such risks to the Trust's shareholders.

Transfer Agent and Registrar. EquiServe Trust Company, N.A. acts as transfer agent, registrar and dividend reinvestment agent of the Trust's shares of beneficial interest.

Trading Market. The Trust's shares of beneficial interest currently trade on the New York Stock Exchange under the symbol "UHT."

#### CERTAIN FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of the federal income tax considerations the Trust believes are material to a holder of the Trust's shares of beneficial interest. This summary is based on current law, is for general information only and is not tax advice. Your tax treatment will vary depending on your particular situation and this discussion does not purport to deal with all aspects of taxation that may be relevant to a holder of shares of beneficial interest in light of his or her personal investments or tax circumstances, or to shareholders who receive special treatment under the federal income tax laws except to the extent discussed under the headings "--Taxation of Tax Exempt-Shareholders" and "--Taxation of Foreign Shareholders." Shareholders receiving special treatment include, without limitation:

- . insurance companies;
- . financial institutions or broker-dealers;
- . tax-exempt organizations;
- . stockholders holding securities as part of a conversion transaction, or a hedge or hedging transaction, or as a position in a straddle for tax purposes;
- . foreign corporations or partnerships; and
- . persons who are not citizens or residents of the United States.

In addition, this summary does not consider the effect of any foreign, state, local or other tax laws that may be applicable to you as a holder of the Trust's shares of beneficial interest.

The information in this section is based on:

- . the Code;
- . current, temporary and proposed Treasury Regulations promulgated under the Code;
- . the legislative history of the Code;
- . current administrative interpretations and practices of the Internal Revenue Service ("IRS"); and
- . court decisions;

in each case, as of the date of this prospectus. Future legislation, Treasury Regulations, administrative interpretations and practices and/or court decisions may adversely affect the tax considerations contained in this discussion. Any change could apply retroactively to transactions preceding the date of the change. The Trust has not requested, and does not plan to request, any rulings from the IRS concerning its tax treatment, and the statements in this prospectus are not binding on the IRS or any court. Thus, the Trust cannot assure you that the tax considerations contained in this discussion will not be challenged by the IRS or if challenged, will be sustained in court.

The summary below is for general information only and is not tax advice. You are urged to consult your tax advisor regarding the specific tax consequences to you of:

- . the acquisition, ownership and sale or other disposition of the Trust's shares of beneficial interest, including the federal, state, local, foreign and other tax consequences;
- . the Trust's election to be taxed as a real estate investment trust for federal income tax purposes; and
- . potential changes in the tax laws.

#### Taxation of the Trust

General. The Trust elected to be taxed as a real estate investment trust, or REIT, commencing with its taxable year ended December 31, 1986. The Trust believes that it was organized and has operated in a manner that permits it to satisfy the requirements for taxation as a REIT under the applicable provisions of the Code and intends to continue to operate in such a manner. No assurance can be given, however, that such requirements have been or will continue to be met.

The following discussion is based on the law existing and in effect on the date hereof and the Trust's qualification and taxation as a REIT will depend on compliance with such law and with any future amendments or modifications to such law. The qualification and taxation as a REIT will further depend upon the ability to meet, on a continuing basis through actual operating results, the various qualification tests imposed under the Code discussed below. No assurance can be given that the Trust will satisfy these tests on a continuing basis.

In brief, an entity that invests primarily in real estate can, if it meets the REIT provisions of the Code described below, claim a tax deduction for the dividends it pays to its shareholders. Such an entity generally is not taxed on its "REIT taxable income" to the extent such income is currently distributed to shareholders, thereby substantially eliminating the "double taxation" (i.e., at both the entity and shareholder levels) that generally results from an investment in an entity which is taxed as a corporation. However, as discussed in greater detail below, such an entity remains subject to tax in certain circumstances even if it qualifies as a REIT. Further, if the entity were to fail to qualify as a REIT in any year, it would not be able to deduct any portion of the dividends it paid to its shareholders and would be subject to full federal corporate income taxation on its earnings, thereby significantly reducing or eliminating the cash available for distribution to its shareholders.

Fulbright & Jaworski L.L.P. has opined that the Trust was organized and has operated in conformity with the requirements for qualification as a REIT under the Code for each of its taxable years and that its proposed method of operations as described in this prospectus and as represented to Fulbright & Jaworski by the Trust will enable the Trust to continue to satisfy the requirements for qualification and taxation as a REIT under the Code for future taxable years. This opinion was rendered as of May \_\_, 2001, and Fulbright & Jaworski has no obligation to update its opinion subsequent to this date.

The opinion of Fulbright & Jaworski is based upon certain assumptions and certain factual representations made by the Trust, including representations made by the Trust in this prospectus and a factual certificate provided by one of the Trust's officers. Moreover, such qualification and taxation as a REIT depends upon the ability of the Trust to meet, for each taxable year, various tests imposed under the Code as discussed below, and Fulbright & Jaworski has not reviewed in the past, and may not review in the future, the Trust's compliance with these tests. Accordingly, neither Fulbright & Jaworski nor the Trust can assure you that the actual results of the operations of the Trust for any particular taxable year will satisfy such requirements.

In any year in which the Trust qualifies as a REIT, it will not generally be subject to federal corporate income tax on that portion of its net income which is distributed to shareholders. The Trust will, however, be subject to tax at normal corporate rates on any undistributed "real estate investment trust taxable income," including capital gains. Shareholders are required to include their proportionate share of the REIT's undistributed long-term capital gain in income, but would receive a credit for their share of any taxes paid on such gain by the REIT.

Notwithstanding its qualification as a REIT, the Trust also may be subject to taxation in the following circumstances:

- . If the Trust should fail to satisfy either the 75% or the 95% gross income test and nonetheless maintains its qualification as a REIT because certain other requirements are met, it will be subject to a 100% tax on the greater of the amount by which the Trust fails either the 75% or the 95% gross income test (substituting for purposes of calculating the amount by which the 95% gross income test is failed, 90% for 95%) multiplied by a fraction intended to reflect the Trust's profitability.

- . The Trust will also be subject to a tax of 100% on net income from any "prohibited transaction" (as described below), and if the Trust has (i) net income from the sale or other disposition of "foreclosure property" which is held primarily for sale to customers in the ordinary course of business or (ii) other non-qualifying income from foreclosure property, it will be subject to tax on such income from foreclosure property at the highest corporate rate.
- . If the Trust should fail to distribute during each calendar year at least the sum of (i) 85% of its REIT ordinary income for such year, (ii) 95% of its REIT capital gain net income for such year and (iii) any undistributed taxable income from prior years, the Trust would be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed.
- . If the Trust disposes of any asset acquired from a corporation which is or has been a C corporation in a transaction in which the Trust's basis in the asset is determined by reference to the basis of the asset in the hands of that C corporation, within the ten-year period following the Trust's acquisition of that asset, the Trust may be required, under Treasury Regulations, to distribute at least 90% (95% for taxable years ending before January 1, 2001) of the after-tax gain, if any, recognized on the disposition of the asset, to the extent that gain does not exceed the excess of (a) the fair market value of the asset on the date the Trust acquired the asset over (b) the Trust's adjusted basis in the asset on the date the Trust acquired the asset.
- . The Trust also may be subject to the corporate alternative minimum tax.

The Trust uses the calendar year both for federal income tax purposes, as is required of a REIT under the Code, and for financial reporting purposes.

**Failure to Qualify.** If the Trust fails to qualify for taxation as a REIT in any taxable year and the relief provisions do not apply, the Trust will be subject to tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates. Distributions to shareholders in any year in which the Trust fails to qualify as a REIT will not be deductible by the Trust, nor will the Trust be required to distribute any amounts to shareholders. In such event, to the extent of current and accumulated earnings and profits, all distributions to shareholders will be taxable as ordinary income and, subject to certain limitations in the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, the Trust also will be disqualified from re-electing taxation as a REIT for the four taxable years following the year during which qualification was lost.

#### REIT Qualification Requirements

In order to qualify as a REIT, the Trust must meet the following requirements, among others:

**Share Ownership Tests.** The Trust's shares of beneficial interest must be held by a minimum of 100 persons for at least 335 days in each taxable year (or a proportionate number of days in any short taxable year). In addition, at all times during the second half of each taxable year, no more than 50% in value of the outstanding shares of beneficial interest of the Trust may

be owned, directly or indirectly and taking into account the effects of certain constructive ownership rules, by five or fewer individuals, which for this purpose includes certain tax-exempt entities (the "50% Limitation"). However, for purposes of this test, any shares of beneficial interest held by a qualified domestic pension or other retirement trust will be treated as held directly by its beneficiaries in proportion to their actuarial interest in such trust rather than by such trust. In addition, for purposes of the 50% Limitation, shares of beneficial interest owned, directly or indirectly, by a corporation will be considered as being owned proportionately by its shareholders.

To ensure compliance with these share ownership tests, the Trust's Declaration of Trust places restrictions on the transfer of its shares of beneficial interest to prevent additional concentration of share ownership. Moreover, to evidence compliance with these requirements, Treasury Regulations require the Trust to maintain records which disclose the actual ownership of its outstanding shares of beneficial interest. In fulfilling its obligations to maintain records, the Trust must and will demand written statements each year from the record holders of designated percentages of its shares of beneficial interest disclosing the actual owners of those shares of beneficial interest. A list of those persons failing or refusing to comply with such demand must be maintained as part of the Trust's records. A shareholder failing or refusing to comply with the Trust's written demand must submit with his tax return a similar statement disclosing the actual ownership of the Trust shares of beneficial interest and certain other information.

Under the Trust's Declaration of Trust a person is generally prohibited from owning more than 9.8% in value of the aggregate outstanding shares of beneficial interest.

Asset Tests. At the close of each quarter of the Trust's taxable year, the Trust must satisfy two tests relating to the nature of its assets (determined in accordance with generally accepted accounting principles). First, at least 75% of the value of the Trust's total assets must be represented by interests in real property, interests in mortgages on real property, shares in other REITs, cash, cash items, government securities and qualified temporary investments. Second, not more than 25% of the value of the Trust's assets generally may be represented by securities (other than securities included in the 75% asset test). Of the investments included in the 25% asset class, such securities may not exceed:

- . in the case of securities of any one non-government issuer, 5% of the value of the Trust's total assets; or
- . 10% of the outstanding voting securities of any one such issuer (or the "Issuer Voting Stock Test"), and 10% of the total value of any such issuer.

In addition, the value of the securities in any "taxable REIT subsidiary" may not exceed 20% of the value of the Trust's total assets. Certain debt securities held by a REIT will not be taken into account for purposes of the Issuer Value Test. Finally, certain "grandfathering" rules also exempt from the Issuer Value Test securities owned by a REIT on July 12, 1999. Where the Trust invests in a partnership, including any limited liability company classified as a partnership for federal income tax purposes, it will be deemed to own a proportionate share of the partnership's assets, and the partnership interest will not constitute a security for purposes of these tests.

After initially meeting the asset tests at the close of any quarter, the Trust will not lose its status as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values. If the Trust fails to satisfy the asset tests because it acquires securities or other property during a quarter, the Trust can cure this failure by disposing of sufficient nonqualifying assets within 30 days after the close of the quarter. For this purpose, an increase in the Trust's interests in any partnership or limited liability company in which it owns an interest will be treated as an acquisition of a portion of the securities or other property owned by that partnership or limited liability company. If the Trust fails to cure any noncompliance with the asset tests within this time period, it would cease to qualify as a REIT.

**Gross Income Tests.** There are two separate percentage tests relating to the sources of the Trust's gross income which must be satisfied for each taxable year. For purposes of these tests, where the Trust invests in a partnership, or a limited liability company classified as a partnership for federal income tax purposes, the Trust generally will be treated as receiving its share of the income and loss of the partnership and the gross income of the partnership will retain the same character in the hands of the Trust as it has in the hands of the partnership. The two tests are described below.

**The 75% Test.** At least 75% of the Trust's gross income for the taxable year must be "qualifying income." Qualifying income generally includes:

- . rents from real property (except as modified below);
- . interest on obligations secured by mortgages on, or interests in, real property;
- . gains from dealer property - that is, gains from the sale or other disposition of interests in real property and real estate mortgages, other than gain from property held primarily for sale to customers in the ordinary course of the Trust's trade or business;
- . dividends or other distributions on shares in other REITs, as well as gain from the sale of such shares;
- . abatements and refunds of real property taxes;
- . income from foreclosure property - that is, income from the operation, and gain from the sale, of property acquired at or in lieu of a foreclosure of the mortgage secured by such property; and
- . commitment fees received for agreeing to make loans secured by mortgages on real property or to purchase or lease real property.

**The 95% Test.** In addition to deriving 75% of its gross income from the sources listed above, at least 95% of the Trust's gross income for the taxable year must be derived from the above-described qualifying income or from dividends, interest, or gains from the sale or other disposition of stock or other securities that are not dealer property. Dividends and interest on obligations not collateralized by an interest in real property are included for purposes of the 95% test, but not for purposes of the 75% test. The Trust intends to monitor closely its non-qualifying



income and anticipates that non-qualifying income from its activities will not result in the Trust failing to satisfy either the 75% or 95% gross income test.

For purposes of the gross income tests, the term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of all or some of the amount depends in any way on the income or profits of any person. The amount received or accrued generally will not be excluded from the term "interest," however, solely by reason of being based on a fixed percentage or percentages of receipts or sales.

Rents received from a tenant will qualify as "rents from real property" in satisfying the gross income requirements for a REIT described above only if all of the following conditions are met:

- . The amount of rent must not be based in any way on the income or profits of any person. An amount received or accrued generally will be not be excluded from the term "rents from real property" solely because it is based on a fixed percentage or percentages of receipts or sales.
- . The Trust, or an actual or constructive owner of 10% or more of the Trust's capital stock, does not actually or constructively own 10% or more of the interests in the tenant.
- . Rent attributable to personal property, leased in connection with a lease of real property, is not greater than 15% of the total rent received under the lease. If this condition is not met, then the portion of the rent attributable to personal property will not qualify as "rents from real property."
- . The Trust generally must not operate or manage its property or furnish or render services to its tenants, subject to a 1% de minimis exception, other than through an independent contractor from whom it derives no revenue. The Trust may, however, directly perform services that are "usually or customarily rendered" in connection with the rental of space for occupancy only and are not otherwise considered "rendered to the occupant" of the property. Examples of these services include the provision of light, heat, or other utilities, trash removal and general maintenance of common area. Further, under recently enacted legislation beginning in 2001, the Trust is permitted to employ a "taxable REIT subsidiary" which is wholly or partially owned by the Trust, to provide both customary and noncustomary services to its tenants without causing the rent received from those tenants to fail to qualify as "rents from real property." The Trust currently does not own any interest in any "taxable REIT subsidiary."

For purposes of determining whether the Trust complies with the 75% and the 95% gross income tests, gross income does not include income from prohibited transactions. A "prohibited transaction" is a sale of dealer property (excluding foreclosure property); however, a sale of property will not be a prohibited transaction if such property is held for at least four years and certain other requirements relating to the number of properties sold in a year, their tax bases and the cost of improvements made thereto are satisfied.

Even if the Trust fails to satisfy one or both of the 75% and 95% gross income tests for any taxable year, it may still qualify as a REIT for such year if it is entitled to relief under certain provisions of the Code. These relief provisions will generally be available if:

- . the Trust's failure to comply is due to reasonable cause and not to willful neglect;
- . the Trust reports the nature and amount of each item of its income included in the tests on a schedule attached to its tax return; and
- . any incorrect information on this schedule is not due to fraud with intent to evade tax.

If these relief provisions apply, however, the Trust will nonetheless be subject to a 100% tax on the greater of the amount by which it fails either the 75% or 95% gross income test (substituting for purposes of calculating the amount by which the 95% gross income test is failed, 90% for 95%) multiplied by a fraction intended to reflect the Trust's profitability. It is not possible, however, to state whether in all circumstances the Trust would be entitled to the benefit of these relief provisions. For example, if the Trust fails to satisfy the gross income tests because nonqualifying income that the Trust intentionally accrues or receives exceeds the limits on nonqualifying income, the IRS could conclude that the Trust's failure to satisfy the tests was not due to reasonable cause.

The Trust intends to continue to monitor its operations and investments in the context of these standards so as to continue to satisfy the 75% and 95% gross income tests. While the Trust or its affiliates provide certain services with respect to the properties in which the Trust, and the partnerships and limited liability companies owned by the Trust, own interests and possibly with respect to any newly acquired properties, the Trust believes that for purposes of the 75% and 95% gross income tests the services provided at such properties and any other services and amenities provided by the Trust, and the partnerships and limited liability companies owned by the Trust, or its agents with respect to such properties will be of the type usually or customarily rendered in connection with the rental of space for occupancy only and not rendered to the occupants of such properties. The Trust intends that services that cannot be provided directly by the Trust, and the partnerships and limited liability companies owned by the Trust, or other agents will be performed by independent contractors.

