

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 8-K**

---

**CURRENT REPORT  
Pursuant to Section 13 OR 15(d)  
of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): November 30, 2023**

---

**Starwood Credit Real Estate Income Trust**

(Exact name of registrant as specified in its charter)

---

**Maryland**  
(State or Other Jurisdiction  
of Incorporation)

**000-56577**  
(Commission  
File Number)

**93-6487687**  
(I.R.S. Employer  
Identification No.)

**2340 Collins Avenue**  
**Miami Beach, Florida 33139**  
(Address of Principal Executive Offices) (Zip Code)

**Registrant's telephone number, including area code: (305) 695-5500**

**Not Applicable**  
(Former Name or Address, if Changed Since Last Report)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act: None

**Title of each class**

**Trading  
Symbol(s)**

**Name of each exchange  
on which registered**

---

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

---

---

**Item 1.01. Entry into a Material Definitive Agreement.**

On December 1, 2023, Starwood Credit Real Estate Income Trust, a Maryland statutory trust (the “Company”), entered into an advisory agreement (the “Advisory Agreement”) with Starwood Credit Advisors, L.L.C. (the “Advisor”), pursuant to which the Advisor has the authority to source, evaluate and monitor the Company’s investment opportunities and make decisions related to the origination, acquisition, management, financing and disposition of the Company’s assets, in accordance with the Company’s investment objectives, guidelines, policies and limitations, subject to oversight by the Company’s board of trustees.

A description of the Advisory Agreement was included under “Item 1. Business—Advisory Agreement” of Post-Effective Amendment No. 1 to the Company’s Registration Statement on Form 10, filed with the Securities and Exchange Commission (the “SEC”) on October 31, 2023. Such description is incorporated by reference herein.

The foregoing description of the Advisory Agreement is qualified in its entirety by reference to the full text of the Advisory Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K.

**Item 3.02 Unregistered Sales of Equity Securities.**

In connection with the Company’s continuous private offering, on December 1, 2023, the Company sold an aggregate of 354,800 of its common shares (the “Shares”) for aggregate consideration of approximately \$7.1 million at a price per Share equal to \$20.00, plus applicable upfront selling commissions and dealer manager fees. The offer and sale of the Shares was exempt from the registration provisions of the Securities Act of 1933, as amended (the “Securities Act”), by virtue of Section 4(a)(2) and Regulation D thereunder.

The following table details the Shares sold:

<u>Title of Securities</u>	<u>Number of Shares Sold</u>	<u>Aggregate Consideration</u>
Class S Common Shares	259,750	\$5,227,300 <sup>(1)</sup>
Class I Common Shares	67,050	\$1,341,000
Class E Common Shares	28,000	\$560,000

(1) Includes upfront selling commission and dealer manager fees of \$32,300.

As previously disclosed, on November 13, 2023, the Company entered into a subscription agreement, by and between the Company and Starwood Real Estate Income Holdings, L.P., an affiliate of the Advisor (“Starwood RE Income Holdings”), pursuant to which Starwood RE Income Holdings has agreed, from time to time, to purchase from the Company an aggregate amount of not less than \$150 million in Class E shares, at a price per share equal to the Company’s most recently determined NAV of its Class E shares, or if an NAV has yet to be calculated, then \$20.00 (the “Initial Capitalization”). On November 30, 2023, in connection with the Initial Capitalization, the Company issued an aggregate of 1,575,000 of its Class E shares to Starwood RE Income Holdings at a price per share of \$20.00 for an aggregate purchase price of \$31.5 million. The offer and sale of the shares to Starwood RE Income Holdings was exempt from the registration provisions of the Securities Act by virtue of Section 4(a)(2).

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

Effective on December 1, 2023, the Company executed its Amended and Restated Declaration of Trust (the “Amended and Restated Declaration of Trust”), which amended and restated the Company’s Declaration of Trust, dated June 28, 2023.

In connection with the execution of the Amended and Restated Declaration of Trust, effective on December 1, 2023, the Company adopted its Bylaws.

Descriptions of the Amended and Restated Declaration of Trust and Bylaws were included under “Item 5. Trustees and Executive Officers—Corporate Governance,” “Item 11. Description of Registrant’s Securities to be Registered—Description of our Shares” and “Item 12. Indemnification of Trustees and Officers—Declaration of Trust” of Post-Effective Amendment No. 1 to the Company’s Registration Statement on Form 10, filed with the SEC on October 31, 2023. Such descriptions are incorporated by reference herein.

The foregoing description of the Amended and Restated Declaration of Trust and Bylaws is qualified in its entirety by reference to the full text of the Amended and Restated Declaration of Trust and Bylaws, which are filed as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<a href="#"><u>Amended and Restated Declaration of Trust of the Company, dated December 1, 2023</u></a>
3.2	<a href="#"><u>Bylaws of the Company, dated December 1, 2023</u></a>
10.1	<a href="#"><u>Advisory Agreement, dated December 1, 2023, by and between Starwood Credit Real Estate Income Trust and Starwood Credit Advisors, L.L.C.</u></a>
104	Cover Page Interactive Data File (embedded within the XBRL file)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

STARWOOD CREDIT REAL ESTATE INCOME TRUST

Date: December 6, 2023

By: /s/ Dennis G. Schuh

Name: Dennis G. Schuh

Title: Chief Executive Officer and President

**STARWOOD CREDIT REAL ESTATE INCOME TRUST**

**DECLARATION OF TRUST**

December 1, 2023

This DECLARATION OF TRUST is made effective as of the date set forth above (the “Effective Date”) by the Trustees of the Trust. On the Effective Date, each common share of beneficial interest, par value \$0.01 per share, of the Trust that was issued and outstanding immediately prior to the Effective Date is hereby changed into one issued and outstanding Class E Common Share (as defined herein).

ARTICLE I

FORMATION; CERTIFICATE OF TRUST

The Trust is a statutory trust within the meaning of the Act. The Trust shall not be deemed to be a general partnership, limited partnership, joint venture, joint stock company or corporation, but nothing herein shall preclude the Trust from being treated for tax purposes as a partnership, association, corporation or real estate investment trust or being disregarded for tax purposes as an entity separate from its owners under the Code. The Trust intends to elect to be treated as a REIT, as of its first taxable year, for federal, and applicable state and local, income tax purposes, and has the right to change such election at any time subject to any restrictions set forth in this Declaration of Trust. The undersigned Trustees have formed the Trust by filing the Certificate. The governing instrument of the Trust shall be this Declaration of Trust, together with the Bylaws.

ARTICLE II

NAME

The name of the Trust is “Starwood Credit Real Estate Income Trust”. The Board may cause the Trust to use any other designation or name for the Trust.

ARTICLE III

PURPOSES AND POWERS

Section 3.1 Purposes. The purposes for which the Trust is formed are to engage in any lawful act or activity for which a statutory trust may be formed under the general laws of the State of Maryland as now or hereafter in force, including, without limitation or obligation, engaging in business as a REIT.

Section 3.2 Powers. The Trust shall have all of the powers granted to a statutory trust by the Act and all other powers that are not inconsistent with law and are appropriate to promote and attain the purposes of the Trust set forth in the Declaration of Trust.

## ARTICLE IV

### RESIDENT AGENT; PRINCIPAL OFFICE

The name and address of the resident agent of the Trust in the State of Maryland are as set forth in the Certificate. The address of the Trust's principal office in the State of Maryland is as set forth in the Certificate. The Board or any duly authorized agent of the Trust may change the Trust's resident agent or principal office from time to time. The Trust may have such offices or places of business within or outside the State of Maryland as the Board may from time to time determine.

## ARTICLE V

### DEFINITIONS

As used in the Declaration of Trust, the following terms shall have the following meanings:

“Act” means the Maryland Statutory Trust Act, as amended from time to time.

“Actual Owner” means a Person that is required to include in such Person's gross income the dividends or other distributions received on such Shares.

“Advisor” means the Sponsor or its Affiliate that acts as investment advisor or manager to the Trust as permitted by Section 6.7 of this Declaration of Trust.”

“Affiliate” means, with respect to any Person, (i) any Person directly or indirectly owning, controlling or holding, with the power to vote, 10% or more of the outstanding voting securities of such other Person; (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held, with the power to vote, by such other Person; (iii) any Person directly or indirectly controlling, controlled by or under common control with such other Person, including any partnership in which such Person is a general partner; (iv) any executive officer, director, trustee or general partner of such other Person; and (v) any legal entity for which such Person acts as an executive officer, director, trustee or general partner.

“Affiliated Person” means any Trustee or officer of the Trust who is also an officer, employee or agent of the Sponsor or any of its Affiliates.

“Aggregate Share Ownership Limit” means 9.9 percent (in value or number of shares, whichever is more restrictive) of the aggregate of the outstanding Shares of all classes or series, or such other percentage determined by the Board in accordance with Section 8.1.8.

“Beneficial Ownership” means ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Sections 856(h)(1)(B) and 856(h)(3) of the Code. The terms “Beneficial Owner,” “Beneficially Owns,” “Beneficially Own” and “Beneficially Owned” shall have the correlative meanings.

“Benefit Plan Investor” means any holder of Shares that is (a) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the provisions of Title I of ERISA; (b) a Plan; (c) an entity whose underlying assets include (or are deemed to include under ERISA or Section 4975(e) of the Code) assets of a Plan by reason of such Plan’s investment in such entity; or (d) any other entity that otherwise constitutes a benefit plan investor for purposes of the Plan Asset Regulations.

“Board” means the Board of Trustees of the Trust.

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

“Bylaws” means the bylaws adopted in accordance herewith for the regulation and management of the affairs of the Trust.

“Certificate” means the Certificate of Trust filed with the State Department of Assessments and Taxation of Maryland, as amended, restated or corrected from time to time.