**Annual Distribution Requirements.** In order to qualify as a REIT, the Trust is required to distribute dividends, other than capital gains dividends, to its shareholders each year in an amount at least equal to (A) the sum of (i) 90% (95% for taxable years ending before January 1, 2001) of the Trust's REIT taxable income, computed without regard to the dividends received deduction and the Trust's net capital gain, and (ii) 90% (95% for taxable years ending before January 1, 2001) of the net after tax income, if any, for foreclosure property, minus (B) the sum of certain items of non-cash income. These distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before the Trust timely files its tax return for such year and if paid on or before the first regular dividend payment after the declaration. To the extent that the Trust does not distribute all of its net capital gain or distributes at least 90% (95% for taxable years ending before January 1, 2001) but less than 100%, of its REIT taxable income, as adjusted, it will be subject to tax on the undistributed amount at regular capital gain or ordinary corporate tax rates, as the case may be.

The Trust intends to make timely distributions sufficient to satisfy the annual distribution requirements described in the first sentence of the preceding paragraph. It is possible that the Trust may not have sufficient cash or other liquid assets to meet the above-described distribution requirement, either due to timing differences between the actual receipt of income and actual payment of expenses on the one hand, and the inclusion of such income and deduction of such expenses in computing the Trust's REIT taxable income on the other hand, or for other reasons. The Trust will monitor closely the relationship between its REIT taxable income and cash flow and, if necessary, intends to borrow funds or cause its affiliates to borrow funds in order to satisfy the distribution requirement. However, there can be no assurance that such borrowing would be available at such time.

If the Trust fails to meet the above-described distribution requirement as a result of an adjustment to the Trust's tax return by the IRS, the Trust may retroactively cure the failure by paying a "deficiency dividend" plus applicable penalties and interest within a specified period.

In addition, the Trust will be required to pay a 4% excise tax on the excess of the required distribution over the amounts, if any, by which the Trust's actual distributions during a calendar year are less than the sum of 85% of the Trust's ordinary income for the year, 95% of the Trust's capital gain net income for the year plus, in each case, any undistributed ordinary income or capital gain net income, as the case may be, from prior periods. Any taxable income or net capital gain income on which this excise tax is imposed for any year is treated as an amount distributed during that year for purposes of calculating the tax.

## Taxation of Shareholders

As used below, the term "domestic shareholder" means a holder of shares of beneficial interest who is for United States federal income tax purposes:

- . a citizen or resident of the United States;
- . a corporation, partnership, or other entity created or organized in or under the laws of the United States or of any state or under the laws of the District of Columbia, unless, in the case of a partnership, Treasury Regulations provide otherwise;
- . an estate which is required to pay United States federal income tax regardless of the source of its income; or
- . a trust whose administration is under the primary supervision of a United States court and which has one or more United States persons who have the authority to control all substantial decisions of the trust.

Notwithstanding the preceding sentence, to the extent provided in Treasury Regulations, some trusts in existence on August 20, 1996, and treated as United States persons prior to this date that elect to continue to be treated as United States persons, also shall be considered domestic shareholders.

**Taxation of Taxable Domestic Shareholders.** As long as the Trust qualifies as a REIT, distributions made to its taxable domestic shareholders out of current or accumulated earnings and profits and not designated as capital gain dividends will constitute dividends taxable as ordinary income, and corporate shareholders will not be eligible for the dividends received deduction as to such amounts. Distributions that are designated as capital gain dividends will be taxed as gain from the sale or exchange of a capital asset to the extent they do not exceed the Trust's actual net capital gain for the taxable year without regard to the period for which the shareholder has held its shares of beneficial interest. In the event the Trust designates any portion of a dividend as a capital gain dividend, a shareholder's share of such capital gain dividend would be an amount which bears the same ratio to the total amount of dividends paid to such shareholder for the taxable year as the total amount of capital gain dividends bears to the total amount of all dividends paid on all classes of shares for the taxable year. However, corporate shareholders may be required to treat up to 20% of certain capital gain dividends as ordinary income. The Trust may elect to retain and pay income tax on any net long-term capital gain, in which case its domestic shareholders would include in their income as long-term capital gain their proportionate share of such undistributed net long-term capital gain. A domestic shareholder would also receive a refundable tax credit for such shareholder's proportionate share of the tax paid by the Trust on such retained capital gains and an increase in its basis in its shares in an amount equal to the difference between the undistributed long-term capital gains and the amount of tax paid by the Trust.

Distributions in excess of current and accumulated earnings and profits will not be taxable to a shareholder to the extent that they do not exceed the adjusted basis of the shareholder's shares of beneficial interest, but rather will reduce the adjusted basis of such shares of beneficial interest. To the extent that distributions exceed the adjusted basis of a shareholder's

shares of beneficial interest, assuming the shares of beneficial interest are capital assets in the hands of the shareholder, they will be included in income as short-term or long-term capital gain depending on the length of time the shares of beneficial interest have been held. In addition, any dividend declared by the Trust in October, November or December of any year and payable to a shareholder of record on a specific date in any such month shall be treated as both paid by the Trust and received by the shareholder on December 31 of such year, provided that the dividend is actually paid by the Trust during January of the following calendar year.

Domestic shareholders may not include in their individual income tax returns any of the Trust's net operating losses or capital losses. Instead, such losses would be carried over by the Trust for potential offset against future income, subject to certain limitations. Distributions made by the Trust and gain arising from the sale or exchange of shares of beneficial interest will not be treated as passive activity income, and, as a result, shareholders generally will not be able to apply any "passive losses" against such income and gain. In addition, taxable distributions from the Trust generally will be treated as investment income. Capital gain dividends, including distributions treated as such, and capital gain from the disposition of shares of beneficial interest, however, will be treated as investment income only if a shareholder so elects, in which case such capital gain will be taxed at ordinary income rates. The Trust will notify shareholders after the close of its taxable year as to the portions of distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

In general, a domestic shareholder will realize capital gain or loss on the disposition of the Trust's shares of beneficial interest equal to the difference between:

- . the amount of cash and the fair market value of any property received on such disposition; and
- . the shareholder's adjusted basis of such shares of beneficial interest.

This gain or loss generally will constitute short-term capital gain or loss if the shareholder has not held the shares of beneficial interest for more than one year and long-term capital gain or loss if the shareholder has held the shares of beneficial interest for more than one year. Loss upon a sale or exchange of the Trust's shares of beneficial interest by a shareholder who has held such shares of beneficial interest for six months or less after applying certain holding period rules will be treated as a long-term capital loss to the extent of distributions from the Trust required to be treated by such shareholder as long-term capital gain.

Capital Gains and Losses. The maximum marginal individual income tax rate is 39.6%. The maximum tax rate on net capital gains applicable to individuals, trusts and estates from the sale or exchange of capital assets held for more than one year is 20%, and the maximum rate is reduced to 18% for assets acquired after December 31, 2000 and held for more than five years. For individuals, trusts and estates who would be subject to a maximum tax rate of 15%, the rate on net capital gains is reduced to 10%, and, effective for taxable years commencing after December 31, 2000, the rate is reduced to 8% for assets held for more than five years. The maximum rate for net capital gains attributable to the sale of depreciable real property held for more than 18 months is 25% to the extent of the deductions for depreciation, other than certain depreciation recapture taxable as ordinary income, with respect to such property. Accordingly, the tax rate differential between capital gain and ordinary income for noncorporate taxpayers may be significant. In addition, the characterization of income as capital or ordinary may affect

the deductibility of capital losses. Capital losses not offset by capital gains may be deducted against a noncorporate taxpayer's ordinary income only up to a maximum annual amount of \$3,000. Unused capital losses may be carried forward. All net capital gain of a corporate taxpayer is subject to tax at ordinary corporate rates. A corporate taxpayer can deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

**Backup Withholding.** The Trust will report to its domestic shareholders and the IRS the amount of dividends paid during each calendar year and the amount of tax withheld, if any, with respect thereto. Under the backup withholding rules, a shareholder may be subject to backup withholding at the rate of 31% with respect to dividends paid unless such holder:

- . is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or
- . provides a taxpayer identification number, certifies as to no loss of exemption and otherwise complies with the applicable requirements of the backup withholdings rules.

Any amount paid as backup withholding will be creditable against the shareholder's income tax liability. The United States Treasury issued final regulations on October 6, 1997 regarding the withholding and information reporting rules discussed above. In general, the final regulations do not alter the substantive withholding and information reporting requirements but unify current certification procedures and forms and clarify and modify reliance standards. The final regulations are generally effective for payments made on or after January 1, 2001, subject to certain transition rules. Prospective investors should consult their own tax advisors concerning the adoption of the final regulations and the potential effect on their ownership of the Trust's shares of beneficial interest.

In addition, as is discussed below under "--Taxation of Foreign Shareholders," the Trust may be required to withhold a portion of capital gain distributions made to shareholders that fail to certify their non-foreign status to the Trust.

**Taxation of Tax-Exempt Shareholders.** The IRS has ruled that amounts distributed as dividends by a REIT generally do not constitute unrelated business taxable income when received by a tax-exempt entity. Based on that ruling, dividend income from the Trust's shares of beneficial interest will not be unrelated business taxable income to a tax-exempt shareholder, provided that the tax-exempt shareholder has not held its shares of beneficial interest as "debt financed property" within the meaning of the Code and such shares of beneficial interest are not otherwise used in a trade or business. Similarly, income from the sale of the Trust's shares of beneficial interest will not constitute unrelated business taxable income unless the tax-exempt shareholder has held the Trust's shares of beneficial interest as "debt financed property" within the meaning of the Code or has used the shares of beneficial interest in a trade or business.

For tax-exempt stockholders which are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the Code, respectively, income from an investment in shares of the Trust will constitute unrelated business taxable income unless the organization is able to properly claim a deduction for

amounts set aside or placed in reserve for specific purposes so as to offset the income generated by its investment in shares of the Trust. These prospective investors should consult their tax advisors concerning these "set aside" and reserve requirements.

Notwithstanding the above, however, a portion of the dividends paid by a "pension-held REIT" will be treated as unrelated business taxable income as to specified tax exempt trusts which hold more than 10%, by value, of the interests in the REIT. A REIT's tax status as a "pension-held REIT" depends, in part, on the ownership of its stock. As a result of the limitations on the transfer and ownership of shares of beneficial interest contained in the Trust's Declaration of Trust, the Trust does not expect to be classified as a "pension-held REIT."

**Taxation of Foreign Shareholders.** The rules governing the United States federal income taxation of the ownership and disposition of the Trust's shares of beneficial interest by persons that are "foreign shareholders" - that is, persons that are not domestic shareholders as defined above - are complex and no attempt will be made herein to provide more than a summary of such rules.

Prospective foreign shareholders should consult with their own tax advisors to determine the impact of federal, state, and local income tax laws with regard to an investment in the Trust's shares of beneficial interest, including any reporting requirements, as well as the tax treatment of such an investment under their home country laws.

In general, foreign shareholders will be subject to regular United States federal income taxation with respect to their investment in the Trust's shares of beneficial interest in the same manner as a domestic shareholder if their investment in the Trust is "effectively connected" with the conduct by such foreign shareholder of a trade or business in the United States. A foreign shareholder that is a corporation and that receives income with respect to its investment in the Trust's shares of beneficial interest that is, or is treated as, "effectively connected" with the conduct of a trade or business in the United States also may be subject to the 30% branch profits tax imposed under Section 884 of the Code, which is payable in addition to the regular United States corporate income tax.

The following discussion addresses only the federal income taxation of foreign shareholders whose investment in the Trust's shares of beneficial interest is not "effectively connected" with the conduct of a trade or business in the United States. Prospective investors whose investment in the Trust's shares of beneficial interest is or may be deemed "effectively connected" with the conduct of a United States trade or business should consult their own tax advisors as to the tax consequences thereof.

Distributions that are not attributable to gain from sales or exchanges of United States real property interests and that are not designated by the Trust as capital gains dividends will be treated as dividends of ordinary income to the extent that they are made out of the Trust's current or accumulated earnings and profits. Such distributions ordinarily will be subject to a withholding tax equal to 30% of the gross amount of the distribution unless an applicable tax treaty reduces or eliminates that tax. Dividends paid to an address in a country outside the United States are no longer presumed to be paid to a resident of that country for purposes of determining the applicability of withholding discussed above and the availability of a reduced tax treaty rate. A foreign shareholder who wishes to claim the benefit of an applicable treaty rate will now be required to satisfy certain certification and other requirements. Distributions that the

Trust makes in excess of its current and accumulated earnings and profits will not be taxable to a foreign shareholder to the extent they do not exceed the adjusted basis of the foreign shareholder's shares of beneficial interest, but rather will reduce the adjusted basis of the shares of beneficial interest, but not below zero. To the extent that such distributions exceed the adjusted basis of a foreign shareholder's shares of beneficial interest, they will give rise to tax liability if such foreign shareholder would otherwise be subject to tax on any gain from the sale or disposition of shares of beneficial interest, as described below.

For withholding tax purposes, the Trust was required to treat all distributions as if made out of its current or accumulated earnings and profits and thus intends to withhold at the rate of 30% or a reduced treaty rate if applicable on the amount of any distribution, other than distributions designated as capital gain dividends, made to a foreign shareholder. Under the final regulations issued on October 6, 1997 by the United States Treasury regarding the withholding and information reporting rules, generally effective for distributions on or after January 1, 2001, the Trust will be required to withhold at the 30% rate on distributions the Trust reasonably estimates to be in excess of its current and accumulated earnings and profits. If it cannot be determined at the time a distribution is made whether such distribution will be in excess of current and accumulated earnings and profits, the distribution will be subject to withholding at the rate applicable to ordinary dividends. However, a foreign shareholder may seek a refund of such amounts from the IRS if it is subsequently determined that such distribution was, in fact, in excess of its current or accumulated earnings and profits, and the amount withheld exceeded the foreign shareholder's United States tax liability, if any, with respect to the distribution.

For any year in which the Trust qualifies as a REIT, distributions that are attributable to gain from sales or exchanges of United States real property interests will be taxed to a foreign shareholder under the provisions of the Foreign Investment in Real Property Tax Act of 1980, or FIRPTA. Under FIRPTA, these distributions are taxed to a foreign shareholder as if such gain were effectively connected with the conduct of a United States trade or business. Foreign shareholders would thus be taxed at the normal capital gain rates applicable to domestic shareholders, subject to applicable alternative minimum tax and special alternative minimum tax in the case of nonresident alien individuals, without regard as to whether such distributions are designated by the Trust as capital gain dividends. Also, distributions subject to FIRPTA may be subject to a 30% branch profits tax in the hands of a foreign corporate shareholder not entitled to treaty exemption. The Trust is required by Treasury Regulations to withhold 35% of any distribution to a foreign shareholder that could be designated as a capital gain dividend. This amount is creditable against the foreign shareholder's FIRPTA tax liability.

Gain recognized by a foreign shareholder upon a sale of the Trust's shares of beneficial interest generally will not be subject to United States taxation unless the shares of beneficial interest constitute a "United States real property interest" within the meaning of FIRPTA. The Trust's shares of beneficial interest will not constitute a "United States real property interest" so long as the Trust is a "domestically controlled REIT." A "domestically controlled REIT" is generally a REIT in which at all times during a specified testing period less than 50% in value of its shares were held directly or indirectly by foreign shareholders. The Trust believes that it will be a "domestically controlled REIT" and therefore, the sale of the Trust's shares of beneficial interest will not be subject to taxation under FIRPTA. However, because the Trust's shares of beneficial interest will be publicly traded, no assurance can be given that the Trust will continue to be a "domestically controlled REIT." Notwithstanding the foregoing, gain from the sale or exchange of the Trust's shares of beneficial interest not otherwise subject to FIRPTA



generally will be taxable to a foreign shareholder if the foreign shareholder is a nonresident alien individual who is present in the United States for 183 days or more during the taxable year and has a "tax home" in the United States. In such case, the nonresident alien individual will be subject to a 30% United States withholding tax on the amount of such individual's gain.

If the Trust does not qualify as or ceases to be a "domestically controlled REIT," whether gain arising from the sale or exchange by a foreign shareholder of the Trust's shares of beneficial interest would be subject to U.S. taxation under FIRPTA will depend on whether the shares of beneficial interest are "regularly traded" (as defined in applicable Treasury Regulations) on an established securities market, such as the NYSE on which the Trust's shares of beneficial interest are traded, and on the size of the selling foreign shareholder's interest in the Trust. If the gain on the sale of the Trust's shares of beneficial interest were to be subject to tax under FIRPTA, the foreign shareholder would be subject to the same treatment as a domestic shareholder with respect to such gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals and the possible application of the 30% branch profits tax in the case of foreign corporations), and the purchaser would be required to withhold and remit to the IRS 10% of the purchase price. In addition, if the Trust is not a "domestically controlled REIT," distributions in excess of its current and accumulated earnings and profits would be subject to withholding at a rate of 10%.

Dividends paid in the United States with respect to the Trust's shares of beneficial interest, and proceeds from the sale of the Trust's shares of beneficial interest, through a United States broker, or certain brokers having significant connections with the United States, may be subject to the information reporting requirements of the Code. Under the backup withholding rules, a shareholder may be subject to backup withholding at the rate of 31% unless such shareholder:

- . is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact; or
- . provides a taxpayer identification number and certifies as to no loss of exemption, and otherwise complies with the applicable requirements of the backup withholding rules.

Foreign shareholders are generally exempt from information reporting and backup withholding, but may be required to provide a properly completed Form W-8 or otherwise comply with applicable certification and identification procedures in order to prove their exemption. Any amount paid as backup withholding will be creditable against the foreign shareholder's United States income tax liability.

The final regulations issued on October 6, 1997 by the United States Treasury regarding the withholding and information reporting rules as discussed above in "-Backup Withholding" also affect the rules applicable to payments to foreign persons. In general, these final regulations do not alter the substantive withholding and information reporting requirements but unify current certification procedures and modify reliance standards. In addition, the final regulations also address certain issues relating to intermediary certification procedures designed to simplify compliance by withholding agents. The final regulations are generally effective for payments made on or after January 1, 2001, subject to certain transition rules. Prospective investors should

consult their own tax advisors concerning the adoption of the final regulations and the potential effect on their ownership of the Trust's shares of beneficial interest.

#### Other Tax Considerations

**Tax Aspects of the Partnerships.** The Trust currently owns interests in several partnerships, including limited liability companies that are classified as partnerships for federal income tax purposes, and may own interests in additional partnerships in the future. The Trust's ownership of an interest in these partnerships involves special tax considerations. These special tax considerations include, for example, the possibility that the IRS might challenge the status of one or more of the partnerships in which the Trust owns an interest as partnerships, as opposed to associations taxable as corporations, for federal income tax purposes. If a partnership in which the Trust owns an interest, or one or more of its subsidiary partnerships, were treated as an association, it would be taxable as corporation and, therefore, subject to an entity-level tax on its income. In this situation, the character of the Trust's assets and items of gross income would change, and could prevent the Trust from satisfying the real estate investment trust asset tests and/or the real estate investment trust income tests. This, in turn, would prevent the Trust from qualifying as a real estate investment trust. In addition, a change in the tax status of one or more of the partnerships in which the Trust owns an interest might be treated as a taxable event. If so, the Trust might incur a tax liability without any related cash distributions.

Treasury Regulations that apply for tax periods beginning on or after January 1, 1997, provide that a domestic business entity not otherwise organized as a corporation and which has at least two members may elect to be treated as a partnership for federal income tax purposes. Unless it elects otherwise, an eligible entity in existence prior to January 1, 1997, will have the same classification for federal income tax purposes that it claimed under the entity classification Treasury Regulations in effect prior to this date. In addition, an eligible entity which did not exist or did not claim a classification prior to January 1, 1997, will be classified as a partnership for federal income tax purposes unless it elects otherwise. All of the partnerships in which the Trust owns an interest intend to claim classification as partnerships under these Treasury Regulations. As a result, the Trust believes that these partnerships will be classified as partnerships for federal income tax purposes. The treatment described above also applies with respect to the Trust's ownership of interests in limited liability companies that are treated as partnerships for tax purposes.

**State and Local Taxes.** The Trust and its shareholders may be subject to state or local taxation in various state or local jurisdictions, including those in which the Trust or they transact business or reside. The state and local tax treatment of the Trust and its shareholders may not conform to the federal income tax consequences discussed above. Consequently, prospective shareholders should consult with their own tax advisors regarding the effect of state, local and other tax laws of any investment in the Trust's shares of beneficial interest.

## PLAN OF DISTRIBUTION

The Trust may sell its shares of beneficial interest to or through one or more underwriters or dealers, and also may sell its shares of beneficial interest directly to other purchasers or through agents. These firms may also act as the Trust's agents in the sale of its shares of beneficial interest. Only underwriters named in the prospectus supplement will be considered as underwriters of the Trust's shares of beneficial interest offered by the prospectus supplement. The Trust may distribute its shares of beneficial interest at different times in one or more transactions. The Trust may sell its shares of beneficial interest at fixed prices, which may change, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

In connection with the sale of the Trust's shares of beneficial interest, underwriters may receive compensation from the Trust or from purchasers of the Trust's shares of beneficial interest in the form of discounts, concessions or commissions. Underwriters, dealers and agents that participate in the distribution of the Trust's shares of beneficial interest may be deemed to be underwriters. Discounts or commissions they receive and any profit on their resale of the Trust's shares of beneficial interest may be considered underwriting discounts and commissions under the Securities Act of 1933. The Trust will identify any such underwriter or agent, and will describe any such compensation, in the prospectus supplement.

The Trust may agree to indemnify underwriters, dealers and agents who participate in the distribution of the Trust's shares of beneficial interest against certain liabilities, including liabilities under the Securities Act of 1933. The Trust may also agree to contribute to payments which the underwriters, dealers or agents may be required to make in respect of such liabilities. The Trust may authorize dealers or other persons who act as the Trust's agents to solicit offers by certain institutions to purchase shares of beneficial interest from the Trust under contracts which provide for payment and delivery on a future date. The Trust may enter into these contracts with commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others. If the Trust enters into these agreements concerning its shares of beneficial interest, the Trust will indicate that in the prospectus supplement.

In connection with an offering of the Trust's shares of beneficial interest, underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the Trust's shares of beneficial interest. Specifically, underwriters may over-allot in connection with the offering, creating a syndicate short position in the Trust's shares of beneficial interest for their own account. In addition, underwriters may bid for, and purchase, the Trust's shares of beneficial interest in the open market to cover short positions or to stabilize the price of the Trust's shares of beneficial interest.

Finally, underwriters may reclaim selling concessions allowed for distributing the Trust's shares of beneficial interest in the offering if the underwriters repurchase previously distributed shares of beneficial interest in transactions to cover short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Trust's shares of beneficial interest above independent market levels. Underwriters are not required to engage in any of these activities and may end any of these activities at any time. Agents and underwriters may engage in transactions with, or perform services for, the Trust and its affiliates in the ordinary course of business.

#### LEGAL MATTERS

Certain legal matters with respect to the validity of the Trust's shares of beneficial interest and tax matters will be passed upon for us by Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, New York 10103.

#### EXPERTS

The consolidated financial statements and schedules of the Trust and subsidiaries incorporated by reference in this prospectus and elsewhere in the registration statement have been audited by Arthur Andersen LLP, independent public accountants, as indicated in their report with respect thereto, and are incorporated by reference herein in reliance upon the authority of said firm as experts in giving said report.

The Declaration of Trust establishing Universal Health Realty Income Trust, dated August 5, 1986, a copy of which, together with all amendments thereto (the "Declaration"), is filed in The Office of The Department of Assessments and Taxation of The State of Maryland, provides that the name "Universal Health Realty Income Trust" refers to the Trustees under the Declaration collectively as Trustees, but not individually or personally, and that no Trustee, Officer, Shareholder, Employee or Agent of the Trust shall be held to any personal liability, jointly or severally, for any obligation of, or claim against, the Trust. All persons dealing with the Trust, in any way, shall look only to the assets of the Trust for the payment of any sum or the performance of any obligation.

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 14. Other Expenses of Issuance and Distribution.

The following is an itemized statement of all expenses payable by the Trust in connection with the registration of the shares of beneficial interest offered hereby, other than underwriting discounts and commissions (if any). All of the amounts shown are estimates except the SEC registration fee.

SEC registration fee.....	\$ 25,000
NYSE listing fee.....	\$ 47,800
Blue sky fees and expenses.....	\$ 20,000
Accounting fees and expenses.....	\$ 50,000
Legal fees and expenses.....	\$100,000
Printing and engraving expenses.....	\$ 50,000
Transfer agent and registrar fees.....	\$ 2,500
Miscellaneous.....	\$ 54,700
	-----
Total.....	\$350,000

#### Item 15. Indemnification of Directors and Officers.

Section 4.5 of the Declaration of Trust provides that the Trust shall indemnify its trustees and officers to the full extent required or permitted by the General Laws of the State of Maryland. Section 8-305(15) of the Maryland General Corporation Law ("MGCL") permits a Maryland real estate investment trust to indemnify or advance expenses to trustees and officers to the same extent as is permitted for directors and officers of a Maryland corporation under the MGCL. The MGCL requires a Maryland corporation (unless its charter provides otherwise, which the Trust's Declaration of Trust does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. A Maryland corporation, however, may not indemnify for an adverse judgment in a suit by, or in the right of, the corporation, or for a judgment of liability on the basis that a personal benefit was improperly received, unless in either case a court orders indemnification, and then, only for expenses. In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and a written undertaking by such director or officer on his or her behalf to repay the amount paid or

reimbursed by the corporation if it shall ultimately be determined that the standard of conduct was not met.

The Declaration of Trust also permits the Trust to indemnify any of its employees, agents or affiliates of an affiliated trustee to such extent as shall be authorized by its trustees or by-laws, or as permitted by law.

The above rights of indemnification shall not exclude any other rights to which any trustee, officer, employee, agent or affiliate of an affiliated trustee may lawfully be entitled.

The Trust has purchased and maintains insurance through a commercial policy arranged by UHS on behalf of all of its trustees, whether or not the Trust is required or has the power to indemnify them against liability.

Item 16. Exhibits.

- 4.1 - Declaration of Trust, dated as of August 1986.
- 4.2 - Amendment to Declaration of Trust, dated as of June 23, 1993.
- 4.3 - Amended and Restated Bylaws.
- 4.4\* - Specimen Shares of Beneficial Interest Certificate.
- 5.1 - Opinion of Fulbright & Jaworski L.L.P.
- 8.1 - Tax Opinion of Fulbright & Jaworski L.L.P.
- 23.1 - Consent of Arthur Andersen LLP.
- 23.2 - Consents of Fulbright & Jaworski L.L.P. (included in Exhibit 5.1 and Exhibit 8.1).
- 24.1 - Power of Attorney (included on signature page).

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\* Incorporated by reference to Exhibit 7 to the Registration Statement on Form 8-A of Universal Health Realty Income Trust (Registration No. 1-9321).

Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

# SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Trust certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in King of Prussia, Commonwealth of Pennsylvania, on May 10, 2001.

## UNIVERSAL HEALTH REALTY INCOME TRUST

By: /s/ Alan B. Miller

-----  
Alan B. Miller  
Chairman of the Board and  
Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Alan B. Miller and Kirk E. Gorman his true and lawful attorneys-in-fact and agents, each acting alone, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this registration statement, including post-effective amendments, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, and hereby ratifies and confirms all that said attorneys-in-fact and agents, each acting alone, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature -----	Title -----	Date -----
/s/ Alan B. Miller ----- Alan B. Miller	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	May 10, 2001
/s/ Kirk E. Gorman ----- Kirk E. Gorman	President, Chief Financial Officer, Secretary and Trustee (Principal Financial Officer)	May 10, 2001
/s/ James E. Dalton, Jr. ----- James E. Dalton, Jr.	Trustee	May 10, 2001
/s/ Myles H. Tanenbaum ----- Myles H. Tanenbaum	Trustee	May 10, 2001
/s/ Daniel M. Cain ----- Daniel M. Cain	Trustee	May 10, 2001
/s/ Miles L. Berger ----- Miles L. Berger	Trustee	May 10, 2001



Signature	Title	Date
-----	-----	-----
/s/ Elliot J. Sussman	Trustee	May 10, 2001
-----		
Elliot J. Sussman		
/s/ Charles F. Boyle	Vice President and Controller	May 10, 2001
-----	(Principal Accounting Officer)	
Charles F. Boyle		

EXHIBIT INDEX

Exhibit NO.	Exhibit
-----	-----
4.1	Declaration of Trust, dated as of August 1986.
4.2	Amendment to Declaration of Trust, dated as of June 23, 1993.
4.3	Amended and Restated Bylaws.
5.1	Opinion of Fulbright & Jaworski L.L.P.
8.1	Tax Opinion of Fulbright & Jaworski L.L.P.
23.1	Consent of Arthur Andersen LLP.
23.2	Consents of Fulbright & Jaworski L.L.P. (included in Exhibit 5.1 and Exhibit 8.1).
24.1	Power of Attorney (included on signature page).

UNIVERSAL HEALTH REALTY INCOME TRUST

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Declaration of Trust  
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August \_\_, 1986

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DECLARATION OF TRUST  
OF  
UNIVERSAL HEALTH REALTY INCOME TRUST  
August \_\_, 1986

-----

DECLARATION OF TRUST made as of the date set forth above by the undersigned Trustees.

WITNESSETH:

WHEREAS, the Trustees desire to create a trust for the principal purpose of investing in real property and interests therein: and

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

WHEREAS, in furtherance of such purpose the Trustees intend to acquire certain real property and interests therein and to hold, manage and dispose of all such property as Trustees in the manner hereinafter stated; and

WHEREAS, it is proposed that the beneficial interest in the Trust be divided into transferable Shares of Beneficial Interest, evidenced by certificates therefor, as hereinafter provided;

NOW, THEREFORE, it is hereby agreed and declared that the Trustees will hold any and all property of every type and description which they are acquiring or may hereafter acquire as Trustees, together with the proceeds thereof, in trust, to manage and dispose of the same for the benefit of the holders from time to time of the Shares of Beneficial Interest being issued and to be issued hereunder in the manner and subject to the stipulations contained herein.

## ARTICLE I

### THE TRUST; DEFINITIONS

1.1 Name. The name of the Trust created by this Declaration of Trust shall be "Universal Health Realty Income Trust" and so far as may be practicable the Trustees shall conduct the Trust's activities, execute all documents and sue or be sued under that name, which name (and the word "Trust" wherever used in this Declaration of Trust, except where the context otherwise requires) shall refer to the Trustees collectively but not individually or personally nor to the officers, agents, employees or Shareholders of the Trust or of such Trustees. Under circumstances under which the Trustees determine that the use of such name is not practicable or under circumstances in which the Trustees are contractually bound to change that name, they may use such other designation or they may adopt another name under which the Trust may hold property or conduct its activities.

1.2 Places of Business. The Trust shall maintain an office in Maryland at The Corporation Trust Incorporated or such other place in Maryland as the Trustees may determine from time to time. The Resident Agent of the Trust at such office shall be The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202. The Trust may change such



Resident Agent from time to time as the Trustees shall determine. The Trust may have such other offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

1.3 Nature of Trust. The Trust shall be a real estate investment trust within the meaning of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland. It is also intended that the Trust shall carry on a business as a "real estate investment trust" as described in the REIT Provisions of the Internal Revenue Code. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation or joint stock company (but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Internal Revenue Code) nor shall the Trustees or Shareholders or any of them for any purpose be, nor be deemed to be, nor be 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 in accordance with the rights conferred upon them by this Declaration.

1.4 Definitions. The terms defined in this Section 1.4, wherever used in this Declaration, shall, unless the context otherwise requires, have the respective meanings hereinafter specified. Wherever the singular number is used in this Declaration and when permitted by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa. Where applicable, calculations to be made pursuant to any such definition shall be made in accordance with generally accepted accounting principles as in effect from time to time except as otherwise provided in such definition.

(a) Advisor. "Advisor" shall mean the Person employed by the Trustees in accordance with the provisions of the Bylaws.

(b) Advisory Contract. "Advisory Contract" shall mean the contract between the Trust and the Advisor pursuant to which the Advisor is employed.

(c) Affiliate. "Affiliate" shall mean, as to any Person, (i) any other Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any other Person that owns beneficially, directly or indirectly, five percent (5%) or more of the outstanding capital stock, shares or equity interests of such Person, or (iii) any officer, director, employee,

general partner or trustee of such Person or of any Person controlling, controlled by or under common control with such Person (excluding trustees who are not otherwise an Affiliate of such Person).

(d) Affiliated Trustee. "Affiliated Trustee" shall mean a Trustee who is not an Independent Trustee.

(e) Annual Meeting of Shareholders. "Annual Meeting of Shareholders" shall mean the meeting described in the first sentence of Section 3.9.

(f) Annual Report. "Annual Report" shall have the meaning set forth in Section 3.11.

(g) Average Invested Real Estate Assets. "Average Invested Real Estate Assets" for any period shall mean the average of the aggregate book value of the consolidated assets of the Trust invested, directly or indirectly, in equity interests in, and loans secured by, real estate, before reserves for depreciation or bad debt or other similar noncash reserves, calculated by taking the average of such values at the end of each month during such period.

(h) Book Value. "Book Value" of an asset or assets shall mean the value of such asset or assets of the Trust on the books of the Trust, without

deduction for depreciation or other asset valuation reserves and without deduction for mortgages or other security interests to which such asset or assets are subject, except that no asset shall be valued at more than its fair market value as determined by or under procedures adopted by the Trustees, and the underlying assets of a partnership, joint venture or other form of indirect ownership, to the extent of the Trust's interest therein, shall be valued as if owned directly by the Trust.

(i) Bylaws. "Bylaws" shall have the meaning set forth in Section 2.12.

(j) Continuing Trustee. "Continuing Trustee" shall mean each of the Trustees identified in this Declaration, or one elected or appointed prior to the time the Related Person (as defined in Section 15) in question acquires such status, or one designated as a Continuing Trustee (prior to his or her initial election or appointment) by all or all but one of the Trustees on the Board of Trustees, but only if all or all but one of the Trustees on the Board of Trustees shall then consist of Continuing Trustees.

(k) Declaration. "Declaration" or "this Declaration" shall mean this Declaration of Trust,

as amended, restated or modified from time to time. References in this Declaration to "herein" and "hereunder" shall be deemed to refer to this Declaration and shall not be limited to the particular text, article or section in which such words appear.

(1) Independent Trustee. "Independent Trustee" shall mean a Trustee who, in his individual capacity, (i) is not an Affiliate of the Advisor and (ii) does not perform any services for the Trust except as Trustee.

(m) Internal Revenue Code. "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as now enacted or hereafter amended, or successor statutes and applicable rules and regulations thereunder.