“Charitable Beneficiary” means one or more beneficiaries of the Charitable Trust as determined pursuant to Section 8.2.7.

“Charitable Trust” means any trust provided for in Section 8.2.1.

“Charitable Trustee” means the Person that is not an Affiliate of the Trust or an Affiliate of any Prohibited Owner that is appointed by the Trust to serve as trustee of the Charitable Trust.

“Class D Common Shares” means Class D Common Shares of the Trust.

“Class E Common Shares” means Class E Common Shares of the Trust.

“Class I Common Shares” means Class I Common Shares of the Trust.

“Class S Common Shares” means Class S Common Shares of the Trust.

“Class T Common Shares” means Class T Common Shares of the Trust.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Common Shares” means common shares of beneficial interest, \$0.01 par value per Share, of the Trust.

“Common Share Ownership Limit” means 9.9 percent (in value or in number of Common Shares, whichever is more restrictive) of the aggregate of the outstanding Common Shares, or such other percentage determined by the Board in accordance with Section 8.1.8.

“Constructive Ownership” means ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code.

“Conversion Event” has the meaning set forth in Section 11.2.

“Covered Person” means (a) each Trustee, (b) the Sponsor, (c) the Advisor, (d) each equityholder, member, manager, director, officer, employee or agent of any Trustee or the Board and (e) each officer of the Trust.

“Declaration of Trust” means this Declaration of the Trust, as it may hereafter be amended, supplemented or restated.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Excepted Holder” means a Person for whom an exemption is granted and/or an Excepted Holder Limit is created by the Board pursuant to Section 8.1.7.

“Excepted Holder Limit” means, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board pursuant to Section 8.1.7 and subject to adjustment pursuant to Section 8.1.8, the percentage limit established by the Board pursuant to Section 8.1.7.

“Gross Proceeds” means the aggregate purchase price of all Shares sold for the account of the Trust through an offering of Common Shares and/or Preferred Shares, without deduction for selling commissions, volume discounts, any marketing support and due diligence expense reimbursement or Organization and Offering Expenses.

“Independent Trustee” means a Trustee (a) who is not an officer or employee of the Trust, any subsidiary of the Trust, or the Sponsor or its Affiliates, (b) whom the Board affirmatively determines has no material relationship with the Trust and (c) who otherwise satisfies the director independence tests provided for in Section 303A.02 of the New York Stock Exchange Listed Company Manual, as may be amended from time to time.

“Individual” means (a) an “individual” within the meaning of Section 542(a)(2) of the Code, as modified by Section 544 of the Code, and (b) any beneficiary of a “qualified trust” (as defined in Section 856(h)(3)(E) of the Code) which qualified trust is eligible for look-through treatment under Section 856(h)(3)(A) of the Code for purposes of determining whether a REIT is closely held under Section 856(a)(6) of the Code, in which case the qualified trust shall not be treated as an Individual.

“Initial Date” means the first date on which Shares are beneficially owned by at least 100 Persons.

“Market Price” on any date means, with respect to any class or series of outstanding Shares, the Closing Price for such Shares on such date. The “Closing Price” on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported on the principal consolidated transaction reporting system with respect to securities listed on the



principal national securities exchange on which such Shares are listed or admitted to trading or, if such Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Shares selected by the Board or, in the event that no trading price is available for such Shares, the NAV of Shares, as determined by the Board in accordance with the PPM.

“MGCL” means the Maryland General Corporation Law.

“NAV” means net asset value determined in accordance with the valuation guidelines that have been approved by the Board.

“Organization and Offering Expenses” means any and all costs and expenses incurred by the Trust in connection with the formation of the Trust and the marketing and distribution of Shares, including, without limitation, total underwriting and brokerage discounts and commissions, expenses for printing, engraving and amending the PPM or supplementing the PPM, mailing and distributing costs, salaries of employees while engaged in sales activity, telephone and other telecommunications costs, all advertising and marketing expenses (including design and website expenses and the costs related to investor and broker-dealer sales meetings), reasonable bona fide due diligence expenses of participating broker-dealers supported by detailed and itemized invoices, expense reimbursements for actual costs incurred by employees of a dealer manager in the performance of wholesaling activities, charges of transfer agents, registrars, trustees (including the Board), subscription processing, escrow holders, depositories and experts and fees, expenses and taxes related to the filing, registration and qualification of the sale of the Shares under federal and state laws, including taxes and fees and accountants’ and attorneys’ fees.

“Person” means an Individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit applies.

“Plan” means, collectively, (a) a plan as defined in and subject to Section 4975(e) of the Code and (b) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the provisions of Title I of ERISA.

“Plan Assets” mean “plan assets” as defined in the Plan Asset Regulations.

“Plan Asset Regulations” means 29 C.F.R. Section 2510.3-101 *et seq.* issued by the U.S. Department of Labor, as modified by Section 3(42) of ERISA.

“PPM” means the Confidential Private Placement Memorandum of the Trust, dated October 31, 2023, as may be amended or supplemented from time to time.

“Preferred Shares” means preferred shares of beneficial interest of the Trust, \$0.01 par value per Share.

“Prohibited Owner” means, with respect to any purported Transfer, any Person who, but for the provisions of Article VIII, would Beneficially Own or Constructively Own Shares in violation of Article VIII, and if appropriate in the context, shall also mean any Person who would have been the record owner of Shares that the Prohibited Owner would have so owned.

“REIT” means a real estate investment trust within the meaning of Sections 856-859 of the Code.

“Restriction Termination Date” means the first day after the Initial Date on which the Board determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Shares set forth herein is no longer required in order for the Trust to qualify as a REIT.

“Shareholder” means an owner of record of Shares.

“Shares” means shares of beneficial interest of the Trust.

“Sponsor” means Starwood Capital Group Holdings, L.P., a Delaware limited partnership.

“Transfer” means any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire, or change its level of, Beneficial Ownership or Constructive Ownership of Shares or the right to vote (other than solely by revocable proxy) or receive dividends or other distributions on Shares, or any agreement to take any such actions or cause any such events, including (a) a change in the capital structure of the Trust, (b) a change in the relationship between two or more Persons that causes a change in ownership of Shares by application of Section 544 of the Code, as modified by Section 856(h) of the Code, (c) the granting or exercise of any option or warrant (or any acquisition or disposition of any option or warrant), pledge, security interest, or similar right to acquire Shares, (d) any acquisition or disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right and (e) Transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms “Transfers,” “Transferring” and “Transferred” shall have the correlative meanings.

“Trust” means Starwood Credit Real Estate Income Trust.

“Trustees” means the trustees of the Trust.

“Trust Property” means any and all property of the Trust.

“Upfront Sales Load” means any upfront selling commission, dealer manager fee or other similar placement fees paid to the Trust or the Trust’s dealer manager with respect to the Class D Shares, Class E Shares, Class I Shares, Class S Shares or Class T Shares, if any.

## ARTICLE VI

### BOARD OF TRUSTEES

Section 6.1 General Powers. Subject only to any limitations expressly set forth in the Declaration of Trust or the Bylaws, (a) the business and affairs of the Trust shall be managed exclusively by or under the direction of the Board, which shall be appointed and shall serve in accordance with the Declaration of Trust, (b) the Board shall have full, exclusive and absolute power, control and authority over the business and affairs of the Trust and Trust Property, and no Shareholder shall have any right to participate in or exercise control or management power over the business and affairs of the Trust, and (c) the Board shall have the exclusive power to take or authorize any action within the powers of the Trust under the Act, the Certificate, the Declaration of Trust and the Bylaws including, without limitation, the power to authorize or approve any action that would otherwise require the approval of one or more Shareholders under the Act. The Declaration of Trust shall be construed with the presumption in favor of the grant of power and authority to the Board. The enumeration and definition of particular powers of the Board included in the Declaration of Trust or the Bylaws shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of the Declaration of Trust or the Bylaws or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board under the general laws of the State of Maryland or any other law. Any determination regarding any matter within the powers of the Board or any construction of the Certificate, the Declaration of Trust or the Bylaws (including any construction of the Certificate, the Declaration of Trust or the Bylaws regarding the scope of the powers of the Board) made by the Board shall be conclusive.

The Board, on behalf of the Trust, without any action by the Shareholders and without limitation, shall have the power: to adopt, amend and repeal the Bylaws, which may contain any provisions not inconsistent with the Act, the Certificate or the Declaration of Trust; to elect or appoint officers or other agents of the Trust in the manner provided in the Bylaws; to solicit proxies from Shareholders; to authorize the issuance of Shares in one or more classes and series; to authorize the declaration and payment of distributions; to cause the Trust to elect to qualify as a REIT and take such actions as may be necessary or appropriate to maintain such qualification; to cause the Trust to cease to qualify, or attempt to qualify, as a REIT; to determine that compliance with any restriction or limitation on ownership or transfer of Shares set forth in Article VIII of the Declaration of Trust is no longer required in order for the Trust to qualify as a REIT; and to do any other act and authorize the Trust to do any other act or enter into any agreement or other document necessary or appropriate to exercise the powers or effectuate the purposes of the Trust.

Section 6.2 Number and Qualifications. As of the date of this Declaration of Trust, the number of Trustees shall be five (5), which number may thereafter be increased or decreased only by the Board pursuant to the Bylaws. No reduction in the number of Trustees shall cause the removal of any Trustee from office prior to the expiration of his, her, or its term.