(n) Invested Assets. "Invested Assets" shall mean the Book Value of all the Real Estate Investments of the Trust.

(o) Mortgage Loans. "Mortgage Loans" shall mean notes, debentures, bonds and other evidences of indebtedness or obligations, whether negotiable or nonnegotiable, and which are secured or collateralized by Mortgages.

(p) Mortgages. "Mortgages" shall mean mortgages, deeds of trust or other security interests in Real Property.

(q) Net Assets. "Net Assets" shall mean 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.

(r) Net Income. "Net Income" for any period shall be calculated on the basis of the Trust's audited financial statements and shall mean total revenues applicable to such period, less the expenses applicable to such period, other than additions to reserves for depreciation or bad debts or other similar non-cash reserves.

(s) Person. "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 and other entities and governments and agencies and political subdivisions thereof.

(t) Real Estate Investment. "Real Estate Investment" shall mean any direct or indirect investment in any interest in Real Property or in

any Mortgage Loan, or in any Person whose principal purpose is to make any such investment.

(u) Real Property. "Real Property" shall mean and include land, leasehold interests (including but not limited to interests of a lessor or lessee therein), rights and interests in land, and in any building's structures, improvements, furnishings and fixtures located on or used in connection with land, leasehold interests or rights in land or interests therein, but does not include investments in Mortgages, Mortgage Loans or interests therein.

(v) REIT. "REIT" shall mean a real estate investment trust as defined in the REIT Provisions of the Internal Revenue Code.

(w) REIT Provisions of the Internal Revenue Code. "REIT Provisions of the Internal Revenue Code" shall mean Parts II and III of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code or any successor provision.

(x) Securities. "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness 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. "Shareholders" shall mean as of any particular time all holders of record of outstanding Shares at such time.

(z) Shares. "Shares" or, as the context may require, "shares" shall mean the shares of beneficial interest of the Trust as described in the first sentence of Section 3.1 hereof.

(aa) Total Assets. "Total Assets" shall mean the Book Value of all the assets of the Trust, as such Book Value appears on the most recent quarterly balance sheet of the Trust.

(bb) Total Operating Expenses. "Total Operating Expenses" shall be calculated on the basis of the Trust's annual audited financial statement and shall mean the aggregate annual expenses regarded as ordinary operating expenses (including any compensation payable to the Advisor) exclusive of the following:

(i) the cost of borrowed money;



(ii) taxes on income and taxes and assessments on real property, if any, and all other taxes applicable to the Trust;

(iii) legal, auditing, accounting, underwriting, brokerage, listing, reporting, registration and other fees, and printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, trading, registration and stock exchange listing of the Trust's securities;

(iv) expenses of organizing, revising, amending, converting, modifying or terminating the Trust;

(v) fees and expenses paid to Trustees and officers of the Trust who are not employees or Affiliates of the Advisor, independent advisors, independent contractors, mortgage servicers, consultants, managers, local property managers or management firms, accountants, attorneys and other agents employed by or on behalf of the Trust who are employees or Affiliates of the Advisor to the extent set forth in the Advisory Contract;

(vi) expenses directly connected with the acquisition, disposition and ownership of real estate interests or other property (including the

costs of foreclosure, insurance premiums, legal services, brokerage and sales commissions, maintenance, repair, improvement and local management of property), other than expenses with respect thereto of employees of the Advisor, to the extent that such expenses are to be borne by the Advisor pursuant to the terms of the Advisory Contract;

(vii) all insurance costs incurred in connection with the Trust (including officer and trustee liability insurance);

(viii) expenses connected with payments of dividends or interest or contributions in cash or any other form made or caused to be made by the Trustees to holders of securities of the Trust;

(ix) all expenses connected with communications to holders of securities of the Trust and other bookkeeping and clerical work necessary to maintaining relations with holders of securities, including the cost of printing and mailing certificates for securities and proxy solicitation materials and reports to holders of the Trust's securities;

(x) transfer agent's, registrar's and indenture trustee's fees and charges;

(xi) legal, accounting and auditing fees and expenses;

(xii) expenses relating to any office or office facilities maintained by the Trust separate from the office of the Advisor;

(xiii) non-cash provisions for depreciation, depletion and amortization;

(xiv) losses on the disposition of assets and provisions for such losses; and

(xv) other extraordinary charges including, without limitation, litigation costs.

(cc) Trust. "Trust" shall mean the Trust created by this Declaration.

(dd) Trustees. "Trustees" shall mean, as of any particular time, the original signatories hereto as long as they hold office hereunder and additional and successor trustees, and shall not include the officers, employees or Agents of the Trust or the Shareholders. Nothing herein shall be deemed to preclude the Trustees from also serving as officers, employees, or agents of the Trust or owning Shares.

(ee) Trust Estate. "Trust Estate" shall mean as of any particular time any and all property, real, personal or otherwise, tangible or

intangible, which is transferred, conveyed or paid to or purchased by the Trust or Trustees and all rents, income, profits and gains therefrom and which at such time is owned or held by or for the Trust or the Trustees.

## ARTICLE II

### TRUSTEES

2.1 Number, Term of Office and Qualifications of Trustees. There shall be no fewer than three (3) nor more than seven (7) Trustees. The initial number of Trustees shall be seven (7) until changed by a two-thirds (2/3) vote of the Continuing Trustees or by an amendment of this Declaration duly adopted by the Shareholders. The Board of Trustees shall be classified into three classes, with three (3) Trustees in Class I, two (2) Trustees in Class II, and two (2) Trustees in Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of Trustees constituting the entire Board of Trustees. If the number of Trustees is changed, any increase or decrease shall be apportioned among the classes so that the number of Trustees in each class remains as nearly equal as possible. Each Trustee in Class I shall serve for an initial term ending at the annual meeting of Shareholders in 1987; each Trustee in Class II shall serve for an initial term ending at the annual meeting of Shareholders in 1988; and each Trustee in Class III, shall serve for an initial term ending at the annual meeting of Shareholders in 1989. After the respective initial terms of the groups indicated, each such group of Trustees shall be elected for successive terms ending at the

annual meeting of Shareholders held during the third year after election.

The names of the initial Trustees who will serve as Trustees until the expiration of their respective terms and until their successors are elected and qualify are as follows:

Class I: Alan B. Miller, Lee Ducat and Peter Linneman  
Class II: Joseph P. Gaynor, III and Daniel M. Cain  
Class III: Sidney Miller and Robert E. Cawthorn

The initial Trustees shall be the signatories hereto. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term. Subject to the provisions of Section 2.3, each Trustee shall hold office until the election and qualification of his successor. There shall be no cumulative voting in the election of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. A majority of the Trustees shall at all times be persons who are Independent Trustees and at least one independent Trustee shall serve in each Class; provided, however, that upon a failure to comply with this requirement because of the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall

not be applicable for a period of ninety (90) days. Nominees to serve as Independent Trustees shall be nominated by the then current Independent Trustees, if any. Unless otherwise required by law, 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 Compensation and Other Remuneration. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. The Trustees and Trust officers shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Subject to the Sections 4.8 and 4.9, such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

2.3 Resignation, Removal and Death of Trustees. A Trustee may resign at any time by giving written notice to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date specified in such notice, without need for prior accounting. A Trustee may be removed at any time with or without cause by vote or

consent of holders of Shares representing two-thirds of the total votes authorized to be cast by Shares then outstanding and entitled to vote thereon, or with 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, shall account to the remaining Trustees as they require for all property which he holds as Trustee and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall perform the acts set forth in the preceding sentence and the discharge mentioned therein shall run to such legal representative and to the incapacitated Trustee or the estate of the deceased Trustee, as the case may be.

2.4 Vacancies. If any or all the Trustees cease to be Trustees hereunder, whether by reason of resignation, removal, incapacity, death or otherwise, such event shall not terminate the Trust or effect its continuity. Until vacancies are filled, the remaining Trustee or Trustees (even though fewer than three (3) may exercise the powers of the Trustees hereunder. Vacancies (including vacancies created



by increases in numbers) may be filled by the remaining Trustee or by a majority of the remaining Trustees (or a majority of the remaining Independent Trustees, if any, if the vacant position was formerly held by an Independent Trustee or is required to be held by an Independent Trustee). If at any time there shall be no Trustees in office, successor Trustees shall be elected by the Shareholders as provided in Section 3.9. Any Trustee elected to fill a vacancy created by the resignation, removal or death of a former Trustee shall hold office for the unexpired term of such former Trustee.

2.5 Successor and Additional Trustees. The right, title and interest of the Trustee 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 and until such qualification, the right, title and interest in the Trust Estate shall vest in the remaining Trustee on a pro rata basis. Such right, title and interest shall vest in the Trustees whether or not conveyancing documents have been executed and delivered pursuant to Section 2.3 or otherwise. Appropriate written evidence of the election and qualification of successor and additional Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable.

2.6 Actions by Trustees. The Trustees may act with or without a meeting. A quorum for all meetings of the Trustees shall be a majority of the Trustees; provided, however, that, whenever pursuant to Section 4.9 or otherwise the vote of a majority of a particular group of Trustees is required at a meeting, a quorum for the consideration of the matter requiring such a majority at such meeting shall be a majority of the Trustees which shall include a majority of such group. Unless specifically provided otherwise in this Declaration, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (if a quorum for such meeting is present) or without a meeting by written consents of a majority of the Trustees, which consents shall be filed with the records of meeting of the Trustees. Any action or actions permitted to be taken by the Trustees in connection with the business of the Trust may be taken pursuant to authority granted by a meeting of the Trustees conducted by a telephone conference call, and the transaction of Trust business represented thereby shall be the same authority and validity as if transacted at a meeting of the Trustees held in person or by written consent. The minutes of any Trustees' meeting held by telephone shall be prepared in the same manner as a meeting of the Trustees held in person. Any agreement, deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees

or by any authorized Person shall be valid and binding upon the Trustees and upon the Trust when authorized or ratified by action of the Trustees or as provided in the Bylaws.

With respect to the actions of the Trustees, Trustees who have, or are Affiliates of Persons who have, any direct or indirect interest in or connection with any matter being acted upon may be counted for all quorum purposes under this Section 2.6 and, subject to the provisions of Section 4.9, may vote on the matter as to which they or their Affiliates have such interest or connection.

2.7 Certification of Changes in Trustees. No alteration in the number of Trustees, no removal of a Trustee and no election or appointment of any individual as Trustee (other than an individual who was serving as a Trustee immediately prior to such election or appointment) shall become effective unless and until there shall be delivered to the secretary of the Trust an instrument in writing signed by a majority of the Trustees, certifying to such alteration in the number of trustees and/or to such removal of a Trustee and/or naming the individual so elected or appointed as Trustee, together with his written acceptance thereof and agreement to be bound thereby.

2.8 Committee. The Trustees may appoint from among their number an audit committee and such other standing committees as the Trustees determine. Each standing commit-

tee shall consist of three or more members. All members of the audit committee shall be Independent Trustees. A majority of the members of each other standing committee shall be Independent Trustees; provided however, that upon a failure to comply with this requirement because of the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable for a period of ninety (90) days. Each committee shall have such powers, duties and obligations as the Trustees may deem necessary or appropriate. The standing committees shall report their activities periodically to the Trustees.

2.9 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 or conducting the business of the Trust. Any construction of this Declaration or 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 to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid powers or the general powers or authority or any other specified power or authority conferred herein upon the Trustees.

2.10 Specific Powers and Authority. Subject only to the express limitations contained in this Declaration and in addition to any powers and authority 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 judgment 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, and to acquire, purchase, or own, real or personal property of any kind, wherever located in the world, and make commitments for such investments, all without regard to whether any such property is authorized by law for the investment of trust funds or produces or may produce income; to pos-

sess 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 any additional authorized Shares (subject to the Bylaws or other Securities of the Trust for such consideration as they deem advisable;

(b) without limitation of the powers set forth in paragraph (a) above, to invest in, purchase or otherwise acquire for such consideration as they deem proper, in cash or other property of through the issuance of shares or through the issuance of notes, debentures, bonds or other obligations of the Trust, and to hold for investment, the entire or any participating interests in any Mortgage Loans or interest in Real Property, including ownership of, or participations in the ownership of, or rights to acquire, equity interests in Real Property or in Persons owning, developing, improving, operating or managing Real Property, which interests may be acquired independently of or in connection with other investment activities of the Trust and, in the latter case, may include rights to receive additional payments based on gross income or rental or other income from the Real Property or improvements thereon; to invest in loans secured by the pledge or transfer of Mortgage Loans;

(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 the Trust Estate by deeds (including deeds in lieu of foreclosure), 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 nominee of the Trust, provided that no disposition of a Real Estate Investment shall be accomplished without the approval of a majority of the Trustees (including a majority of the Independent Trustees);

(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, 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 and to purchase or otherwise acquire, hold, cancel, reissue, sell and

transfer any of such Securities, and to cause the instruments evidencing such Securities to bear an actual or facsimile imprint of the seal of the Trust (if the Trustees shall have adopted such a seal) and to be signed by manual or facsimile signature or signatures (and to issue such Securities, whether or not any Person whose manual or facsimile signature shall be imprinted thereon shall have ceased to occupy the office with respect to which such signature was authorized), provided that, where only facsimile signatures for the Trust are used, the instrument shall be countersigned manually by a transfer agent, registrar or other authentication agent; and to issue any of such Securities of different types in combinations or units with such restrictions on the separate transferability thereof as the Trustees shall determine;

(e) to enter into leases of real and personal property as lessor or lessee and to enter into contracts, obligations and other agreements for a term, and to invest in obligations having a term, extending beyond the term of office of the Trustees and beyond the possible termination of the Trust, or having a lesser term;

(f) to borrow money and give negotiable or non-negotiable instruments therefor; 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 indebtedness of the Trust or any other of the foregoing obligations of the Trust;

(g) to lend money, whether secured or unsecured;

(h) to create reserve funds for any purpose;

(i) to incur and pay out of the Trust Estate any charges or expenses, and to disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the 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 Estate or any part thereof, and for any of the purposes herein;

(j) to deposit funds of the Trust in banks, trust companies, savings and loan associations 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 or officers, em-

ployees or agents of the Trust) as the Trustees may determine;

(k) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any Mortgages or Securities issued or created by, or interests in, any Person, forming part of the Trust Estate, to the same extent that an individual might do so, 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 cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire 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, rent, lease, hire, convey, negotiate, assign, exchange or transfer the Trust Estate or any part or parts

thereof to or with any such Person or any existing Parson in exchange for the Securities thereof or otherwise, and to merge or consolidate the Trust with or into any Person or merge or consolidate any Person into the Trust, and to lend money to, subscribe for the Securities of, and enter into any contracts with, any Person in which the Trust holds or is about to acquire Securities or any other interest;

(m) to enter into joint ventures, general or limited partnerships, participation or agency arrangements and any other lawful combinations or associations; provided, however, that the Trustees may not enter into any such joint venture or other association as aforesaid unless it has first received from counsel an opinion to the effect that such joint venture or other association as aforesaid will be treated for tax purposes as a partnership;

(n) 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, as may be prescribed by the Trustees or by the Bylaws; to engage or employ any Persons (including, subject to the provisions of Sections 4.8 and 4.9, any Trustee or officer, agent or employee of the Trust and any Person in which any Trustee, officer

or agent 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, managers, appraisers, brokers, architects, engineers, construction 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 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; provided, however, that no such delegation shall be made to an Affiliate of the Advisor, except with the approval of a majority of the Independent Trustees;

(o) to determine or cause to be determined from time to time the value of all or any part of the Trust Estate and of any services, Securities, property or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue or cause to be revalued 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 coming due to the Trust, and to engage in, intervene in, 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, 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 or participate in any reorganization of obligors to the Trust;

(r) to self-insure or to purchase and pay for out of the Trust Estate insurance contracts and policies, including contracts of indemnity, insuring the Trust Estate and/or all or any of the Trustees, the Shareholders, or the officers, employees or agents 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 the Trustees, Shareholders, officers, employees or agents, whether or not the Trust would have the power to indemnify such Person or Persons against any such claim or liability;

(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 and 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 a fiscal year for the Trust, and from time to time to change such fiscal year;

(u) 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);

(v) to the extent permitted by law, to indemnify or enter into agreements with respect to indemnification with any Person with which the Trust has dealings, including without limitation any broker/dealer, investment bank, investment advisor or independent contractor, to such extent as the Trustees shall determine;

(w) to confess judgment against the Trust;

(x) to discontinue the operations of the Trust;

(y) to repurchase or redeem Shares and other Securities issued by the Trust;

(z) to declare and pay dividends or distributions, consisting of cash, property or Securities, to the holders of Shares of the Trust out of any funds legally available therefor; and

(aa) 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 and to carry out the provisions of this Declaration.

2.11 Employment of Advisor. The Trustees are responsible for the general policies of the Trust and for the general supervision of the business of the Trust conducted by all officers, agents, employees, advisors, managers or independent contractors of the Trust. However, the Trustees are not and shall not be required personally to conduct the day to day business of the Trust, and consistent with their ultimate responsibility as stated above and upon such terms as are specified in the Bylaws, the Trustees shall have the power to appoint, employ or contract with any Person (including 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 therefore employ or contract with such Person (herein referred to as the "Advisor") and, consistent with their ultimate responsibility as set forth in this Section 2.11 and upon such terms as are specified in the Bylaws, 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. Such granted or delegated authority shall, however, be revocable by a majority vote of the Independent Trustees. The Advisor shall be required to use its best efforts to supervise the operation of the Trust in a manner consistent with the investment policies and objectives of the Trust.

Subject to the provisions of Article IV of the Bylaws and Section 4.9 of the Declaration, the Trustees shall have the power to determine the terms and compensation of the Advisor or any other Person whom they may employ or with whom they may contract for advisory services. The Trustees may exercise broad discretion in allowing the Advisor to administer and regulate the operations of the Trust, to act as agent for the Trust, to execute documents on behalf of the Trustees and to make executive decisions which conform to general



policies and general principles previously established by the Trustees.

2.12 Bylaws. The Trustees may make or adopt and from time to time amend or repeal Bylaws (the "Bylaws") not inconsistent with law or with this Declaration, containing provisions relating to the business of the Trust and the conduct of its affairs and in such Bylaws may define the duties of the officers, employees and agents of the Trust.

### ARTICLE III

#### THE SHARES AND SHAREHOLDERS

3.1 Description of Shares. The interest of the Shareholders shall be divided into 100,000,000 shares of beneficial interest, 95,000,000 of which shall be designated as "Common Shares," and 5,000,000 of which shall be designated as "Preferred Shares," and all of which shall be known collectively as "Shares," all of which shall be validly issued, fully paid and nonassessable by 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. Each holder of Shares shall as a result thereof be deemed to have agreed to and be bound by the terms of this Declaration. The Shares may be issued for such consideration as the Trustees shall deem advisable. The

Shares shall have a par value of \$.01 per share. The Trustees are hereby expressly authorized at any time, and from time to time, to provide for issuance of Shares upon such terms and conditions and pursuant to such agreements as the Trustees may determine. The Trustees may classify or reclassify Preferred Shares from time to time by setting (or changing, if such class has previously been established) the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of such Preferred Shares. The Preferred Shares may further be divided by the Trustees into special classes or series. However, such classification or reclassification shall not be done in such manner so as to result in any Person holding Excess Shares.

Except as otherwise determined by the Trustees with respect to any class or series of Preferred Shares, the holders of Shares shall be entitled to the rights and powers hereinafter set forth in this Section 3.1. The holders of Shares shall be entitled to receive, when as declared from time to time by the Trustees out of any funds legally available for the purpose, such dividends or distributions as may be declared from time to time by the Trustees. In the event of the termination of the Trust pursuant to Section 5.1 or otherwise, or upon the distribution of its assets, the assets of the Trust available for payment and distribution to Share-

holders shall be distributed ratably among the holders of Shares at the time outstanding in accordance with Section 5.2. All Shares shall have equal noncumulative voting rights at the rate of one vote per Share, and equal dividend, distribution, liquidation and other rights, and shall have no preference, conversion, exchange, sinking fund or redemption rights. Absent a contrary written agreement of the Trust authorized by the Trustees, and notwithstanding any other determination by the Trustees with respect to any class or series of Preferred Shares, no holder of Shares shall be entitled as a matter of right to subscribe for or purchase any part of any new or additional issue of Shares of any class whatsoever of the Trust, or of securities convertible into any shares of any class whatsoever of the Trust, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

3.2 Certificates. Ownership of Shares shall be evidenced by certificates. Every Shareholder shall be entitled to receive a certificate, in such form as the Trustees shall from time to time approve, specifying the number of Shares of the applicable class held by such Shareholder. Subject to Sections 3.6 and 3.14(c) hereof, such certificates shall be treated as negotiable and title thereto and to the Shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a dock certif-

icate, and the Shares represented thereby, of a Maryland business corporation. Unless otherwise determined by the Trustee, such certificates shall be signed by the Chairman, if any, or the President and shall be countersigned by a transfer agent, and registered by a registrar if any, and such signatures may be facsimile signatures in accordance with Section 2.10(d) hereof. There shall be filed with each transfer agent a copy of the form of certificate so approved by the Trustees, certified by the Chairman, President, or Secretary, and such form shall continue to be used unless and until the Trustees approve some other form.

In furtherance of the provisions of Section 3.14(c) hereof, each certificate evidencing Shares shall contain legends imprinted thereon to substantially the following effect or such other legend as the Trustees may from time to time adopt:

REFERENCE IS MADE TO THE DECLARATION OF TRUST OF THE TRUST FOR A STATEMENT OF ALL THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF EACH CLASS OR SERIES OF SHARES THAT THE TRUST IS AUTHORIZED TO ISSUE, THE VARIATIONS IN THE RELATIVE RIGHTS AND PREFERENCES OF ANY PREFERRED OR SPECIAL CLASS OF SHARES IN SERIES, TO THE EXTENT THEY HAVE BEEN FIXED AND DETERMINED, AND THE AUTHORITY OF THE TRUSTEES TO FIX AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. ANY SUCH STATEMENT SHALL BE FURNISHED WITHOUT CHARGE ON REQUEST TO THE TRUST AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

IF NECESSARY TO EFFECT COMPLIANCE BY THE TRUST WITH REQUIREMENTS OF THE INTERNAL REVENUE CODE RELATING TO REAL ESTATE INVESTMENT TRUSTS, THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE REDEEMED BY THE TRUST AND/OR THE TRANSFER THEREOF MAY BE PROHIBITED ALL UPON THE TERMS

AND CONDITIONS SET FORTH IN THE DECLARATION OF TRUST. THE TRUST WILL FURNISH A COPY OF SUCH TERMS AND CONDITIONS TO THE REGISTERED HOLDER OF THIS CERTIFICATE UPON REQUEST AND WITHOUT CHARGE.

3.3 Fractional Shares. In connection with any issuance of Shares, the Trustees may issue fractional Shares or may adopt provisions for the issuance of scrip including without limitation, the time within which any such scrip must be surrendered for exchange into full Shares and the rights, if any, of holders of scrip upon the expiration of the time so fixed, the rights, if any, to receive proportional distributions, and the rights, if any, to redeem scrip for cash, or the Trustees may in their discretion, or if they see fit at the option of each holder, provide in lieu of scrip for the adjustment of the fractions in cash. The provisions of Section 3.2 hereof relative to certificates for Shares shall apply so far as applicable to such scrip, except that such scrip may in the discretion of the Trustees be signed by a transfer agent alone.

3.4 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 (subject to Section 2.10(s), 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.

3.5 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 or provided for in this Declaration. The death, insolvency or incapacity of a Shareholder shall not dissolve or terminate the Trust or affect its continuity nor give his legal representative any rights whatsoever, whether against or in respect of 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 Bylaws 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.

3.6 Share Record; Issuance and Transferability of Shares. Records shall be kept by or on behalf of and under the direction of the Trustees, which shall contain the names and addresses of the Shareholders, the number of Shares held by them respectively, and the numbers of the certificates representing the Shares, and in which there shall be recorded all transfers of Shares. The Trust, the Trustees and the officers, employees and agents of the Trust shall be entitled to deem the Persons in whose names certificates are registered on the records of the Trust to be the absolute owners of the Shares represented thereby for all purposes of the

Trust; but nothing herein shall be deemed to preclude the Trustees or officers, employees or agents of the Trust from inquiring as to the actual ownership of Shares. Until a transfer is duly effected on the records of the Trust, the Trustees shall not be affected by any notice of such transfer, either actual or constructive.

Shares shall be transferable on the records of the Trust only by the record holder thereof or by his agent thereunto duly authorized in writing upon delivery to the Trustees or a transfer agent of the certificate or certificates therefor, properly endorsed or accompanied by duly executed instruments of transfer and accompanied by all necessary documentary stamps together with such evidence of the genuineness of each such endorsement, execution or authorization and of other matters as may reasonably be required by the Trustees or such transfer agent. Upon such delivery, the transfer shall be recorded in the records of the Trust and a new certificate for the Shares so transferred shall be issued to the transferee and in case of a transfer of only a part of the Shares represented by any certificate, a new certificate for the balance shall be issued to the transferor. Any Person becoming entitled to any Shares in consequence of the death of a Shareholder or otherwise by operation of law shall be recorded as the holder of such Shares and shall receive a new certificate therefor but only

upon delivery to the Trustees or a transfer agent of instruments and other evidence required by the Trustees or the transfer agent to demonstrate such entitlement, the existing certificate for such Shares and such releases from applicable governmental authorities as may be required by the Trustees or transfer agent. In case of the loss, mutilation or destruction of any certificate for shares, the Trustees may issue or cause to be issued a replacement certificate on such terms and subject to such rules and regulations as the Trustees may from time to time prescribe. Nothing in this Declaration shall impose upon the Trustees or a transfer agent a duty, or limit their rights, to inquire into adverse claims.

3.7 Dividends or Distributions to Shareholders. Subject to the Bylaws, the Trustees may from time to time declare and pay to Shareholders such dividends or distributions in cash, property or assets of the Trust or Securities issued by the Trust, out of current or accumulated income, capital, capital gains, principal, interest, surplus, proceeds from the increase or financing or refinancing of Trust obligations, or from the sale of portions of the Trust Estate or from any other source as the Trustees in their discretion shall determine. Shareholders shall have no right to any dividend or distribution unless and until declared by the Trustees. The Trustees shall furnish the Shareholders with a statement in writing advising as to the source of the funds



so distributed not later than ninety (90) days after the close of the fiscal year in which the distribution was made.

3.8 Transfer Agent, Dividend Disbursing Agent and Registrar. The Trustees shall have power to employ one or more transfer agents, dividend disbursing agents and registrars (including the Advisor or its Affiliates) and to authorize them on behalf of the Trust to keep records to hold and to disburse any dividends or distributions and to have and perform, in respect of all original issues and transfers to Shares, dividends and distributions and reports and communications to Shareholders, the powers and duties usually had and performed by transfer agents, dividend disbursing agents and registrars of a Maryland business corporation.

3.9 Shareholders' Meetings. There shall be an annual meeting of the Shareholders, at such time and place as shall be determined by or in the manner prescribed in the Bylaws, at which the Trustees shall be elected and any other proper business may be conducted. The Annual Meeting of Shareholders shall be held after delivery to the Shareholders of the Annual Report, commencing with the fiscal year ending December 31, 1986. Special meetings of Shareholders may be called by the chief executive officer of the Trust or by a majority of the Trustees or of the Independent Trustees and shall be called by the chief executive officer of the Trust upon the written request of Shareholders holding in the

aggregate not less than ten percent (10%) of the total votes authorized to be cast by the outstanding Shares of the Trust entitled to vote at such meeting in the manner provided in the Bylaws. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders entitled to vote for the election of successor Trustees. Notice of any special meeting shall state the purposes of the meeting.

The holders of Shares entitled to vote at the meeting representing a majority of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote on any question present in person or by proxy shall constitute a quorum at any such meeting for action on such question. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, without regard to class, whether or not a quorum is present, and, except as otherwise provided in the Bylaws, the meeting may be reconvened without further notice. At any reconvened session of the meeting at which there shall be a quorum, any business may be transacted at the meeting as originally noticed.

Whenever any action is to be taken by the Shareholders, it shall, except as otherwise clearly indicated in this Declaration or the Bylaws, be authorized by the affirmative vote of the holders of Shares representing a majority of

all the votes cast at a meeting at which a quorum is present. At all elections of Trustees, voting by Shareholders shall be conducted under the noncumulative method and the election of Trustees shall be by the affirmative vote of the holders of Shares representing a majority of all the votes cast at a meeting at which a quorum is present.

No action required to be taken or which may be taken at any annual or special meeting of Shareholders may be taken without a meeting, and the power of Shareholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

3.10 Proxies. Whenever the vote or consent of a Shareholder entitled to vote is required or permitted under this Declaration, such vote or consent may be given either directly by such Shareholder or by a proxy in the form prescribed in, and subject to the provisions of, the Bylaws. The Trustees may solicit such proxies from the Shareholders or any of them entitled to vote in any matter requiring or permitting the Shareholders' vote or consent.

3.11 Reports to Shareholders. Not later than ninety (90) days after the close of each fiscal year of the Trust, the Trustees shall mail or deliver a report of the business and operations of the Trust during such fiscal year to the Shareholders, which report shall constitute the accounting of the Trustees for such fiscal year. Subject to

Section 8-401 of the Annotated Code of Maryland, the report (the "Annual Report") shall be in such form and have such content as the Trustees deem proper. The Annual Report shall include a balance sheet, an income statement and a surplus statement, each prepared in accordance with generally accepted accounting principles. Such financial statements shall be certified by an independent public accountant based on a full examination of the books and records of the Trust conducted in accordance with generally accepted auditing procedure. Manually signed copies of the Annual Report and of the auditor's certificate, will be filed with the Maryland Department of Assessments and Taxation. A manually signed copy of the accountant's report shall be filed with the Trustees.

3.12 Fixing Record Date. The Bylaws may provide for fixing or, in the absence of such provision, the Trustees may fix, in advance, a date as the record date for determining the Shareholders entitled to notice of or to vote at any meeting of Shareholders or to express consent to any proposal without a meeting or for the purpose of determining Shareholders entitled to receive payment of any dividend or distribution (whether before or after termination of the Trust) or any Annual Report or other communication from the Trustees, or for any other purpose. The record date so fixed shall be not less than ten (10) days nor more than sixty (60)

days prior to the date of the meeting or event for the purposes of which it is fixed.

3.13 Notice to Shareholders. Any notice of meeting or other notice, communication or report to any Shareholder shall be deemed duly delivered to such Shareholder when such notice, communication or report is deposited, with postage thereon prepaid, in the United States mail, addressed to such Shareholder at his address as it appears on the records of the Trust or is delivered in person to such Shareholder.

3.14 Shareholders' Disclosures; Trustees' Right to Refuse to Transfer Shares; Limitation on Holdings; Redemption of Shares.

(a) 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 or appropriate to comply with the REIT Provisions of the Internal Revenue Code or to comply with the requirements of any taxing authority or governmental agency.

(b) Whenever in good faith the Trustees deem it reasonably necessary to protect the status of the Trust as a REIT they may require a statement or affidavit from each Shareholder or proposed transferee of Shares setting forth the number of Shares already owned by such Shareholder or proposed transferee and any related Person specified in the

form prescribed by the Trustee for that purpose. If, in the opinion of the Trustees, which shall be binding upon any Shareholder, or proposed transferee of Shares, any proposed transfer of Shares would jeopardize the status of the Trust as a REIT, the Trustees shall have the right, but not the duty, to refuse to permit such transfer.

(c) The Trustees, by notice to the holder thereof, may purchase any or all Shares that have been transferred in a transaction which, in the opinion of the Trustees, would jeopardize the status of the Trust as a REIT. Without limiting the generality of the foregoing, if the Trustees shall, at any time and in good faith, be of the opinion that direct or indirect ownership of Shares representing more than 9.8% in value of the total Shares outstanding (the "Excess Shares") has or may become concentrated in the hands of one Person (taking into account the constructive ownership rules of Sections 318 and 544 of the Internal Revenue Code), the Trustees shall have the power (i) by lot or other means deemed equitable by them to call for the purchase from any Shareholder of such Excess Shares, and (ii) to refuse to transfer or issue Shares to any Person whose acquisition of such Shares would, in the opinion of the Trustees, result in any Person's direct or indirect ownership of Excess Shares. The purchase price for any Shares shall be equal to the fair market value of the Shares reflected in the closing sale

price for the Shares, if then listed on a national securities exchange, or such price for the Shares on the principal exchange if then listed on more than one national securities and exchange, or if the Shares are not then listed on a national securities exchange, the latest bid quotation for the Shares if then traded over-the-counter, on the last trading day immediately preceding the day on which notices of such acquisition are sent, or, if no such closing sales prices or quotations are available, then the purchase price shall be equal to the net asset value of such Shares as determined by the Trustees in accordance with the provisions of applicable law. Payment of the purchase price shall be made in cash or with a note by the Trust at such time, in such manner and upon such terms as may be determined by the Trustees. From and after the date fixed for purchase by the Trustees, and so long as payment of the purchase price for the Shares to be so redeemed shall have been made or duly provided for, the holder of any Excess Shares so called for purchase shall cease to be entitled to distributions, voting rights and other benefits with respect to such Shares, excepting only the right to payment of the purchase price fixed as aforesaid. Any transfer of Shares, options, warrants or other securities convertible into Shares that would create a direct or indirect beneficial owner of Excess Shares shall be deemed void ab initio and the intended transferee shall be deemed

never to have an interest therein. If the foregoing provision is determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the transferee of such Shares, options, warrants or other securities convertible into Shares shall be deemed, at the option of the Trust to have acted as agent on behalf of the Trust in acquiring such Shares and to hold such Shares on behalf of the Trust.

In addition, if any Person knowingly holds Excess Shares and the Trust loses its REIT qualification under the Internal Revenue Code or becomes a personal holding company, that Person would be required to indemnify the Trust for the full amount of any damages and expenses resulting from the loss of its REIT qualification or its becoming a personal holding company. This liability might include, but should not be limited to, increased corporate taxes, attorneys' fees, and administrative costs.

(d) Notwithstanding any other provision in this Declaration of Trust or the Bylaws, the foregoing provision may not be amended or repealed without the affirmative vote of holders of Shares entitled to cast 95% of the votes outstanding.

(e) Notwithstanding any other provision of this Declaration of Trust to the contrary, any purported



acquisition of Shares of the Trust which would result in the disqualification of the Trust as a REIT shall be null and void.