Section 6.3 Term and Election; Sponsor Designation. Each Trustee shall serve until his or her resignation, removal, death or adjudication of legal incompetence or the election and qualification of his or her successor. If for any reason a Trustee ceases to serve as a Trustee as provided in this Section 6.3, his or her successor shall be elected by a majority of the remaining

Trustees; provided, that if the Trustee that ceases to serve as a Trustee is an Independent Trustee, the successor to such Trustee shall be an Independent Trustee and shall be elected by a majority of the remaining Independent Trustees, or if none, then the remaining Trustees; and further provided that, if the Trustee is removed for cause as set forth in Section 6.4 hereof, the successor to the Trustee shall be elected by the Shareholders in the manner set forth in Article VII. For so long as the Sponsor or its Affiliate acts as investment advisor or manager to the Trust as permitted by Section 6.7 of this Declaration of Trust, the Sponsor shall have the right to designate two Trustees for election to the Board. Furthermore, the Board shall consult with the Sponsor in connection with filling of any vacancies created by the removal, resignation, retirement or death of any Trustee (other than in connection with a removal by Shareholders in accordance with Section 6.4). Except in the case of removal for cause as set forth above, or in the event that there are no Trustees, the Shareholders do not have the right to nominate or elect Trustees.

Section 6.4 Resignation and Removal. Any Trustee may resign by delivering his or her written notice of resignation to the Board, effective upon execution and delivery of such notice or upon any future date specified in the notice. Any Trustee or the entire Board, may be removed, at any time, but only for "cause" and then only by the affirmative vote of Shareholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter as set forth in Section 7.5. In addition, any Trustee may be removed, at any time, but only for "cause" by written instrument, signed by a majority of the Trustees, specifying the date when such removal shall become effective. For the purpose of this paragraph, "cause" shall mean, with respect to any particular Trustee, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Trustee caused demonstrable, material harm to the Trust through bad faith or active and deliberate dishonesty.

Section 6.5 Determinations by Board. The determination as to any of the following matters by or pursuant to the direction of the Board and consistent with the Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and every Shareholder: the amount of the net income of the Trust for any period and the amount of assets at any time legally available for the payment of dividends, redemption of Shares or the payment of other distributions to the Shareholders; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation or resolution of any ambiguity with respect to any provision of the Declaration of Trust (including any of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of any class or series of Shares) or of the Bylaws; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Trust or of any Shares; the number of outstanding Shares at any time or from time to time; the NAV of the Trust allocable to any class or series of Shares; any matter relating to the acquisition, holding or disposition of any assets by the Trust; any interpretation of the terms and conditions of one or more agreements with any person, corporation, association, company, trust, partnership (limited or general) or other entity; the compensation of Trustees, officers, employees or agents of the Trust; or any other matter relating to the business and affairs of the Trust or required or permitted by law, the Declaration of Trust or otherwise to be determined by the Board.

Section 6.6 Legal Title. Legal title to all of the Trust Property shall at all times be vested in the Trust as a separate legal entity, except that the Board may cause legal title to any Trust Property to be held by, or in the name of one or more of the Trustees acting for and on behalf of the Trust, or in the name of any person as nominee acting for and on behalf of the Trust. No Shareholder shall be deemed to have a severable ownership interest in any individual asset of the Trust, or any right of partition or possession thereof, but each Shareholder shall have, except as otherwise provided for herein, a proportionate, undivided beneficial interest in the Trust. The Trust, or at the determination of the Board, one or more of the Trustees or a nominee acting for and on behalf of the Trust, shall be deemed to hold legal title and beneficial ownership of any income earned on securities of the Trust issued by any business entities formed, organized, or existing under the laws of any jurisdiction, including the laws of any foreign country. In the event that title to any part of the Trust Property is vested in one or more Trustees, the right, title and interest of the Trustees in the Trust Property shall vest automatically in each person who may hereafter become a Trustee upon his or her due election and qualification. Upon the resignation, death or incapacity of a Trustee, he, she, or it shall automatically cease to have any right, title or interest in any of the Trust Property, and the right, title and interest of such Trustee in the Trust Property shall vest automatically in the remaining Trustees. To the extent permitted by law, such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

Section 6.7 Service Contracts.

(a) Advisory, Management and Administrative Services. Subject to such requirements as may be set forth under federal and/or state law and in the Bylaws, the Board may, at any time and from time to time, contract for exclusive or non-exclusive advisory, management and/or administrative services for the Trust or for any series or class of Shares with any corporation, trust, association, or other person; and any such contract may contain such other terms as the Board may determine, including, without limitation, payment of fees and authority for the investment adviser to the Trust to supervise and direct the investment of all assets held, and to determine from time to time without prior consultation with the Board what investments shall be purchased, held, sold, or exchanged and what portion, if any, of the assets of the Trust shall be held uninvested and to make changes in the Trust's investments; and authority for the investment adviser or the administrator of the Trust to delegate certain or all of its duties under such contracts to qualified investment advisers and administrators, or such other activities as may specifically be delegated to such party.

(b) Underwriters. The Board may retain underwriters and/or placement agents to sell Shares and other securities of the Trust. The Board may in its discretion from time to time authorize the Trust to enter into one or more contracts, providing for the sale of securities of the Trust, whereby the Trust may either agree to sell such securities to the other party to the contract or appoint such other party its sales agent for such securities. In either case, the contract shall be on such terms and conditions as the Board may in its discretion determine that are not inconsistent with the provisions of this Article or the Bylaws; and such contract may also provide for the repurchase or sale of securities of the Trust by such other party as principal or as agent of the Trust and may provide that such other party may enter into selected dealer agreements with registered securities dealers and brokers and servicing and similar agreements with persons who are not registered securities dealers to further the purposes of the distribution or repurchase of the securities of the Trust. Every such contract shall comply with such requirements and restrictions as may be set forth under federal and/or state law or regulation and the Bylaws, and any such contract may contain such other terms as the Board may determine.

Section 6.8 ERISA Matters. Notwithstanding any other provision of the Declaration of Trust, the Board is authorized to take any action or refrain from taking any action which in its judgment is necessary or desirable in order to prevent the Trust or any of its assets from being deemed to constitute Plan Assets of any Benefit Plan Investor.

Section 6.9 REIT Qualification. If the Trust elects to qualify for federal income tax treatment as a REIT, the Board shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the status of the Trust as a REIT; however, if the Board determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT, the Board may revoke or otherwise terminate the Trust's REIT election pursuant to Section 856(g) of the Code. The Board, in its sole and absolute discretion, also may (a) determine that compliance with any restriction or limitation on Share ownership and transfers set forth in Article VIII is no longer required for REIT qualification and (b) make any other determination or take any other action pursuant to Article VIII.

## ARTICLE VII

### SHARES OF BENEFICIAL INTEREST

Section 7.1 Authorized Shares. The beneficial interest in the Trust shall be divided into Shares. The Trust has authority to issue an unlimited number of Common Shares, an unlimited number of which are classified as Class T Common Shares, an unlimited number of which are classified as Class I Common Shares, an unlimited number of which are classified as Class S Common Shares, an unlimited number of which are classified as Class D Common Shares, and an unlimited number of which are classified as Class E Common Shares, and an unlimited number of Preferred Shares. Subject to the relative rights of any other class or series of Common Shares or Preferred Shares designated from time to time, the Common Shares and Preferred Shares shall have all of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of Common Shares or Preferred Shares as set forth herein. Subject to the provisions of Article VIII and the terms of any class or series of Shares at the time outstanding, the Board may, by amendment to this Article VII or supplement of the Declaration of Trust and without any action by the Shareholders, classify or reclassify any unissued Shares from time to time and set or change the number, par value, designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the class or series of Shares. If Shares of one class or series are classified or reclassified into Shares of another class or series pursuant to this Article VII, then, except to the extent that the Trust is authorized to issue an unlimited number of Shares of any such class or series, the number of authorized Shares of the former class or series shall be automatically decreased and the number of authorized Shares of the latter class or series shall be automatically increased, in each case by the number of Shares so classified or reclassified.

Section 7.2 Authorization by Board of Share Issuance. The Board may authorize or cause the Trust to issue from time to time Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration, whether in cash, property, past or future services, obligation for future payment or otherwise, or without consideration (including in connection with a Share split or distribution of Shares), determined by the Board, subject to such restrictions or limitations, if any, as may be set forth in the Certificate or the Declaration of Trust.

Section 7.3 Conversion of Class T Common Shares, Class S Common Shares and Class D Common Shares. At the Board's sole discretion, upon a determination by the Trust's dealer manager, transfer agent or other agent selected by the Board that total Upfront Sales Loads and ongoing servicing fees paid with respect to such Shares in a Shareholder's account would exceed a limit agreed upon between such dealer manager and an applicable participating broker-dealer, each applicable Class T Common Share, Class S Common Share and Class D Common Share held in a Shareholder's account may automatically and without any action on the part of the holder thereof convert into a number of Class I Common Shares (including any fractional Shares) with an equivalent NAV as of the date of conversion as such Class T Common Shares, Class S Common Shares or Class D Common Shares. In addition, each Class E Common Share, Class T Common Share, Class D Common Share and Class S Common Share held in a Shareholder's account will automatically convert into a number of Class I Common Shares (including any fractional Shares) with an equivalent NAV as of the date of conversion as such converting share on the earliest of (i) a listing of Class I Common Shares or (ii) the Trust's merger or consolidation with or into another entity or the sale or other disposition of all or substantially all Trust Property, other than in connection with a Conversion Event.

Section 7.4 Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up, or any distribution of the assets of the Trust, the aggregate assets of the Trust available for distribution to holders of the Common Shares shall be determined in accordance with applicable law. Immediately before any liquidation, dissolution winding up, or any distribution of the assets of the Trust pursuant to a plan of liquidation, dissolution or winding up, each Class T Common Share, Class E Common Share, Class S Common Share and Class D Common Share will automatically convert into a number of Class I Common Shares (including any fractional shares), with an equivalent NAV as of the date of conversion as such converting share. Following such conversion, the aggregate assets of the Trust available for distribution to holders of the Common Shares, or the proceeds therefrom, shall be distributed to each holder of Class I Common Shares ratably with each other holder of Class I Common Shares, in such proportion as the number of outstanding Class I Common Shares held by such holder bears to the total number of outstanding Class I Common Shares.