(f) Nothing contained in this Section 3.14 or in any other provision of this Declaration of Trust shall limit the authority of the Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of the Shareholders by preservation of the Trust's status as a REIT.

(g) If any provision of this Section 3.14 or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court. To the extent this Section 3.14 may be inconsistent with any other provision of this Declaration of Trust, this Section 3.14 shall be controlling.

#### 3.15 Special Voting Requirements for Certain Business Combinations.

(a) The affirmative vote of the holders of Shares representing 95% of the total number of votes authorized to be cast by holders of Shares then outstanding and entitled to vote thereon shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined)

of the Trust with any "Related Person" (as hereinafter defined). However, such 95% voting requirement shall not be applicable if: (1) the Board of Trustees by the vote or written consent of all or all but one of the Continuing Trustees shall have expressly approved in advance the acquisition of the outstanding Shares of the Trust that caused the Related Person to become a Related Person or shall have approved the Business Combination prior to the Related Person involved in the Business Combination having become a Related Person; or (2) the Business Combination is solely between the Trust and another trust or corporation, 100% of the voting securities of which is owned directly or indirectly by the Trust.

(b) For purposes of this Section 3.15:

(i) The term "Business Combination" shall mean (a) any merger or consolidation of the Trust with or into a Related Person, (b) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any "Substantial Part" (as hereinafter defined) of the assets of the Trust (including without limitation any voting securities of a subsidiary) to a Related Person, (c) any merger or consolidation of a Related Person with or into the Trust, (d) any sale, lease, exchange, transfer or other disposition of assets of a Related Person to the Trust having a book value

equal to more than 10% of the Invested Assets of the Trust as of the end of the Trust's most recent fiscal year ending prior to the time the determination is made, (e) the issuance of any Securities (other than by way of pro rata distribution to all Shareholders) of the Trust to a Related Person or to a person who would become a Related Person upon issuance of any of or all of such securities, and (f) any agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination.

(ii) The term "Related Person" shall mean and include any individual, corporation, partnership or other person or entity which, together with its "affiliates" and "associates" (as defined on October 1, 1982, in Rule 12b-2 under the Securities Exchange Act of 1934), "beneficially owns" (as defined on October 1, 1982, in Rule 13d-3 under the Securities Exchange Act of 1934) in the aggregate, shares of beneficial interest of the Trust representing 5% of the total number of votes authorized to be cast by holders of Shares then outstanding entitled to vote generally in the election of Trustees. A Related Person is also deemed to own beneficially Shares owned, directly or indirectly, by any "Affiliate" of the Related Person, as well as (1) Shares which it or any such Affiliate has a right to acquire, (2) Shares issuable upon the exercise of options or rights, or upon conversion of convertible securities, held by the Related

Person, and (3) Shares beneficially owned by any other person with whom the Related Person or any of his Affiliates acts as a partnership, syndicate or other group pursuant to an agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of shares of the Trust.

(iii) The term "Substantial Part" shall mean an amount equal to more than 10% of the Invested Assets of the Trust as of the end of its most recent fiscal year ending prior to the time the determination is being made.

(iv) Without limitation, any Shares that any Related Person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, whether exercisable currently or at some time in the future, shall be deemed beneficially owned by the Related Person.

(c) The Trust elects not to be governed by the provisions of Subtitle 6 of Title 3 of the Corporations and Associations Article of the Annotated Code of Maryland, and the provisions of subparagraphs (a) and (b) of this Section 3.15 shall be in substitution for and to the exclusion of said Subtitle 6 of Title 3.

(d) Except as otherwise provided in this Section 3.15, the Trust may effect any merger or consolidation in accordance with applicable law.

ARTICLE IV

LIABILITY OF TRUSTEES, SHAREHOLDERS, OFFICERS,

EMPLOYEES AND AGENTS, AND OTHER MATTERS

4.1 Limitation of Liability of Shareholders, Trustees, Officers, Employees and Agents for Obligations of the Trust. The Trustees and the 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 as otherwise provided in Sections 4.3 and 4.4 hereof with respect to liability of Trustees or officers, agents or employees of the Trust to the Trust or to Shareholders, no Shareholder, Trustee or officer, employee or agent of the Trust shall be liable for any debt, claim, demand, judgment decree, liability or obligation of any kind (in tort, contract or otherwise) of, against or with respect to the Trust or 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, and no Shareholder, Trustee or officer, employee or agent of the Trust shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other Person or Persons in connection.

with the Trust Estate or the affairs of the Trust (or any actions taken or omitted for or on behalf of the Trust). All such other Persons shall look solely to the Trust Estate for satisfaction of claims of any nature arising in connection with the Trust Estate or the affairs of the Trust (or any action taken or omitted for or on behalf of the Trust).

4.2 Express Exculpatory Clauses and Instruments. Any written instrument creating an obligation of the Trust shall include a reference to this Declaration and provide that neither the Shareholders nor the Trustees nor any officers, employees or agents of the Trust shall be liable thereunder and that all Persons shall look solely to the Trust Estate for the payment of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the Shareholders, any Trustee, or any officer, employee or agent of the Trust liable nor shall the Shareholders, any Trustee or any officer, employee or agent of the Trust be liable to anyone for such omission.

4.3 Limitation of Liability of Trustees, Officers, Employees and Agents to the Trust and to Shareholders for Acts and Omissions. No Trustee or officer, employee or agent of the Trust shall have any greater duties than those established by this Declaration of Trust or, in cases as to which such duties are not so established, than those of the directors,

officers, employees and agents of a Maryland business corporation in effect from time to time. Subject to the provisions of Section 4.4 hereof, no Trustee or officer, employee or agent of the Trust shall be liable to the Trust, Shareholders or to any other Person for any act or omission except for his own wilful misfeasance, bad faith, gross negligence or reckless disregard of duty.

4.4 Limitation of Liability of Affiliated Trustees and Their Affiliates to the Trust and to Shareholders for Acts and Omissions. No Affiliated Trustee and no Affiliate (as defined in Section 4.6 hereof) of such Affiliated Trustee shall have any liability to the Trust or to any Shareholder for any loss suffered by the Trust which arises out of any action or inaction of such Affiliated Trustee or Affiliate if such Affiliated Trustee or Affiliate, in good faith, determined that such course of conduct was in the best interest of the Trust, and such course of conduct did not constitute negligence or misconduct of such Affiliated Trustee or Affiliate.

4.5 Indemnification and Reimbursement of Trustees, Officers, Employees and Agents.

(a) Except as otherwise provided in paragraph (b) of this Section 4.5, any Person made a party to any action, suit or proceeding or against whom a claim or liability is asserted by reason of the fact that he, his

testator or intestate was or is a Trustee, Officer, employee or agent of the Trust shall be indemnified and held harmless by the Trust against judgments, fines, amounts paid on account thereof (whether in settlement or otherwise) and reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of such action, suit, proceeding, claim or alleged liability or in connection with any appeal therein, whether or not the same proceeds to judgment or is settled or otherwise brought to a conclusion; provided, however, that no such Person shall be so indemnified or reimbursed for any claim, obligation or liability which shall have been adjudicated to have arisen out of or been based upon his wilful misfeasance, bad faith, gross negligence or reckless disregard of duty; and provided, further, that such Person gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense or settlement thereof and cooperates therein. In the event of a settlement approved by the Trustees of any such claim, alleged liability, action, suit or proceeding, indemnification and reimbursement shall be provided except as to such matters covered by the settlement which the Trust is advised by its counsel would, if adjudicated, likely be adjudicated



to have arisen out of or been based upon such Person's wilful misfeasance, bad faith, gross negligence, or reckless disregard of duty. Such rights of indemnification and reimbursement shall be satisfied only out of the Trust Estate. The rights accruing to any Person under these 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 Trustees may make advance payments in connection with indemnification under this Section 4.5, provided that the indemnified Person shall have given a written undertaking to reimburse the Trust in the event it is subsequently determined that he is not entitled to such indemnification. Any action taken by or conduct on the part of a Trustee, officer, employee or agent of the Trust in conformity with or in good faith reliance upon the provisions of this Declaration (including without limitation any provision in Article 7 hereof) shall not constitute wilful misfeasance, bad faith, gross negligence or reckless disregard of duty.

(b) Each Affiliated Trustee and any Affiliates (as defined in Section 4.6 hereof) of such Affiliated Trustee shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts

paid in settlement of any claims sustained by them in connection with the Trust, provided that the same were not the result of negligence or misconduct on the part of such Affiliated Trustee or Affiliate. Notwithstanding the foregoing, Affiliated Trustees and their Affiliates and any person acting for the Trust as a broker/dealer shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee or (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee or (iii) a court of competent jurisdiction approves a settlement of the claim against the particular indemnitee. In any claim for indemnification for federal or state securities law violations, the party seeking indemnification shall place before the court the position of the Securities and Exchange Commission and the Maryland Division of Securities with respect to the issue of indemnification for securities law violations. The Trust shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party

against any liability the indemnification of which is prohibited by this Section 4.5(b).

4.6 Certain Definitions. For the purposes of Sections 4.4 and 4.5(b) hereof, the term "Affiliate," when used in connection with the term "Affiliated Trustee," shall mean any person performing services on behalf of the Trust who (i) directly or indirectly controls, is controlled by, or is under common control with such Affiliated Trustee; (ii) owns or controls ten percent (10%) or more of the outstanding voting securities of such Affiliated Trustee; (iii) is an officer, director, partner or trustee of such Affiliated Trustee; or (iv) is a company for which such Affiliated Trustee acts as an officer, director, partner or trustee. For the purposes of the above definition, the terms "control," "controlling," "controlled by," and "under common control with" refer to the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contrast, or otherwise.

4.7 Indemnification and Reimbursement of Shareholder. Any Shareholder made a party to any action, suit or proceeding or against him a claim or liabilities asserted by reason of the fact that he, his testate or intestate was or is a Shareholder shall be indemnified and held harmless by the Trust against judgments, fines, amounts paid on account

thereof (whether in settlement or otherwise) and reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of such action, suit, proceeding, claim or alleged liability or in connection with any appeal therein, whether or not the same proceeds to judgment or is settled or otherwise brought to a conclusion; provided, however, that such Shareholder gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense of settlement thereof and cooperates therein. In the event that the assets of the Trust Estate are insufficient to satisfy the Trust's indemnity obligations hereunder, each Shareholder shall be entitled to such indemnification pro rata from the Trust Estate.

4.8 Right of Trustees, Officers, Employees and Agents to Own Shares or Other Property and to Engage in Other Business. Any Trustee or 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 or officer, employee or agent of the Trust. Any Trustee or officer, employee or agent of the Trust may, in his personal capacity or in the capacity of trustee, officer, director, stockholder, partner, member, advisor or employee of any Person or otherwise, have

business interests and engage in business activities similar to or in addition to those relating to the Trust, which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for his own account, for the account of such Person or others, of interests in Mortgages, interests in Real Property, or interests in Persons engaged in the real estate business. Each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity which comes to him in any capacity other than solely as Trustee, officer, employee or agent of the Trust even if such opportunity is of a character which, if presented to the Trust, could be taken by the Trust. Subject to the provisions of Article IV and Section 4.9, any Trustee or officer, employee or agent of the Trust 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, employee or agent or otherwise hereunder. None of these activities shall be deemed to conflict with his duties and powers as Trustee or officer, employee or agent of the Trust.

4.9 Transaction Between Trustees, Officers, Employees or Agents and the Trust. Except as otherwise provided by this Declaration, and in the absence of fraud, a contract, act or other transaction between the Trust and any other Person in which the Trust is interested, shall be valid, and no Trustee or officer, employee or agent of the Trust shall have any liability as a result of entering into any such contract, act or transaction, even though (a) one or more of the Trustees or officers, employees or agents of the Trust are directly or indirectly interested in or connected with or are trustees, partners, directors, employees, officers or agents of such other Person, or (b) one or more of the Trustees or officers, employees or agents of the Trust individually or jointly with others, is a party or are parties to, or are directly or indirectly interested in or connected with, such contract, act or transaction; provided that in each such case (i) such interest or connection is disclosed or known to the Trustees and thereafter the Trustees authorize or ratify such contract, act or other transaction by affirmative vote of a majority of the Trustees who are not so interested or (ii) such interest or connection is disclosed or known to the Shareholders, and thereafter such contract, act or transaction is approved by Shareholders holding a majority of the Shares then outstanding and entitled to vote thereon.

Notwithstanding any other provisions of this Declaration, the Trust shall not engage in a transaction with (a) any Trustee, officer, employee or agent of the Trust (acting in his individual capacity), (b) any director, trustee, partner, officer, employee or agent (acting in his individual capacity) of the Advisor or any other investment advisor of the Trust, (c) the Advisor or any other investment advisor of the Trust or (d) an Affiliate of any of the foregoing, except to the extent that such transaction has, after disclosure of such affiliation, been approved or ratified by the affirmative vote of a majority of the Trustees including a majority of the Independent Trustees (or, if the transaction is with a Person other than the Advisor or an Affiliate of the Advisor, a majority of the Trustees not having any interest in such transaction and not Affiliates of any party to the transaction) after a determination by them that to the extent applicable:

(A) such transaction is fair and reasonable to the Trust and the Shareholders;

(B) based upon an appraisal by a qualified independent real estate appraiser who shall, in each case, have been approved by a majority of the Independent Trustees (or, if the transaction is with a Person other than the Advisor or an Affiliate of the Advisor, a majority of the Trustees not

having any interest in such transaction and not Affiliates of any party to the transaction), the total consideration is not in excess of the appraised value of the interest in Real Property being acquired, if an acquisition is involved, or not less than the appraised value of the interest in Real Property being disposed of, if a disposition is involved; and

(C) if such transaction involves payments by the Trust for services rendered to the Trust by a Person in a capacity other than that of Advisor, Trustee or Trust officer, (1) the compensation is not in excess of the compensation, if any, paid to such Person by any other Person who is not an Affiliate of such Person, for any comparable services in the same geographic area, and (2) the compensation is not greater than the charges for comparable services generally available in the same geographic area from other Persons who are competent and not affiliated with any of the parties involved.

This Section 4.9 shall not prevent any sale of Shares issued by the Trust for the public offering thereof in accordance with a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933. The



Trustees are not restricted by this Section 4.9 from forming a corporation, partnership, trust or other business association owned by any Trustee, officer, employee or agent or by their nominees for the purpose of holding title to property of the Trust or managing property of the Trust, provided that the Trustees make a determination that the creation of such entity for such purpose is in the best interest of the Trust.

4.10 Independent Counsel. In the event of a dispute between the Trust and the Advisor or its Affiliates, or should it be necessary for the Trust to prepare and negotiate contracts and agreements between the Trust and the Advisor or its Affiliates which in the good faith judgement of a majority of the Independent Trustees require the advice or assistance of separate counsel or accountants from that of the Advisor or its Affiliates, the Trust will retain such separate counsel or accountants for such matters, the choice of which shall be made by a majority of the Independent Trustees.

4.11 Persons Dealing with Trustees, Officers, Employees or Agents. Any act of the Trustees or of the officers, employees or agents of the Trust purporting to be done in their capacity as such, shall, as to any Persons dealing with such Trustees, officers, employees or agents, be conclusively deemed to be within the purposes of this Trust and within the powers of such Trustees or officers, employees

or agents. No Person dealing with the Trustees or any of them or with the officers, employees or agents 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 or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

4.12 Reliance. The Trustees and the officers, employees and agents of the Trust may consult with counsel (which may be a firm in which one or more of the Trustees or the officers, employees or agents, including the Advisor and its Affiliates, of the Trust is or are members) and the advice or opinion of such counsel shall be full and complete personal protection to all the Trustees and the officers, employees and agents of the Trust in respect of any action taken or suffered by them in good faith and in reliance on or in accordance with such advice or opinion. In discharging their duties, Trustees or officers, employees or agents of the Trust, when acting in good faith, may rely upon financial statements of the Trust represented to them to fairly present the financial position or results of operations of the Trust by the chief financial officer of the Trust or the officer of the Trust having charge of its books of account, or stated in written report by an independent certified public accountant fairly to present the financial position or results of

operations of the Trust. The Trustees and the officers, employees and agents of the Trust may rely, and shall be personally protected in acting, upon any instrument or other document believed by them to be genuine.

#### Article V

##### DURATION, AMENDMENT AND TERMINATION OF TRUST

5.1 Duration of Trust. The duration of the Trust shall be perpetual; provided, however, the Trust may be terminated at any time by the affirmative vote at a meeting of Shareholders of the holders of Shares representing 95% of the total number of Shares then outstanding and entitled to vote thereon or by a unanimous vote of the Continuing Trustees.

##### 5.2 Termination of Trust.

(a) upon the termination of the Trust:

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

(ii) the Trustees shall proceed to wind up the affairs of the Trust and all 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; and

(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 or in kind or partly each) among the Shareholders according to their respective rights.

(b) After termination of the Trust and distribution of the Trust Estate 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 such distribution, a copy of which instrument shall be filed with the Maryland Department of Assessments and Taxation, 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.