Section 7.5 Voting Rights. Except as may otherwise be specified in the terms of any class or series of Shares or as provided herein, each Share shall entitle the holder thereof to one vote on each matter upon which holders of Shares are entitled to vote. Except to the extent that the Trust directly or indirectly owns Shares in a fiduciary capacity, neither the Trust nor any entity of which the Trust is entitled to exercise a majority of the outstanding voting power may vote on any matter, and Shares held by the Trust or any such entity shall not be counted in determining the total number of votes entitled to be cast on any matter or at any time. Subject to the terms of any class or series of Shares then outstanding limiting or expanding the voting rights of such Shares, Shareholders shall be entitled to vote only on the following matters:

(a) the removal of a Trustee for cause and the election of a successor Trustee as provided in Article VI ; provided, that if the Trustee so removed was designated by the Sponsor pursuant to Section 6.3, then the Sponsor shall have the exclusive right to designate a successor Trustee for election to the Board;

(b) in the event that there are no Trustees, the election of Trustees;

(c) the amendment of the Declaration of Trust, to the extent provided in Section 10.3;

(d) the merger, consolidation or conversion of the Trust or the transfer of all or substantially all of its assets, to the extent provided in Article XI;

(e) the dissolution of the Trust, to the extent specifically provided by the terms of any class or series of Shares as set forth in Section 12.2; and

(f) such other matters that the Board has submitted to the Shareholders for approval or ratification.

Except with respect to the foregoing matters, no action taken by the Shareholders shall in any way bind the Trust or the Board. Unless a different proportion is specified in the Certificate, the Declaration of Trust or the Bylaws (and notwithstanding any different proportion of votes that may be specified in the Act to approve any matter), the affirmative vote of a plurality of the votes cast in the election of a Trustee shall be sufficient to elect any Trustee, and the affirmative vote of a majority of the votes cast at a meeting of Shareholders duly called and at which a quorum is present shall be sufficient to approve any other matter that may properly come before the Shareholders at such meeting. There shall be no requirement to hold an annual meeting of the Shareholders in any year.

Section 7.6 Dividends and Distributions. The Board may from time to time authorize or cause the Trust to pay such dividends or other distributions to the Shareholders of any or all classes or series of Shares, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board shall determine, and the amount of such dividends or other distributions may vary between the classes or series of Shares. The Board shall endeavor to cause the Trust to declare and pay such dividends and other distributions as shall be necessary for the Trust to qualify under the Code as a REIT; however, Shareholders shall have no right to any dividend or other distribution unless and until authorized by the Board and declared by the Trust. Before payment of any dividends or other distributions, there may be set aside out of any funds of the Trust available for dividends or other distributions such amounts as the Board may from time to time reserve for any Trust purpose, and the Board may modify or abolish any such reserve. Each dividend or other distribution pursuant to this Section 7.6 to the Shareholders of a particular class or series of Shares shall be made ratably according to the number of Shares of such class or series held by each Shareholder on the applicable record date thereof, provided that no dividend or other distribution need be made on Shares purchased pursuant to orders received, or for which payment is made, after such time or times as the Trustees may determine. Shareholders shall have



no right to any dividend or other distribution unless and until authorized by the Board and declared by the Trust, and then only at the time and in the amount and form authorized by the Board. Any action by the Board to cause the Trust to declare or pay any dividend or other distribution shall be conclusive evidence of the authorization by the Board of such distribution. The exercise of the powers and rights of the Board pursuant to this Section 7.6 shall be subject to the terms of any class or series of Shares at the time outstanding. The receipt by any Person in whose name any Shares are registered on the records of the Trust or by his or her duly authorized agent shall be a sufficient discharge for all dividends or other distributions payable or deliverable in respect of such Shares and from all liability to see to the application thereof.

Section 7.7 Consent Dividends. If the Board determines that consent dividends (within the meaning of Section 565 of the Code) with respect to a taxable year are necessary or appropriate to ensure or maintain the qualification of the Trust as a REIT for U.S. federal income tax purposes; to avoid the imposition of any U.S. federal income or excise tax; or for any other reason, the Board may require the holders of Common Shares and any other Persons to take any and all actions necessary or appropriate under the Code, any regulations promulgated thereunder, any court decision or any administrative interpretations of the U.S. Department of Treasury (including any U.S. Internal Revenue Service forms or other forms) to declare consent dividends sufficient to maintain REIT qualification and avoid U.S. federal income or excise tax or otherwise.

Section 7.8 General Nature of Shares. All Shares shall be personal property entitling the Shareholder only to those rights provided in the Certificate, the Declaration of Trust and the Bylaws. The rights of all Shareholders and the terms of all Shares are subject to the provisions of the Certificate, the Declaration of Trust and the Bylaws. The Shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a Shareholder shall not terminate the Trust. The Trust is entitled to treat as Shareholders only those persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust. Notwithstanding any other provision in the Declaration of Trust, no determination shall be made by the Board nor shall any transaction be entered into by the Trust which would cause any Shares or other beneficial interest in the Trust not to constitute "transferable shares" or "transferable certificates of beneficial interest" under Section 856(a)(2) of the Code. Each Share, whether or not evidenced by a certificate, shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Maryland Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect and as it may be amended or superseded from time to time, and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 or any successor uniform act or law in effect in the State of Maryland from time to time.

Section 7.9 Fractional Shares. The Trust may, without the consent or approval of any Shareholder, issue fractional Shares, eliminate any outstanding fraction of a Share by rounding up to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it or pay cash for the fair value of a fraction of a Share.

Section 7.10 No Issuance of Share Certificates. Unless otherwise provided by the Board, the Trust shall not issue share certificates. A Shareholder's investment shall be recorded on the books of the Trust. To transfer his, her or its Shares, a Shareholder shall submit an executed form to the Trust, which form shall be provided by the Trust upon request. Such transfer will also be recorded on the books of the Trust. Upon issuance or transfer of Shares, the Trust will provide the Shareholder with information concerning his, her or its rights with regard to such Shares, as required by the Declaration of Trust, the Bylaws or applicable law.

## ARTICLE VIII

### RESTRICTIONS ON OWNERSHIP AND TRANSFER OF SHARES

#### Section 8.1 Shares.

##### Section 8.1.1. Ownership Limitations.

###### (a) Basic Restrictions.

(i) (1) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Aggregate Share Ownership Limit, (2) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Common Shares in excess of the Common Share Ownership Limit and (3) no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit applicable to such Excepted Holder.

(ii) No Person shall Beneficially Own or Constructively Own Shares to the extent that such Beneficial Ownership or Constructive Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial Ownership or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(iii) Any Transfer of Shares that, if effective, would result in Shares being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void *ab initio*, and the intended transferee shall acquire no rights in such Shares.

(b) Transfer in Trust. If any Transfer of Shares occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 8.1.1(a)(i) or (ii), then that number of Shares the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 8.1.1(a)(i) or (ii) (rounded up to the nearest whole Share) shall be automatically transferred to a Charitable Trust for the exclusive benefit of a Charitable Beneficiary, as described in Section 8.2, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Shares. If the transfer to the Charitable Trust described in this Section 8.1.1(b) would not be effective for any reason to prevent the violation of Section 8.1.1(a)(i) or (ii), or would not prevent the Trust from failing to qualify as a REIT, then the Transfer of that number of Shares that otherwise would cause any Person to violate Section 8.1.1(a)(i) or (ii) shall be void *ab initio*, and the intended transferee shall acquire no rights in such Shares.

To the extent that, upon a transfer of Shares pursuant to this Section 8.1.1(b), a violation of any provision of this Article VIII would nonetheless be continuing (for example where the ownership of Shares by a single Charitable Trust would violate the 100 shareholder requirement applicable to REITs), then Shares shall be transferred to that number of Charitable Trusts, each having a distinct Charitable Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Charitable Trust, such that there is no violation of any provision of this Article VIII.

Section 8.1.2. Remedies for Breach. If the Board or its designee (including any duly authorized committee of the Board) shall at any time determine that a Transfer or other event has taken place that results in a violation of Section 8.1.1 or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Shares that would result in a violation of Section 8.1.1 (whether or not such violation is intended), the Board or its designee shall take or cause to be taken such action as it deems necessary or advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Shares, refusing to give effect to such Transfer on the books of the Trust or instituting proceedings to enjoin such Transfer or other event; *provided, however*, that any Transfers or attempted Transfers or other events in violation of Section 8.1.1 shall automatically result in the transfer to the Charitable Trust described above, or, where applicable, such Transfer (or other event) shall be void *ab initio* as provided above irrespective of any action (or non-action) by the Board or its designee.

Section 8.1.3. Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 8.1.1(a), or any Person who would have owned Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 8.1.1(b), shall immediately give written notice to the Trust of such event or, in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust's qualification as a REIT.

Section 8.1.4. Owners Required To Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder or as otherwise required by the Board) of the outstanding Shares, within 30 days after the end of each taxable year, shall give written notice to the Trust stating the name and address of such owner, the number of Shares and other Shares Beneficially Owned and a description of the manner in which such shares are held; *provided, that* a Shareholder of record who holds outstanding Shares as nominee for an Actual Owner, shall give written notice to the Trust stating the name and address of such Actual Owner and the number of shares of such Actual Owner with respect to which the Shareholder of record is nominee. Each such owner shall provide to the Trust such additional information as the Trust may request in order to determine the effect, if any, of such Beneficial Ownership on the Trust's qualification as a REIT and to ensure compliance with this Article VIII; and

(b) each Person who is a Beneficial Owner or Constructive Owner of Shares and each Person (including the Shareholder of record) who is holding Shares for a Beneficial Owner or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust's qualification as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

Section 8.1.5 Remedies Not Limited. Subject to Section 6.1, nothing contained in this Section 8.1 shall limit the authority of the Board to take such other action as it deems necessary or advisable to protect the Trust and the interests of its Shareholders in preserving the Trust's qualification as a REIT.

Section 8.1.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 8.1, Section 8.2 or any definition contained in Article V, the Board shall have the power to determine the application of the provisions of this Section 8.1 or Section 8.2 with respect to any situation based on the facts known to it. In the event Section 8.1 or Section 8.2 requires an action by the Board and the Declaration of Trust fails to provide specific guidance with respect to such action, the Board shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 8.1 or Section 8.2. Absent a decision to the contrary by the Board (which the Board makes in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 8.1.2) acquired Beneficial Ownership or Constructive Ownership of Shares in violation of Section 8.1.1, such remedies (as applicable) shall apply first to the Shares which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Shares based upon the relative number of Shares held by each such Person.

Section 8.1.7 Exceptions.

(a) Subject to Section 8.1.1(a)(ii), the Board may exempt (prospectively or retroactively) a Person from the Aggregate Share Ownership Limit or the Common Share Ownership Limit, or both, and may establish or increase an Excepted Holder Limit for such Person if

(i) the Board obtains such representations and undertakings from such Person as are reasonably necessary for the Board to ascertain that no individual's Beneficial Ownership or Constructive Ownership of such Shares will violate Section 8.1.1(a)(ii);

(ii) such Person does not and represents that it will not own, actually or Constructively, an interest in a tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board obtains representations and undertakings from such Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant from whom the Trust (or an entity owned or controlled by the Trust) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the judgment of the Board, rent from such tenant would not adversely affect the Trust's ability to qualify as a REIT, shall not be treated as a tenant of the Trust); and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Sections 8.1.1 through 8.1.6) will result in the Shares being automatically transferred to a Charitable Trust in accordance with Sections 8.1.1(b) and 8.2.

(b) Prior to granting any exception pursuant to Section 8.1.7(a), the Board may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Trust's qualification as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(c) Subject to Section 8.1.1(a)(ii), an underwriter, placement agent or an initial purchaser which participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Aggregate Share Ownership Limit or the Common Share Ownership Limit, or both such limits, but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, (2) unless the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder provide otherwise, at any time after the Excepted Holder no longer Beneficially Owns or Constructively Owns Shares in excess of the Aggregate Share Ownership Limit or the Common Share Ownership Limit or (3) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Aggregate Share Ownership Limit.

Section 8.1.8 Increase or Decrease in Aggregate Share Ownership Limit or the Common Share Ownership Limit. The Board may from time to time increase or decrease the Aggregate Share Ownership Limit and/or the Common Share Ownership Limit for one or more Persons and increase or decrease the Aggregate Share Ownership Limit and/or the Common Share Ownership Limit for all other Persons. No decreased Aggregate Share Ownership Limit or Common Share Ownership Limit will be effective for any Person whose percentage of ownership of Shares is in excess of such decreased Aggregate Share Ownership Limit or Common Share

Ownership Limit, as applicable, until such time as such Person's percentage of ownership of Shares equals or falls below the decreased Aggregate Share Ownership Limit or Common Share Ownership Limit, as applicable; *provided, however*, that any further acquisition of Shares by any such Person (other than a Person for whom an exemption has been granted pursuant to Section 8.1.7(a) or an Excepted Holder) in excess of the Shares owned by such person on the date the decreased Aggregate Share Ownership Limit or Common Share Ownership Limit became effective will be in violation of the Aggregate Share Ownership Limit or Common Share Ownership Limit. No increase of the Aggregate Share Ownership Limit or Common Share Ownership Limit may be approved if the new Aggregate Share Ownership Limit or Common Share Ownership Limit would allow five or fewer Persons to Beneficially Own, in the aggregate more than 49.9% in value of the outstanding Shares or otherwise cause the Trust to fail to qualify as a REIT. Prior to increasing or decreasing the Aggregate Share Ownership Limit or Common Share Ownership Limit pursuant to this Section 8.1.8, the Board may require such opinions of counsel, affidavits, undertakings or agreements, in form and substance satisfactory to the Board, as it may deem necessary or advisable in order to determine or ensure the Trust's qualification as a REIT.

Section 8.1.9 Legend. Each certificate or notice in lieu of any certificate, if any, for Shares shall bear a legend summarizing the restrictions on ownership and transfer contained herein. Instead of a legend, the certificate, if any, may state that the Trust will furnish a full statement about certain restrictions on transferability to a Shareholder on request and without charge.

## Section 8.2. Transfer of Shares in Trust.

Section 8.2.1. Ownership in Trust. Upon any purported Transfer or other event described in Section 8.1.1 that would result in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 8.1.1(b). The Charitable Trustee shall be appointed by the Trust and shall be a Person that is not an Affiliate of the Trust or an Affiliate of any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 8.2.7.

Section 8.2.2 Status of Shares Held by the Charitable Trustee. Shares held by the Charitable Trustee shall be issued and outstanding Shares. The Prohibited Owner shall have no rights in the Shares held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any Shares held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the Shares held in the Charitable Trust. The Prohibited Owner shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Shares.

Section 8.2.3. Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Trust that Shares

have been transferred to the Charitable Trustee shall be paid with respect to such Shares to the Charitable Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividends or other distributions so paid over to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, subject to Maryland law, effective as of the date that Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; *provided, however*, that if the Trust has already taken irreversible trust action, then the Charitable Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article VIII, until the Trust has received notification that Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its Share transfer and other Shareholder records for purposes of preparing lists of Shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of Shareholders.

Section 8.2.4. Rights Upon Dissolution. Upon any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Trust, the Charitable Trustee shall be entitled to receive, ratably with each other holder of Shares of the class or series of Shares that is held in the Charitable Trust, that portion of the assets of the Trust available for distribution to the holders of such class or series (determined based upon the ratio that the number of Shares of such class or series of Shares held by the Charitable Trustee bears to the total number of Shares of such class or series of Shares then outstanding). The Charitable Trustee shall distribute any such assets received in respect of the Shares held in the Charitable Trust in any liquidation, dissolution or winding up of, or distribution of the assets of, the Trust in accordance with Section 8.2.5.

Section 8.2.5. Sale of Shares by Charitable Trustee. Within 20 days of receiving notice from the Trust that Shares have been transferred to the Charitable Trust, the Charitable Trustee shall sell the Shares held in the Charitable Trust to a Person, designated by the Charitable Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in Section 8.1.1(a). Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 8.2.5. The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the Shares or, if the event causing the Shares to be held in the Charitable Trust did not involve a purchase of such Shares at Market Price, the Market Price of the Shares on the day of the event causing the Shares to be held in the Charitable Trust and (2) the price per Share received by the Charitable Trustee (net of any commissions and other expenses) from the sale or other disposition of the Shares held in the Charitable Trust. The Charitable Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and other distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 8.2.3. Any net sales proceeds in excess of the amount payable to the Prohibited Owner and any other amounts received by the Charitable Trustee with respect to such Shares shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee, such Shares are sold by a Prohibited Owner, then (i) such Shares shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 8.2.5, such excess shall be paid to the Charitable Trustee upon demand for payment to the Charitable Beneficiary.

Section 8.2.6. Purchase Right in Shares Transferred to the Charitable Trustee. Shares transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Trust, or its designee, at a price per Share equal to the lesser of (i) the price per Share in the transaction that resulted in such transfer to the Charitable Trust (or, if the event that resulted in the Transfer to the Charitable Trust did not involve a purchase of such Shares at Market Price, the Market Price of such shares on the day of the event that resulted in the Transfer of such shares to the Charitable Trust) and (ii) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust may reduce the amount payable to the Prohibited Owner by the amount of dividends and other distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Charitable Trustee pursuant to Section 8.2.3. The Trust may pay the amount of such reduction to the Charitable Trustee for the benefit of the Charitable Beneficiary. The Trust shall have the right to accept such offer until the Charitable Trustee has sold the Shares held in the Charitable Trust pursuant to Section 8.2.5. Upon such a sale to the Trust, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and any other amounts held by the Charitable Trustee with respect to such Shares to the Charitable Beneficiary.

Section 8.2.7 Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, the Trust shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Shares held in the Charitable Trust would not violate the restrictions set forth in Section 8.1.1(a) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. Neither the failure of the Trust to make such designation nor the failure of the Trust to appoint the Charitable Trustee before the automatic transfer provided for in Section 8.1.1 shall make such transfer ineffective, provided that the Trust thereafter makes such designation and appointment.

Section 8.3 Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article VIII.

Section 8.4 Non-Waiver. No delay or failure on the part of the Trust or the Board in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board, as the case may be, except to the extent specifically waived in writing.

Section 8.5 Severability. If any provision of this Article VIII 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 provisions shall be affected only to the extent necessary to comply with the determination of such court.



## ARTICLE IX

### LIABILITY OF SHAREHOLDERS, TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS AND TRANSACTIONS BETWEEN SUCH PERSONS AND THE TRUST

Section 9.1 Limitation of Shareholder Liability. No Shareholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Trust by reason of being a Shareholder, nor shall any Shareholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the property or affairs of the Trust.

Section 9.2 Limitation of Trustee and Officer Liability. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a statutory trust, no Covered Person shall be liable to the Trust or to any Shareholder for money damages. Neither the amendment nor repeal of this Section 9.2, nor the adoption or amendment of any other provision of the Declaration of Trust inconsistent with this Section 9.2, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act that occurred prior to such amendment, repeal or adoption.