5.3 Amendment Procedure. This Declaration may be amended (except that the provision governing the personal

liability of the Shareholders, Trustees and of the officers, employees and agents of the Trust and the prohibition of assessments upon Shareholders may not be amended in any respect that could increase the personal liability of such Shareholders, Trustees or officers, employees and agents of the Trust) at a meeting of Shareholders by holders of Shares representing ninety-five percent (95%) of the total number of votes authorized to be cast in respect of Shares then outstanding and entitled to vote thereon. Notwithstanding the foregoing, if all or all but one of the Continuing Trustees vote in favor of any proposed amendment, the affirmative vote of holders of Shares representing a majority of the total number of votes authorized to be cast in respect of Shares then outstanding and entitled to vote thereon, will be required to amend this Declaration. Two-thirds (2/3) of the Continuing Trustees may, after fifteen (15) days written notice to the Shareholders, also amend this Declaration without the vote or consent of Shareholders if in good faith they deem it necessary to conform this Declaration to the requirements of REIT Provisions of the Internal Revenue Code, but the Continuing Trustees shall not be liable for failing to do so. Actions by the Trustees pursuant to Section 3.1 or pursuant to Section 6.6(a) that result in an amendment to this Declaration shall be effected without vote or consent of Shareholders.

5.4 Amendments Effective. Any amendment pursuant to any Section of this Declaration shall not become effective

until it is duly filed with the Maryland Department of Assessments and Taxation.

5.5 Transfer to Successor. Subject to Section 3.15 above, the Trustees, with the approval of a majority of the Trustees (including a majority of the Independent Trustees) and the affirmative vote, approving a plan for this purpose, of the holders of Shares representing ninety-five percent (95%) of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote thereon, may (a) cause the organization of a corporation, association, trust or other organization to take over the Trust Estate and carry on the affairs of the Trust, (b) merge the Trust into, or sell, convey and transfer the Trust Estate to, any such corporation, association, trust or organization in exchange for Securities thereof, or beneficial interests therein, and the assumption by such transferee of the liabilities of the Trust and (c) thereupon terminate this Declaration and deliver such shares, Securities or beneficial interests among the Shareholders in accordance with such plan.

#### ARTICLE VI

#### MISCELLANEOUS

6.1 Applicable Law. This Declaration is executed and acknowledged by the Trustees with reference to the statutes and laws of the State of Maryland, and the rights of

all parties and the construction and effect of every provision hereof shall be subject to and construed according to the statutes and laws of such State.

6.2 Index and Headings for Reference Only. The index and 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.

6.3 Successors in Interest. This Declaration and the Bylaws 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, distributees and legal representatives.

6.4 Inspection of Records. Trust records shall be available for inspection by Shareholders at the same time and in the same manner and to the extent that comparable records of a Maryland business corporation would be available for inspection by shareholders under the laws of the State of Maryland. Except as specifically provided for in this Declaration or in Title 8 of the Annotated Code of Maryland, Shareholders shall have no greater right than shareholders of a Maryland business corporation to require financial or other information from the Trust, Trustees or Officers of the Trust. Any Federal or state securities administrator or the

Maryland Department of Assessments and Taxation shall have the right, at reasonable times during business hours and for proper purposes, to inspect the books and records of the Trust.

6.5 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.

6.6 Provisions of the Trust in Conflict with Law or Regulations; Severability.

(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, 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 action taken or omitted (including but not limited to the election of Trustees) prior to such determination. An amendment in recordable form signed by a majority of the Trustees setting forth any such determination and



reciting that it was duly adopted by the Trustees, or a copy of this Declaration, with the Conflicting Provisions removed pursuant to such a determination, in recordable form, signed by a majority of the Trustees, shall be conclusive evidence of such determination when filed with the Maryland Department of Assessments and Taxation. The Trustees shall not be liable for failure to make any determination under this Section 6.6(a). Nothing in this Section 6.6(a) shall in any way limit or affect the right of the Trustees to amend this Declaration as provided in Section 5.3.

(b) If any provision 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 herein.

6.7 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 individuals holding office as Trustees or officers at any particular time, when made in writing by the secretary of the Trust;

(c) a certification that a copy of this Declaration or of the Bylaws is a true and correct copy thereof as then in force, when made in writing by the secretary of the Trust;

(d) the certifications referred to in Section 2.7, 5.4 and 6.6(a);  
and

(e) a certification as to any actions by Trustees, other than the above, when made in writing by the secretary of the Trust or by any Trustee.

IN WITNESS THEREOF, the undersigned have signed these presents all  
on the day and year first above written.

/s/ Alan B. Miller  
-----  
Alan B. Miller

Address: -----  
-----

/s/ Joseph P. Gaynor, III  
-----  
Joseph P. Gaynor, III

Address: -----  
-----

/s/ Robert E. Cawthorn  
-----  
Robert E. Cawthorn

Address: -----  
-----

/s/ Sidney Miller  
-----  
Sidney Miller

Address: -----  
-----

/s/ Daniel M. Cain  
-----  
Daniel M. Cain

Address: -----  
-----

/s/ Lee Ducat  
-----  
Lee Ducat

Address: -----  
-----

/s/ Peter Linneman

-----  
Peter Linneman

Address:-----  
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## UNIVERSAL HEALTH REALTY INCOME TRUST

## A Maryland Real Estate Investment Trust

The Declaration of Trust of Universal Health Realty Income Trust, (the "Trust"), as filed with the Maryland State Department of Assessments and Taxation on August 5, 1986 (the "Declaration of Trust"), is amended as follows:

1. Section 4.3 is amended to read in its entirety:

"Limitation of Liability of Trustees, Officers, Employees and Agents to the Trust and to Shareholders for Acts and Omissions. No Trustee or officer, employee or agent of the Trust shall have any greater duties than those established by this Declaration or, in cases as to which such duties are not so established, than those of the directors, officers, employees and agents of a Maryland business corporation in effect from time to time. Subject to the provisions of Section 4.4 hereof, to the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no trustee or officer of this Trust shall be personally liable to the Trust or its shareholders for money damages. No amendment of this Declaration or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to trustees and officers hereunder with respect to any act or omission occurring prior to such amendment or repeal;"

2. Section 4.5 is amended to read in its entirety:

"Indemnification and Reimbursement of Trustees, Officers, Employees and Agents. The Trust shall indemnify (A) its Trustees and officers, whether serving the Trust or at its request, any other entity, to the full extent required or permitted by the General Laws of the State of Maryland now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law; (B) each Affiliated Trustee and any Affiliates (as defined in Section 4.6 hereof) of such Affiliated Trustee to such extent as shall be authorized by the Board of Trustees or the Trust's By-Laws and be permitted by law; and (C) other employees and agents to such extent as shall be authorized by the Board of Trustees of the Trust's By-Laws and be permitted by law. The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The Board of Trustees may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such by-laws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of the charter of the Trust or repeal of any of its provisions shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal;" and

3. The first clause of the first sentence of Section 4.6 is amended to read as follows:

"For the purposes of Sections 4.4 and 4.5 hereof,"

These amendments do not affect the total number of shares of beneficial interest authorized or issued by the Trust. These amendments were authorized by the Board of Trustees of the Trust, acting by written consent as of April 13, 1993, and by a majority of the shareholders on June 15, 1993.

IN WITNESS WHEREOF, the amendment has been executed and delivered this 15th day of June, 1993 by the undersigned Trustees, each of whom acknowledges, under penalty of perjury, that this document is such Trustee's free act and deed, and that, to the best of his knowledge, information and belief, the matters and facts set forth herein are true in all material respects.

BY THE TRUSTEES:

/s/ Daniel Cain

-----  
Daniel Cain

/s/ Peter Linneman, Ph.D

-----  
Peter Linneman, Ph.D

/s/ Alan B. Miller

-----  
Alan B. Miller

/s/ Sidney Miller

-----  
Sidney Miller

/s/ Myles H. Tanenbaum

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Myles H. Tanenbaum

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UNIVERSAL HEALTH REALTY INCOME TRUST

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BYLAWS

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INDEX OF BYLAWS

OF

UNIVERSAL HEALTH REALTY INCOME TRUST, INC.

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## ARTICLE I

### TRUSTEES

SECTION 1.1 Fiduciary Duty. The Trustees shall have a fiduciary duty to the Shareholders of the Trust.

SECTION 1.2 Qualifying Shares Not Required. Trustees need not be Shareholders of Universal Health Realty Income Trust (the "Trust").

SECTION 1.3 Quorum. A majority of the Trustees shall constitute a quorum subject to the provisions of Section 2.6 of the Trust's Declaration of Trust, as it may be amended from time to time (the "Declaration").

SECTION 1.4 Number and Term; Election. The number and terms of the Trustees shall be as provided in Section 2.1 of the Declaration. Trustees shall be elected at Annual Meetings of Shareholders as provided in Section 2.1 of the Declaration. If Trustees are not so elected at an Annual Meeting or if such meeting is not held, Trustees may be elected at a special meeting of Shareholders.

SECTION 1.5 Place of Meeting. Meetings of the Trustees shall be held at the principal office of the Trust or at such place within or without the State of Maryland as the Chairman or the President shall direct or as is fixed from time to time by resolution of the Trustees. Whenever a place other than the principal office is fixed by the Chairman or the President or by resolution as the place at which future meetings are to be held, written notice thereof shall be sent to all Trustees a reasonable time in advance of any meeting to be held at such place.

SECTION 1.6 Organizational Meetings. Immediately following each Annual Meeting of Shareholders, a regular meeting of the Trustees shall be held for the purpose of organizing, electing officers and transacting other business. Notice of such meetings need not be given.

SECTION 1.7 Regular Meetings. Regular meetings of the Trustees shall be held at the place determined pursuant to Section 1.4 hereof on the dates, if any, established at each organizational meeting of the Trustees and notice of such regular meetings of the Trustees is hereby dispensed with.

SECTION 1.8 Special Meetings. Special meetings of the Trustees may be called at any time by the Chairman or President, and the Chairman or President shall call a special meeting at any time upon the written request of three (3) Trustees. Written notice of the time and place of a special meeting shall be given to each Trustee, either personally or by sending a copy thereof by mail or by telegraph, charges prepaid, to his address appearing on the books of the Trust or theretofore given by him to the Trust for the purpose of notice. In case of personal service, such notice shall be so delivered at least twenty-four (24) hours prior to the time fixed for the meeting. If such notice is mailed, it shall be deposited in the United States mail in the place in which the principal office of the Trust is located at least seventy-two (72) hours prior to the time fixed for the holding of the meeting. If telegraphed, it shall be delivered to the telegraph company at least forty-eight (48) hours prior to the time fixed for the holding of the meeting. If notice is not so given by the Secretary, it may be given in the same manner by the Chairman, President or the Trustees requesting the meeting.

SECTION 1.9 Adjourned Meetings. A quorum of the Trustees may adjourn any Trustees' meeting to meet again at a stated day and hour. In the absence of a quorum, a majority of the Trustees present may adjourn from time to time to meet again at a stated day and hour prior to the time fixed for the next regular meeting of the Trustees. The motion for adjournment shall be lodged with the records of the Trust. Notice of the time and place of an adjourned meeting need not be given to any Trustee present at the adjourned meeting if the time and place is fixed at the meeting adjourned.

SECTION 1.10 Waiver of Notice. The transactions of any meeting of the Trustees, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Trustees not present signs a written waiver of notice, a consent to the

holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be lodged with the Trust records or made a part of the minutes of the meeting.

SECTION 1.11 Action Without Meeting. Unless specifically otherwise provided in the Declaration, any action required or permitted to be taken by the Trustees may be taken without a meeting if a majority of the Trustees (or a majority of the Independent Trustees as to any action which requires such a majority) shall individually or collectively consent in writing to such action. Such written consent or consents shall be lodged with the records of the Trust and shall have the same force and effect as the affirmative vote of such Trustees at a duly held meeting of the Trustees at which a quorum were present.

SECTION 1.12 Telephone Meetings. The Trustees may meet by means of a telephone conference circuit or similar communications equipment by means of which all persons participating in the meeting shall be able to hear one another and participate therein. Such meeting shall be deemed to have been held at a place designated by the Trustees at the meeting. Participation in a telephone conference meeting shall constitute presence in person at such meeting.

SECTION 1.13 Committee Rules. Unless the Trustees otherwise provide, each committee designated by the Trustees pursuant to Section 2.8 of the Declaration may adopt, amend and repeal rules for the conduct of such committee's business. In the absence of a provision by the Trustees or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Trustees conduct their business pursuant to Article II of the Declaration and this Article I of these Bylaws.

## ARTICLE II

### OFFICERS

SECTION 2.1 Enumeration. The officers of the Trust shall be a President, a Secretary, a Treasurer, and such other officers as are elected by the Trustees including, in their discretion, a Chairman and one or more assistant secretaries and assistant treasurers, with such duties as are assigned to them by the Trustees. Officers shall be elected by and shall hold office at the pleasure of the Trustees. When the duties do not conflict, any two or more officers, except those of Chairman and/or President and Secretary, may be held by the same person.

SECTION 2.2 Powers and Duties of the Chairman. The Chairman, if there shall be such an officer, shall, if present, preside at all meetings of the Shareholders and the Trustees and may be the chief executive officer of the Trust if the Trustees so elect.

SECTION 2.3 Powers and Duties of the President. Subject to such supervisory powers, if any, as may be given by the Trustees to the Chairman, the President shall, subject to the control of the Trustees and the supervision of the Chairman, have general supervision, direction and control of the business of the Trust and its employees and shall exercise such general powers of management as are usually vested in the office of president of a corporation. In the absence of the Chairman, or if there be none, he shall preside at all meetings of the Shareholders and/or Trustees and, unless the Chairman has been designated as chief executive officer, shall be chief executive officer of the Trust. He shall be, ex officio, a member of all standing committees.

SECTION 2.4 Powers and Duties of Vice-President. Each Vice-President, if any, designated by the Trustees shall be an administrative officer of the Trust and have such duties as are designated by the President or the Trustees.

SECTION 2.5 Duties of the Secretary. The Secretary shall:

(a) Minutes. Keep full and complete minutes of the meetings (or actions in lieu thereof) of the Trustees, any committees of the Trustees and the Shareholders and give notice, as required, of all such meetings;

(b) Books and Other Records. Maintain custody of and keep the books of account and other records of the Trust except such as are in the custody of the Treasurer;

(c) Share Register. Maintain at the principal office of the Trust a share register, showing the ownership and transfers of ownership of all shares of the Trust, unless a transfer agent is employed to maintain and does maintain such a share register; and

(d) General Duties. Generally, perform all duties which pertain to his office and which are required by the Trustees.

An Assistant Secretary or Secretaries may be appointed to assist, or to act in the absence of, the Secretary.

SECTION 2.6 Duties of the Treasurer. The Treasurer shall perform all duties which pertain to his office and which are required by the Trustees, including without limitation the receipt, deposit and disbursement of funds belonging to the Trust.

An Assistant Treasurer or Treasurers may be appointed to assist, or to act in the absence of, the Treasurer.

### ARTICLE III

#### SHAREHOLDERS

SECTION 3.1 Effect of Quorum. Subject to the provisions of the Declaration, the Shareholders present at a duly called or held meeting at which a quorum is present (such quorum determined pursuant to Section 3.9 of the Declaration) may continue to do business until adjournment notwithstanding the withdrawal of enough Shareholders so that the remaining Shareholders constitute less than a quorum.

SECTION 3.2 Place of Meeting. Meetings of the Shareholders shall be held at the principal office of the Trust or at such place within or without the State of Maryland as is designated by the Trustees or the Chairman or President or by the written consent of a majority

of the Shareholders entitled to vote thereat, given either before or after the meeting and filed with the Secretary of the Trust.

SECTION 3.3 Annual Meeting. A regular Annual Meeting of the Shareholders shall be called by the Chairman or President after the end of each fiscal year, commencing with the fiscal year ending December 31, 1986.

SECTION 3.4 Special Meetings. Special meetings of the Shareholders may be held at any time for any purpose or purposes permitted by the Declaration and shall be called as provided in Section 3.9 of the Declaration.

SECTION 3.5 Notice of Regular or Special Meetings. Written notice specifying the place, day and hour of any regular or special meeting, the purposes of the meeting, and all other matters required by law shall be given to each Shareholder of record entitled to vote, either personally or by sending a copy thereof by mail or telegraph, charges prepaid, to his or her address appearing on the books of the Trust or theretofore given by him or her to the Trust for the purpose of notice or, if no address appears or has been given, addressed to the place where the principal office of the Trust is situated. It shall be the duty of the Secretary to give notice of each Annual Meeting of the Shareholders at least fifteen (15) days and not more than sixty (60) days before the date on which it is to be held. Whenever an officer has been duly requested to call a special meeting of Shareholders, it shall be his duty to fix the date and hour thereof, which date shall be not less than twenty (20) days and not more than sixty (60) days after the receipt of such request if the request has been delivered in person or after the date of mailing the request, as the case may be, and to give notice of such special meeting within ten (10) days after receipt of such request. If the date of such special meeting is not so filed and notice thereof given within ten (10) days after the date of receipt of the request, the date and hour of such meeting may be fixed by the person or persons calling or requesting the meeting and notice thereof shall be given by such person or persons not less than twenty (20) nor more than sixty (60) days before the date on which the meeting is to be held.