Section 9.3 Indemnification. To the maximum extent permitted by Maryland law in effect from time to time, the Trust shall indemnify any Covered Person (including among the foregoing, for all purposes of this Article IX and without limitation, any individual or entity who, while serving as the Covered Person and, at the request of the Trust, serves or has served any other enterprise in any management or agency capacity) against any claim or liability to which such Covered Person may become subject by reason of such status, except for liability for such Covered Person's gross negligence or intentional misconduct. In addition, the Trust shall, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse, in advance of final disposition of a proceeding, reasonable expenses incurred by a present or former Covered Person or Shareholder made a party to or witness in a proceeding by reason such status, provided that, in the case of a Covered Person, the Trust shall have received (i) a written affirmation by the Covered Person of the Covered Person's good faith belief that the Covered Person has met the applicable standard of conduct necessary for indemnification by the Trust pursuant to this Section 9.3 and (ii) a written undertaking by or on behalf of the Covered Person to repay the amount paid or reimbursed by the Trust if it shall ultimately be determined that the applicable standard of conduct was not met. Notwithstanding the foregoing, the Trust shall not be required to indemnify or advance funds to any Person entitled to indemnification hereunder (x) with respect to any action initiated or brought voluntarily by such indemnified Person (and not by way of defense) unless (I) approved or authorized by the Board or (II) incurred to establish or enforce such Person's right to indemnification hereunder, or (y) in connection with any claim with respect to which such Person is found to be liable to the Trust.

The Trust may, with the approval of the Board, provide or obligate itself to provide such indemnification or payment or reimbursement of expenses to any Person that served a predecessor of the Trust as a Covered Person or any employee or agent of the Trust or any predecessor of the Trust.

Except that no preliminary determination of the ultimate entitlement to indemnification shall be required for the payment or reimbursement of expenses, any indemnification or payment or reimbursement of the expenses permitted by the Declaration of Trust shall be furnished in accordance with the procedures provided for indemnification or advance or reimbursement of expenses, as the case may be, under Section 2-418 of the MGCL (or any successor provision thereto) for directors of Maryland corporations.

Neither the amendment nor repeal of this Article IX, nor the adoption or amendment of any other provision of the Declaration of Trust inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. The rights to indemnification and advance of expenses provided by the Declaration of Trust shall vest immediately upon a Person or entity becoming a Covered Person or the acquisition of Shares by a Shareholder.

Section 9.4 Transactions between the Trust and its Trustees, Officers, Employees and Agents. Subject to any express restrictions in the Certificate or the Declaration of Trust or adopted by the Board, the Trust may enter into any contract or transaction of any kind, including, without limitation, for the purchase or sale of property or for any type of services, including those in connection with the offer or sale of securities of the Trust, with any Person, including any Covered Person or employee or agent of the Trust or any Person Affiliated with a Covered Person or employee or agent of the Trust, whether or not any of them has a financial interest in such transaction. The procedures and presumptions set forth in Section 2-419 of the MGCL (or any successor provision thereto) shall be available for and apply to any contract or other transaction between the Trust and any Trustee or between the Trust and any other trust, corporation, firm or other entity in which a Trustee is a trustee or director or has a material financial interest.

Section 9.5 Duties of Trustees, Officers and Agents. Any Covered Person may have business interests and engage in business activities similar, in addition to or in competition with those of or relating to the Trust. Each Trustee shall have the duties set forth in Section 12-402(b) of the Act. No Trustee shall have any duties, including fiduciary duties under the common law of trusts, or be subject to any duties or other standard of conduct, other than as set forth in the preceding sentence. Any action or failure to act by the Trustee shall be presumed to be in accordance with the duties described in this Section 9.5, and any Person alleging the contrary shall bear the burden of proof that the action or failure to act was not consistent with such duties. Each Trustee or officer shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust whom the Trustee or officer reasonably believes to be reliable and competent in the matters presented or by a lawyer, certified public accountant or other Person as to a matter which the Trustee or officer reasonably believes to be within the Person's professional or expert competence.

Section 9.6 Corporate Opportunities. If any Affiliated Person of the Trust or the Sponsor or any of its Affiliates acquires knowledge of a potential business opportunity, the Trust renounces, on its behalf and on behalf of its subsidiaries, any potential interest or expectation in, or right to be offered or to participate in, such business opportunity to the maximum extent permitted from time to time by Maryland law. Accordingly, to the maximum extent permitted from time to time by Maryland law (a) no Affiliated Person is required to present, communicate

or offer any business opportunity to the Trust or any of its subsidiaries and (b) the Affiliated Person, on his or her own behalf or on behalf of the Sponsor or any of its Affiliates, shall have the right to hold and exploit any business opportunity, or to direct, recommend, offer, sell, assign or otherwise transfer such business opportunity to any person or entity other than the Trust and its subsidiaries.

The taking by an Affiliated Person for himself or herself, or the offering or other transfer to another person or entity, of any potential business opportunity whether pursuant to the Declaration of Trust or otherwise, shall not constitute or be construed and interpreted as an act or omission of gross negligence or intentional misconduct.

## ARTICLE X

### AMENDMENT

Section 10.1 General. The Trust reserves the right from time to time to make any amendment to the Certificate or the Declaration of Trust now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in the Declaration, of any outstanding Shares. The Certificate or the Declaration of Trust may be amended only as provided in this Article X. The merger or consolidation of the Trust with another Person, the dissolution of the Trust or any other transaction between the Trust and another Person in which the Trust does not survive as a separate entity shall not be considered an amendment to the Declaration of Trust for purposes of this Article X.

Section 10.2 By Board. Except as expressly provided in the Certificate, Section 10.3 or in the terms of any class or series of Shares, the Declaration of Trust may be amended by the Board, without any action by the Shareholders. Except as may otherwise be expressly provided in the Certificate, the Certificate may be amended only by the Board, without any action or approval by the Shareholders, including, but not limited to, amendments for clarity, that cure any ambiguity, or cure, correct or supplement any defective provision contained herein, or that add or change any other provisions with respect to matters or questions arising under this Declaration of Trust as the Board may deem necessary or desirable and that the Board determines does not materially and adversely affect the contract rights of outstanding Shares.

Section 10.3 By Shareholders. Amendments to the Declaration of Trust that the Board determines would, viewed as a whole, materially and adversely affect the contract rights of outstanding Shares, but excluding amendments of the type specified in (a) Section 7.1 of the Declaration of Trust or (b) Section 2-605 of the MGCL (both of which shall not require approval of any Shareholder), must be approved by the Board and Shareholders entitled to cast a majority of the votes entitled to be cast on the matter.

## ARTICLE XI

### MERGER, CONSOLIDATION OR SALE OF TRUST PROPERTY; CONVERSION EVENT

Section 11.1 General. The Trust may (a) merge with or into or convert into another entity, (b) consolidate with one or more other entities into a new entity or (c) transfer all or substantially all of its assets to another person. Subject to the terms of any series or class of Shares at the time outstanding, any such action must be approved by the Board and, unless (i) such action could be taken by a Maryland corporation without the approval of its Shareholders pursuant to Subtitle 1 of Title 3 of the MGCL or (ii) such action is in connection with a Conversion Event, Shareholders entitled to cast a majority of all of the votes entitled to be cast on the matter. Notwithstanding the foregoing, a transfer of all or substantially all of the Trust's assets to another Person in connection with a dissolution of the Trust as approved by the Board pursuant to Section 12.2 of this Declaration of Trust shall not require the approval of the Shareholders.

Section 11.2 Conversion Event. The Board may determine, without any action by the Shareholders, that the Trust will conduct a public offering as a non-listed real estate investment trust subject to the Statement of Policy Regarding Real Estate Investment Trusts published by the North American Securities Administrators Association on May 7, 2007, as amended from time to time. In connection with such determination and the conduct of such public offering, the Board may cause the Trust to (a) merge with or into or convert into another entity, (b) consolidate with one or more other entities into a new entity or (c) transfer all or substantially all of its assets to another entity (in each case, a "Conversion Event"). The Board may take all actions that are required to effect a Conversion Event without any action by the Shareholders.

## ARTICLE XII

### DURATION OF TRUST

Section 12.1 Duration. The Trust shall continue perpetually unless dissolved pursuant to Section 12.2 or pursuant to any applicable provision of the Act. No Shareholder or other Person shall have any right to petition a court for judicial dissolution of the Trust.

Section 12.2 Dissolution. Subject to the terms of any class or series of Shares at the time outstanding, the Trust may be dissolved with the approval of the Board.

## ARTICLE XIII

### CONFLICTS OF INTEREST

Section 13.1 Sales and Leases to the Trust. The Trust may purchase or lease an asset or assets from the Sponsor, a Trustee or any Affiliate thereof only upon a finding by a majority of Trustees (including a majority of Independent Trustees) not otherwise interested in the transaction that such transaction is fair and reasonable to the Trust and at a price to the Trust no greater than the cost of the asset to such Sponsor, Trustee or affiliate or, if the price to the Trust is in excess of such cost, that substantial justification for such excess exists and such excess is reasonable. In no event shall the purchase price paid by the Trust for any such asset exceed the asset's current appraised value.

Section 13.2 Sales and Leases to the Sponsor, Trustee or Affiliates. The Sponsor, a Trustee or any affiliate thereof may purchase or lease an asset or assets from the Trust only if a majority of Trustees (including a majority of Independent Trustees) not otherwise interested in the transaction determine that the transaction is fair and reasonable to the Trust.

### Section 13.3 Other Transactions.

(a) The Trust may make loans to the Sponsor, a Trustee or any Affiliate thereof (except (i) mortgages loans and (ii) loans to wholly owned subsidiaries of the Trust, each of which, for the avoidance of doubt, do not require approval of the Board or the Independent Trustees) only if a majority of Trustees (including a majority of Independent Trustees) not otherwise interested in the transaction determine that the transaction is fair and reasonable to the Trust. This restriction on loans applies only to advances of cash that are commonly viewed as loans, as determined by the Board, and does not apply to advances of cash for legal expenses or other costs incurred as a result of any legal action for which indemnification is being sought nor does it limit the Trust's ability to advance reimbursable expenses incurred by Trustees or officers or the Sponsor or its Affiliates.

(b) The Trust may not borrow money from the Sponsor, a Trustee or any Affiliate thereof, unless approved by a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in such transaction as fair, competitive, and commercially reasonable, and no less favorable to the Trust than comparable loans between unaffiliated third parties under the same circumstances.

(c) The Trust may not invest in joint ventures with the Sponsor, one or more Trustees or any Affiliate thereof, unless a majority of Trustees (including a majority of Independent Trustees) not otherwise interested in the transaction approve such investment as being fair and reasonable to the Trust and on substantially the same terms and conditions as, or more favorable than, those received by other joint venturers.

(d) The Trust may not engage in any other transaction with the Sponsor, a Trustee or any Affiliate thereof unless a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in such transaction approve such transaction as fair and reasonable to the Trust and on terms and conditions no less favorable to the Trust than those available from unaffiliated third parties.

## ARTICLE XIV

### MISCELLANEOUS

Section 14.1 Certificate of Trust. In the event of any conflict between the provisions of the Certificate and the Declaration of Trust, the provisions of the Certificate shall control.

Section 14.2 Inspection. Any Shareholder shall be entitled to examine the Trust's books and records to the extent permitted by Section 12-305(a) of the Act, but only if, and to the extent, approved by the Board.

Section 14.3. Rights of Objecting Shareholders; Derivative Claims. Shareholders shall not be entitled to exercise any appraisal rights or rights analogous to those of an objecting Shareholder provided for under Title 3, Subtitle 2 of the MGCL (or any successor provision thereto). A Shareholder shall not be entitled to recover a judgment in favor of the Trust, assert any claim in the name of the Trust or bring any other action that is derivative in nature without the approval of the Board.

Section 14.4 Organization and Offering Expenses. The Trust may reimburse the Board or the Sponsor for Organization and Offering Expenses incurred by the Board or the Sponsor in connection with any offering of Shares, on an accountable or nonaccountable basis.

Section 14.5 Governing Law. The rights of all parties and the validity, construction and effect of every provision of the Declaration of Trust shall be subject to and construed according to the laws of the State of Maryland, without regard to conflicts of laws provisions thereof.

- Signature Page Follows -

IN WITNESS WHEREOF, this Declaration of Trust has been executed by the undersigned Trustees to be effective as of the date and year first above written.

/s/ John P. McCarthy

John P. McCarthy

/s/ Dennis G. Schuh

Dennis G. Schuh

/s/ Peggy Lamb

Peggy Lamb

/s/ Jay N. Levine

Jay N. Levine

/s/ Cyrus D. Walker

Cyrus D. Walker

**STARWOOD CREDIT REAL ESTATE INCOME TRUST**

**BYLAWS**

**ARTICLE I**

**OFFICES**

Section 1. PRINCIPAL OFFICE. The principal office of the Trust in the State of Maryland shall be located at such place as the Board of Trustees (“Board”) may designate.

Section 2. ADDITIONAL OFFICES. The Trust may have additional offices, including a principal executive office, at such places as the Board may from time to time determine or the business of the Trust may require.

**ARTICLE II**

**MEETINGS OF SHAREHOLDERS**

Section 1. PLACE. All meetings of shareholders shall be held at the principal executive office of the Trust or at such other place as shall be set in accordance with these Bylaws and stated in the notice of the meeting.

Section 2. ANNUAL MEETING. There shall be no requirement to hold an annual meeting of the shareholders in any year.

Section 3. SPECIAL MEETINGS.

(a) General. Each of the chair of the board, the executive chairperson, the chief executive officer, the president, the Board or a majority of the Independent Trustees (as defined in the Declaration of Trust of the Trust (the “Declaration of Trust”)) may call a special meeting of shareholders. Except as provided in subsection (b)(4) of this Section 3, a special meeting of shareholders shall be held on the date and at the time and place set by the chair of the board, executive chairperson, chief executive officer, president, Board or majority of Independent Trustees, whoever has called the meeting. Subject to subsection (b) of this Section 3, a special meeting of shareholders shall also be called by the secretary of the Trust for the purposes of removing one or more Trustees and, subject to any Trustee qualifications required by the Declaration of Trust or these Bylaws, filling the resulting vacancy on the Board upon the written request of shareholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting (the “Special Meeting Percentage”). Shareholders may not request a special meeting for any other purpose or the consideration of any other matter. Notwithstanding the foregoing or subsection (b) of this Section 3, in the event there are no Trustees, any shareholder may call a special meeting for the purpose of electing Trustees to be held on the date and at the time and place set by any officer of the Trust (or, if there are no officers of the Trust, by the shareholder calling the meeting).



(b) Shareholder-Requested Special Meetings. (1) Any shareholder of record seeking to have shareholders request a special meeting shall, by sending written notice to the secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board to fix a record date to determine the shareholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more shareholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such shareholder (or such agent) and shall set forth all information relating to each such shareholder, each individual whom the shareholder proposes to nominate for election as a trustee and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of trustees or the election of each such individual, as applicable in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board. If the Board, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which a Record Date Request Notice is received by the secretary.

(2) In order for any shareholder to request a special meeting to act on any matter that may properly be considered at a meeting of shareholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by shareholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than the Special Meeting Percentage shall be delivered to the secretary. In addition, the Special Meeting Request shall (a) set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to the removal of one or more Trustees and filling the resulting vacancy on the Board as set forth in the Record Date Request Notice received by the secretary), (b) bear the date of signature of each such shareholder (or such agent) signing the Special Meeting Request, (c) set forth (i) the name and address, as they appear in the Trust's books, of each shareholder signing such request (or on whose behalf the Special Meeting Request is signed), (ii) the class, series and number of all shares of beneficial interest of the Trust which are owned beneficially or of record by each such shareholder, and (iii) the nominee holder for, and number of, shares of beneficial interest of the Trust owned beneficially but not of record by such shareholder, (d) be sent to the secretary by registered mail, return receipt requested, and (e) be received by the secretary within 60 days after the Request Record Date. Any requesting shareholder (or agent duly authorized in a writing accompanying the revocation of the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.

(3) The secretary shall inform the requesting shareholders of the reasonably estimated cost of preparing and mailing or delivering the notice of the meeting (including the Trust's proxy materials). The secretary shall not be required to call a special meeting upon shareholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) In the case of any special meeting called by the secretary upon the request of shareholders (a "Shareholder-Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board; provided, however, that the date of any Shareholder-Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the secretary (the "Delivery Date"), a date and time for a Shareholder-Requested Meeting, then such meeting shall be held at 2:00 p.m., local time, on the 90<sup>th</sup> day after the Meeting Record Date or, if such 90<sup>th</sup> day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board fails to designate a place for a Shareholder-Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Trust. In fixing a date for a Shareholder-Requested Meeting, the Board may consider such factors as it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board to call a special meeting. In the case of any Shareholder-Requested Meeting, if the Board fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30<sup>th</sup> day after the Delivery Date shall be the Meeting Record Date. The Board may revoke the notice for any Shareholder-Requested Meeting in the event that the requesting shareholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the secretary and the result is that shareholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting on the matter to the secretary: (i) if the notice of meeting has not already been delivered, the secretary shall refrain from delivering the notice of the meeting and send to all requesting shareholders who have not revoked such requests written notice of any revocation of a request for a special meeting on the matter, or (ii) if the notice of meeting has been delivered and if the secretary first sends to all requesting shareholders who have not revoked requests for a special meeting on the matter written notice of any revocation of a request for the special meeting and written notice of the Trust's intention to revoke the notice of the meeting or for the chair of the meeting to adjourn the meeting without action on the matter, (A) the secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chair of the meeting may call the meeting to order and adjourn the meeting without acting on the matter. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The chairperson of the board, executive chairperson, chief executive officer, president or Board may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Trust for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been received by the secretary until the earlier of (i) five Business Days after actual receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Trust that the valid requests received by the secretary represent, as of the Request Record Date, shareholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Trust or any shareholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 4. NOTICE. Not less than ten nor more than 90 days before each meeting of shareholders, the secretary shall give to each shareholder entitled to vote at such meeting, and to each shareholder not entitled to vote who is entitled to notice of the meeting, notice stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called. Notice may be provided by mail, by presenting it to such shareholder personally, by leaving it at the shareholder's residence or usual place of business, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the records of the Trust, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the shareholder by an electronic transmission to any address or number of the shareholder at which the shareholder receives electronic transmissions. The Trust may give a single notice to all shareholders who share an address, which single notice shall be effective as to any shareholder at such address, unless such shareholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more shareholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