SECTION 3.6 Notice of Adjourned Meetings. It shall not be necessary to give notice of the time and place of any adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken, except that when a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

SECTION 3.7 Proxies. The appointment of a proxy or proxies for any meeting of Shareholders entitled to vote shall be made by an instrument in writing executed by the Shareholder or his duly authorized agent and filed with such officer of the Trust as the Trustees shall have designated for such purpose for verification prior to such meeting. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution. At a meeting of Shareholders all questions concerning the qualification of voters, the validity of proxies, and the acceptance or rejection of votes, shall be decided by the Secretary of the meeting unless inspectors of election are appointed pursuant to Section 3.10 hereof in which event such inspectors shall pass upon all questions and shall have all other duties specified in said section.

SECTION 3.8 Consent of Absentees. The transactions of any meeting of Shareholders, either annual, special or adjourned, however called and noticed, shall be as valid as though had at a meeting duly held after the regular call and notice if a quorum is present and if, either before or after the meeting, each Shareholder entitled to vote, not present in person or by proxy, signs a written waiver of notice, a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be lodged with the Trust records or made a part of the minutes of the meeting.

SECTION 3.9 Voting Rights. If no date is fixed for the determination of the Shareholders entitled to vote at any meeting of Shareholders, only persons in whose names Shares entitled to vote are registered on the share records of the Trust at the opening of business on the day of any meeting of Shareholders shall be entitled to vote at such meeting.



## ARTICLE IV

### ADVISOR

SECTION 4.1 Term. The Trustees shall not enter into any advisory contract with the Advisor unless such contract has an initial term of not more than one year, provides for annual renewal or extension thereafter, provides for termination thereof by the Trustees without cause at any time upon sixty (60) days' written notice by the Trustees, by affirmative vote or written consent of a majority of the Independent Trustees, and provides for termination thereof by the Advisor without cause at any time after the expiration of a period specified in such contract (which period shall not be shorter than the original term) without penalty upon sixty (60) days' written notice by the Advisor. In the event of the termination of an advisory contract, the terminated Advisor shall be required to cooperate with the Trust and take all reasonable steps requested to assist the Trustees in making an orderly transition of the advisory function. It shall be the duty of the Trustees annually to evaluate the performance of the Advisor, and the Trustees have a fiduciary duty to the Shareholders to supervise the relationship of the Trust with the Advisor.

SECTION 4.2 Other Activities of Advisor. The Advisor shall not be required to administer the Trust as its sole and exclusive function and may have other business interests and may engage in other activities similar or in addition to those relating to the Trust, including the rendering of advice or services of any kind to other investors or any other Persons (including other REITs) and the management of other investments. The Trustees may request the Advisor to engage in certain other activities which complement the Trust's investments, and the Advisor may receive compensation or commissions therefor from the Trust or other Persons.

Neither the Advisor nor (subject to any applicable provisions of Section 4.8 of the Declaration) any Affiliate of the Advisor shall be obligated to present any particular investment opportunities to the Trust, even if such opportunities are of a character such that, if presented to the Trust, they could be taken by the Trust, and, subject to the foregoing, each of them shall be protected in taking for its own account or recommending to others any such particular investment opportunity.

SECTION 4.3 Advisor Compensation. The Trustees, including a majority of the Independent Trustees, shall at least annually review generally the performance of the Advisor in order to determine whether the compensation which the Trust has contracted to pay to the Advisor is reasonable in relation to the nature and quality of services performed and whether the provisions of the advisory contract with the Advisor are being carried out. Each such determination shall be based on such of the following and other factors as the Trustees (including the Independent Trustees) deem appropriate and shall be reflected in the minutes of the meetings 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 REITs and to investors other than REITs 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 brokerage commissions and 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; and

(g) the quality of the portfolio of the Trust in relationship to any investments generated by the Advisor for its own account.

SECTION 4.4 Annual Total Operating Expenses. Each advisory contract with an Advisor shall provide that the Total Operating Expenses of the Trust shall not exceed in any fiscal year the lower of:

(a) the greater of (i) two percent (2%) of the Average Invested Real Estate Assets for such fiscal year or (ii) twenty-five percent (25%) of the Net Income for such fiscal year (calculated before the deduction therefrom of such Total Operating Expenses); or

(b) the lowest of any applicable operating expense limitations that may be imposed by law or regulation in a state in which any securities of the Trust are or will be qualified for sale or by a national securities exchange on which any securities of the Trust are or may be listed, as such limitations may be altered from time to time.

The Independent Trustees shall at least annually determine whether the total fees and expenses of the Trust are reasonable in light of the investment experience of the Trust, its Net Assets, its Net Income and the fees and expenses of comparable REITs. Each such determination shall be reflected in the minutes of meetings of the Trustees.

Within sixty (60) days after the end of any fiscal quarter of the Trust ending on or after December 31, 1986, for which Total Operating Expenses (for the twelve months then ended) exceed either of the expense limitations provided in subparagraphs (a) or (b) of this Section 4.5, the Trust shall send to the Shareholders a written disclosure of such fact, together with an explanation of the factors, if any, which the Trustees (including a majority of the Independent Trustees) have concluded were sufficiently unanticipated, unusual or nonrecurring to justify such higher Total Operating Expenses.

Each advisory contract with the Advisor shall provide that in the event that the Total Operating Expenses exceed any of the limitations provided in this Section 4.5, then the Advisor shall refund to the Trust (which refund may be accomplished, at the option of the Trust, by a reduction of the Advisor's compensation) the amount by which the aggregate annual Total Operating Expenses paid or incurred by the Trust exceed the limitations herein; provided, however, that with respect to the limitations provided in subparagraphs (a) or (b) of this Section 4.5, only so much of such excess need be refunded as the Trustees, including a majority of the Independent Trustees, shall have found to be unjustified as provided above.

ARTICLE V

INVESTMENT POLICY AND POLICIES  
WITH RESPECT TO CERTAIN  
DISTRIBUTIONS TO SHAREHOLDERS

SECTION 5.1 Statement of Policy. It shall be the general objectives of the Trust (i) to provide current income for distribution to Shareholders through investments in income-producing, health care-related facilities, (ii) to provide Shareholders with the opportunity for additional returns through participation in any increases in the operating revenues of income-producing, health care-related facilities and (iii) to preserve and protect Shareholders' capital. These general objectives shall be pursued in a manner consistent with the investment policies specified in the remainder of this Section 5.1.

While the Trustees are authorized pursuant to the Declaration to invest the Trust Estate in a wide variety of investments, it shall be the policy of the Trustees to invest the major portion of the Trust Estate in income-producing health care-related facilities including, acute care, rehabilitative care, long-term care and psychiatric and substance abuse recovery facilities, retirement housing facilities, custodial care facilities, medical care office buildings, and ancillary support facilities associated with any of the foregoing.

The Trust may make secured or unsecured borrowings to make permitted additional Real Estate Investments and secured or unsecured borrowings for normal working capital needs, including the repair and maintenance of properties in which it has invested, tenant improvements and leasing commissions. The Trust may make such borrowings from third parties or, subject to approval by a majority of the Independent Trustees, from Affiliates of the Advisor. Interest and other financing charges or fees to be paid on loans from such Affiliates will not exceed the interest and other financing charges or fees which would be charged by third party financing institutions on comparable loans for the same purpose in the same geographic area.

To the extent that the Trust Estate has assets not otherwise invested in accordance with this Section 5.1, subject to Section 8-302 of the Corporations and Associations Article of the Annotated Code of Maryland, the Trust may invest in such assets as the Advisor and/or the Trustees shall determine.

It shall be the policy of the Trustees to make investments in such manner as to comply with the requirements of the Internal Revenue Code with respect to the composition of the investments and the derivation of the income of a real estate investment trust as defined in the REIT Provisions of the Internal Revenue Code; provided, however, that no Trustee, officer, employee or agent of the Trust shall be liable for any act or omission resulting in the loss of tax benefits under the Internal Revenue Code, except for that arising from his own willful misfeasance, bad faith, gross negligence or reckless disregard of duty.

SECTION 5.2 Prohibited Investments and Activities. The Trustees shall not engage in any of the following investment practices or activities:

- (a) investing in any junior mortgage loan unless (i) the capital invested in such mortgage loan is adequately secured on the basis of the equity of the borrower in the property underlying such investment and the ability of the borrower to repay the mortgage loan, or (ii) such loan is a financing device entered into by the Trust to establish the priority of its capital investment over the capital invested by others investing with the Trust in a real estate project;
- (b) investing in commodities or commodity futures contracts, other than interest rate futures, when used solely for hedging purposes;
- (c) investing in contracts for the purchase of real estate, unless such contracts are recordable in the chain of title;
- (d) issuing Securities that are redeemable at the option of the holders thereof;
- (e) underwriting or distributing as agent securities issued by others;
- (f) investing more than ten percent (10%) of the Trust's assets in unimproved real property;
- (g) engaging in trading, as compared with investment activities;
- (h) making secured and unsecured borrowings which in the aggregate exceed 300% of the Net Assets of the Trust, unless approved by a majority of the Independent Trustees and disclosed in the next quarterly report of the Trust, along with an explanation for such excess;

(i) any activity that would disqualify the Trust as a real estate investment trust under the provisions of the Code; or

(j) using or applying for farming, agriculture, horticulture or similar purposes in violation of Section 8-302(b) of the Corporations and Associations Article of the Annotated Code of Maryland.

SECTION 5.3 Appraisals. If the Trustees shall at any time purchase Real Property, or interests therein, the consideration paid therefor shall generally be based upon the fair market value thereof as determined by an appraisal by a person who is not an Affiliate of the Trust or the Advisor and who is, in the sole judgment of the Trustees, properly qualified to make such a determination.

SECTION 5.4 Change in Investment Policies. Notwithstanding anything to the contrary contained herein, the investment policies set out in this Article V may be changed by a vote of a majority of the Trustees, including a majority of the Independent Trustees without any shareholder vote.

## ARTICLE VI

### MISCELLANEOUS

SECTION 6.1 Record Dates and Closing of Transfer Books. Pursuant to the Declaration, the Trustees may fix record dates for specified purposes. If a record date is so fixed, only Shareholders of record on the date so fixed shall be entitled to the rights to which the record date pertains.

SECTION 6.2 Inspection of Bylaws. The Trustees shall keep at the principal office for the transaction of business of the Trust the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Shareholders at all reasonable times during office hours.

ARTICLE VII

AMENDMENTS

SECTION 7.1 By Trustees. Except for any change for which the Declaration requires approval by more than a majority vote, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted by the vote or written consent of a majority of the Trustees.

ARTICLE VIII

DEFINITIONS

SECTION 8.1 Definitions. All terms defined in the Declaration shall have the same meaning when used in these Bylaws.

ARTICLE IX

FISCAL YEAR

SECTION 9.1 Fiscal Year. The fiscal year of the Trust shall be the calendar year.

[Letterhead of Fulbright & Jaworski L.L.P.]

May 10, 2001

Universal Health Realty Income Trust  
Universal Corporate Center  
367 South Gulph Road  
King of Prussia, Pennsylvania 19406

Ladies and Gentlemen:

We have acted as counsel to Universal Health Realty Income Trust, a Maryland real estate investment trust (the "Trust"), in connection with the registration under the Securities Act of 1933, as amended (the "Act"), of the Trust's shares of beneficial interest, \$.01 par value ("Trust Shares"), with an aggregate offering price of up to \$100,000,000 on a registration statement on Form S-3 (such registration statement, as it may be amended from time to time, the "Registration Statement").

We have examined such records of the Trust, other documents and questions of law as we have considered necessary or appropriate for the purposes of this opinion letter. Our opinion set forth below is limited to the law of Maryland.

In our examination of the foregoing documents, we have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such latter documents.

We assume that appropriate action will be taken, prior to the offer and sale of Trust Shares, to register and qualify such Trust Shares for sale under all applicable state securities or "blue sky" laws.

Based on the foregoing, we advise you that in our opinion the Trust Shares, which may be issued and sold by the Trust, (i) have been duly and validly authorized for issuance by the Trust and, (ii) when sold following the effectiveness of the Registration Statement under the Act in the manner contemplated by the applicable definitive purchase, underwriting or other similar agreement approved by the trustees and upon receipt by the Trust of payment therefor as provided in such agreement, will be legally issued, fully paid and non-assessable with no personal liability attaching to ownership thereof other than as described under the caption "Description of the Trust's Shares of Beneficial Interest - Shareholder Liability" in the Registration Statement.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and the reference to this firm under the caption "Legal Matters" in the prospectus contained therein. This consent is not to be construed as an admission that we are a party whose consent is



required to be filed with the Registration Statement under the provisions of the Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

The opinion expressed herein is solely for your benefit, and may be relied upon only by you.

Very truly yours,

/s/ Fulbright & Jaworski L.L.P.

[Letterhead of Fulbright & Jaworski L.L.P.]

May 10, 2001

Universal Health Realty Income Trust  
Universal Corporate Center  
367 South Gulph Road  
King of Prussia, Pennsylvania 19406

Ladies and Gentlemen:

We have acted as tax counsel to Universal Health Realty Income Trust, a Maryland real estate investment trust (the "Trust"), in connection with the registration under the Securities Act of 1933, as amended, of the Trust's shares of beneficial interest, \$0.01 per value per share, with an aggregate offering price of up to \$100,000,000.00 on a registration statement on Form S-3 (such registration statement, as it may be amended from time to time, the "Registration Statement"). We have been asked to provide our opinion as to certain federal income tax matters arising under the Internal Revenue Code of 1986, as amended (the "Code"), relating to the Trust's qualification for taxation as a real estate investment trust (a "REIT") for federal income tax purposes. Capitalized terms used in this letter that are not otherwise defined herein have the meanings ascribed to them in the Registration Statement.

The opinions set forth in this letter are based on relevant provisions of the Code, Treasury Regulations thereunder and interpretations of the foregoing as expressed in court decisions and administrative determinations as of the date hereof (or, where applicable, as in effect during earlier periods in question). These provisions and interpretations are subject to changes that might result in modifications of our opinions.

For purposes of rendering the opinions contained in this letter, we have reviewed the Registration Statement and such other documents, law and facts as we have deemed necessary. In our review, we have assumed the genuineness of all signatures; the proper execution of all documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; and the authenticity of the originals of any copies.

These opinions also are premised on certain written representations made by the Trust in a certificate provided to us dated the date hereof (the "Certificate"), the assumptions identified herein and the various assumptions and representations described in the Registration Statement under the heading "CERTAIN FEDERAL INCOME TAX CONSIDERATIONS" (the "Tax Section"). For purposes of our opinions, we have not made an independent investigation of the matters relating to such assumptions or representations. We have relied on the representation contained in the Certificate that the information contained in the Certificate and the Registration Statement, or otherwise furnished to us, accurately describes all material facts relevant to our opinions.

In addition, for purposes of rendering our opinions, we have assumed without independent verification that (i) each partnership and limited liability company in which the Trust owns an interest is properly classified as a partnership and not as an association for federal income tax purposes, and (ii) the restrictions on the redemption, transfer and issuance of shares of beneficial interest in the Trust, as set forth in the Declaration of Trust and described in the Registration Statement, are enforceable in accordance with their terms under Maryland law.

Based upon and subject to the foregoing and subject to the restrictions and limitations set forth herein, we are of the opinion that, for federal income tax purposes, (a) the Trust was organized and has operated in conformity with the requirements for qualification as a REIT under the Code for each of its taxable years and (b) the proposed method of operation as described in the Registration Statement and as represented to us by the Trust will enable the Trust to continue to satisfy the requirements for such qualification for subsequent taxable years.

We express no opinion other than the opinions expressly set forth herein. Our opinions are not binding on the Internal Revenue Service (the "IRS") and the IRS may disagree with our opinions. Although we believe that our opinions would be sustained if challenged, there can be no assurance that this will be the case. Our opinions are based upon the law as it currently exists. Consequently, future changes in the law, or interpretations of law, may cause the federal income tax treatment of the matters referred to herein and in the Tax Section to be materially and adversely different from that described above and in the Tax Section. In addition, any variation in the facts or in the operations of the Trust from those set forth in the Registration Statement, in the representations contained in the Certificate or otherwise provided to us or in the assumptions set forth above may affect the conclusions stated in our opinions. Moreover, the Trust's qualification and taxation as a REIT has depended in the past and necessarily depends for the current and future taxable years upon the Trust's ability to actually meet, for each such taxable year, various tests imposed under the Code. These include, among others, tests relating to the Trust's asset composition, operating results, distribution levels and diversity of stock ownership. We will not review (and have not reviewed) the Trust's compliance with these tests. Furthermore, notwithstanding the opinions expressed above, no assurance can be given that the actual results of the Trust's operations for any taxable year will in fact satisfy (or have satisfied) the requirements for the Trust to qualify (or to have qualified) as a REIT.

This opinion is rendered only to you, and is solely for your use in connection with the issuance of shares of beneficial interest by the Trust pursuant to the Registration Statement. This opinion may not be relied upon by you for any other purpose, or furnished to, quoted to or relied upon by any other person, firm or corporation, for any purpose, without our prior written consent. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the Tax Section of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended.

Very truly yours,

/s/ Fulbright & Jaworski L.L.P.

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference in this Registration Statement of our report dated January 18, 2001 included in Universal Health Realty Income Trust's Form 10-K for the year ended December 31, 2000 and to all references to our Firm included in this Registration Statement.

/s/ Arthur Andersen LLP

Philadelphia, Pennsylvania

May 10, 2001