No business shall be transacted at a special meeting of shareholders except as specifically designated in the notice. The Trust may postpone or cancel a meeting of shareholders by making a public announcement (as defined herein) of such postponement or cancellation prior to the meeting. Notice of the date, time and place to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this Section 4. For purposes of these Bylaws, "Public Announcement" means disclosure in (A) a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) a document publicly filed by the Trust with the Securities and Exchange Commission pursuant to the Exchange Act.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of shareholders shall be conducted by an individual appointed by the Board to be chair of the meeting or, in the absence of such appointment or appointed individual, by one of the following officers present at the meeting in the following order: the executive chairperson, the chairperson, chief executive officer, the president, the vice presidents in their order of rank and, within each rank, in their order of seniority, the secretary or, in the absence of such officers, a chair chosen by the shareholders by the vote of a majority of the votes cast by shareholders present in person or by proxy. The secretary or, in the secretary's absence, an individual appointed by the Board or, in the absence of such appointment, an individual appointed by the chair of the meeting, shall act as secretary. In the event that the secretary presides at a meeting of shareholders, an individual appointed by the Board or the chair of the meeting shall record the minutes of the meeting. Even if present at the meeting, the individual holding the office named herein may delegate to another individual the power to act as chair or secretary of the meeting. The order of business and all other matters of procedure at any meeting of shareholders shall be determined by the chair of the meeting. The chair of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chair and without any action by the shareholders, are appropriate for the proper conduct of the meeting, including, without limitation: (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance or participation at the meeting to shareholders of record of the Trust, their duly authorized proxies and such other individuals as the chair of the meeting may determine; (c) recognizing speakers at the meeting and determining when and for how long speakers and any individual speaker may address the meeting; (d) determining when and for how long the polls should be opened and when the polls should be closed and when announcement of the results shall be made; (e) maintaining order and security at the meeting; (f) removing any shareholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chair of the meeting; (g) concluding a meeting or recessing or adjourning the meeting to a later date and time and at a place either (1) announced at the meeting or (2) provided at a future time through means announced at the meeting; and (h) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chair of the meeting, meetings of shareholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. QUORUM. At any meeting of shareholders, the presence in person or by proxy of shareholders entitled to cast one-third of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum (unless the Board, when setting a meeting, determines that a greater percentage (but not more than a majority of all the votes entitled to be cast at such meeting on any matter) shall constitute a quorum for such meeting); but this section shall not affect any requirement under the Declaration of Trust for the vote necessary for the approval of any matter. If such quorum is not established at any meeting of the shareholders, the chair of the meeting may adjourn the meeting *sine die* or from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally convened. The date, time and place of the meeting, as reconvened, shall be either (a) announced at the meeting or (b) provided at a future time through means announced at the meeting.

The shareholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough shareholders to leave fewer than would be required to establish a quorum.

Section 7. VOTING. A nominee for election by the shareholders as trustee shall be elected as a trustee only if such nominee receives the affirmative vote of a plurality of the total votes cast at a meeting of shareholders duly called and at which a quorum is present. The affirmative vote of a majority of the votes cast at a meeting of shareholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by the Declaration of Trust. Unless otherwise provided by the Declaration of Trust, each outstanding share of beneficial interest, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Voting on any question or in any election may be viva voce unless the chair of the meeting shall order that voting be by ballot or otherwise.

Section 8. PROXIES. A holder of record of shares of beneficial interest of the Trust may cast votes in person or by proxy executed by the shareholder or by the shareholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Trust before or at the meeting. No proxy shall be valid more than eleven months after its date, unless otherwise provided in the proxy.

Section 9. VOTING OF SHARES BY CERTAIN HOLDERS. Shares of beneficial interest of the Trust registered in the name of a corporation, partnership, trust, limited liability company or other entity, if entitled to be voted, may be voted by the president or a vice president, general partner, trustee or managing member thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any trustee or fiduciary may vote shares of beneficial interest registered in the name of such person in the capacity of such trustee or fiduciary, either in person or by proxy.

Shares of beneficial interest of the Trust directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board may adopt any procedure it deems appropriate by which a shareholder may certify in writing to the Trust that any shares of beneficial interest registered in the name of the shareholder are held for the account of a specified person other than the shareholder. The procedure shall set forth the class of shareholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Trust; and any other provisions with respect to the procedure which the Board considers necessary or desirable. On receipt by the Trust of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the shareholder of record of the specified shares of beneficial interest in place of the shareholder who makes the certification.

Section 10. INSPECTORS. The Board or the chair of the meeting may appoint, before or at the meeting, one or more inspectors for the meeting (or one or more entities that designate individuals as inspectors to act at the meeting) or any postponement or adjournment thereof and any successor to the inspector. Except as otherwise provided by the chair of the meeting, the inspectors, if any, shall (a) determine the number of shares of beneficial interest represented at the meeting in person or by proxy and the validity and effect of proxies, (b) receive and tabulate all votes, ballots or consents, (c) report such tabulation to the chair of the meeting, (d) hear and determine all challenges and questions arising in connection with the right to vote, and (e) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 11. REMOTE COMMUNICATION. Notwithstanding anything to the contrary in these Bylaws, the Board or an authorized officer of the Trust may determine at any time, including, without limitation, after the calling of any meeting of shareholders, that any meeting of shareholders be held solely by means of remote communication or both at a physical location and by means of remote communication. Notwithstanding anything to the contrary in these Bylaws, if it is determined after notice of the meeting has been sent to shareholders that participation by shareholders in the meeting shall or may be conducted by means of remote communication, notice thereof may be provided at any time by press release or any other means of public communication not prohibited by law. Shareholders and proxy holders entitled to be present and to vote at the meeting that are not physically present at such a meeting but participate by means of remote communication shall be considered present in person for all purposes under these Bylaws and may vote at such a meeting. Subject to any guidelines or procedures that the Board may adopt, any meeting at which shareholders or proxy holders are permitted to participate by means of remote communication shall be conducted in accordance with the following, unless otherwise permitted by applicable law or regulation: (a) the Trust shall implement reasonable measures to verify that each person considered present and authorized to vote at the meeting by means of remote communication is a shareholder or proxy holder; (b) the Trust shall implement reasonable measures to provide the shareholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and (c) in the event any shareholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the Trust.

Section 12. SHAREHOLDERS' CONSENT IN LIEU OF MEETING. Except as provided in the following sentence with respect to the election of Trustees, any action required or permitted to be taken at any meeting of shareholders by the Declaration of Trust or these Bylaws may be taken without a meeting (a) if a unanimous consent setting forth the action is given in writing or by electronic transmission by each shareholder entitled to vote on the matter and filed with the minutes of proceedings of the shareholders or (b) if the action is advised, and submitted

to the shareholders for approval, by the Board and a consent in writing or by electronic transmission of shareholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of shareholders at which all shareholders entitled to vote were present and voted is delivered to the Trust in accordance with the Maryland Statutory Trust Act. If the election of Trustees is advised, and submitted to the shareholders for approval, by the Board or if there are no Trustees, the election of Trustees may be effected without a meeting if a consent in writing or by electronic transmission of shareholders entitled to cast a majority of the votes entitled to be cast generally in the election of Trustees is delivered to the Trust. The Trust shall give notice of any action taken by less than unanimous consent to each shareholder not later than ten days after the effective time of such action.

Section 13. ADVANCE NOTICE OF SHAREHOLDER NOMINEES FOR TRUSTEE AND OTHER SHAREHOLDER PROPOSALS.

(a) General. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Trust's notice of meeting. Nominations of individuals for election to the Board may be made at a special meeting of shareholders at which Trustees are to be elected only (i) by or at the direction of the Board, (ii) by a shareholder that has requested that a special meeting be called for the purpose of electing Trustees in compliance with Section 3 of this Article II or (iii) provided that the special meeting has been called in accordance with Section 3(a) of this Article II for the purpose of electing Trustees, by any shareholder of the Trust who is a shareholder of record at the record date set by the Board for the purpose of determining shareholders entitled to vote at the special meeting, at the time of giving of notice provided for in this Section 13 and at the time of the special meeting (and any postponement or adjournment thereof), who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 13. In the event the Trust calls a special meeting of shareholders for the purpose of electing one or more individuals to the Board, any shareholder may nominate an individual or individuals (as the case may be) for election as a Trustee as specified in the Trust's notice of meeting, if the shareholder's notice, containing the information required by paragraph (b) of this Section 13 is delivered to the secretary at the principal executive office of the Trust not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. The postponement or adjournment of a special meeting (or public announcement thereof) shall not commence a new time period for the giving of a shareholder's notice as described above.

(b) Information Required.

(1) A shareholder's notice shall set forth as to each individual whom the shareholder proposes to nominate for election as a Trustee (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act.

(2) A shareholder's notice shall set forth as to the shareholder giving the notice and any Proposed Nominee (i) the class, series and number of all shares of beneficial interest or other securities of the Trust (collectively, the "Company Securities"), if any, which are owned (beneficially or of record) by such shareholder or Proposed Nominee, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such shares or other security) in any Company Securities of any such person, and (ii) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such shareholder or Proposed Nominee.

### **ARTICLE III**

#### **BOARD OF TRUSTEES**

Section 1. GENERAL POWERS AND QUALIFICATIONS. Except as otherwise provided in the Declaration of Trust, the business and affairs of the Trust shall be managed under the direction of the Board.

Section 2. NUMBER, ELECTION AND TERM OF TRUSTEES. The number of Trustees constituting the entire Board may be changed from time to time by a majority of the entire Board; provided, however, that the number of Trustees shall in no event be fewer than three (3), nor more than fifteen (15). At all times, except for a period of up to 60 days after the death, removal or resignation of, or other vacancy involving, an Independent Trustee (as hereinafter defined) pending the election of a successor Independent Trustee, a majority of the Board shall be Independent Trustees. Trustees need not be shareholders of the Trust. Each Trustee shall serve until his or her resignation, removal, death or adjudication of legal incompetence or the election and qualification of his or her successor. A vacancy on the Board for any reason other than removal for "cause" by the shareholders may be filled only by a vote of a majority of the remaining Trustees; provided, that any vacancy involving an Independent Trustee may be filled only by a vote of a majority of the remaining Independent Trustees. If a Trustee is removed by Shareholders for "cause" as set forth in the Declaration of Trust or if there are no Trustees, the successors to the Trustees shall be elected by the Shareholders. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his or her term unless the Trustee is specifically removed pursuant to the Declaration of Trust at the time of the decrease.

Section 3. RESIGNATION. A Trustee of the Trust may resign at any time by giving written notice of his, her or its resignation to the Board or the Chair of the Board or the President or the Secretary of the Trust. Any resignation shall take effect immediately upon its receipt or at such later time as specified in the resignation. Acceptance of a resignation shall not be necessary to make it effective unless the resignation states otherwise.

Section 4. PLACE OF MEETINGS. Meetings of the Board may be held at any place that the Board may from time to time determine or that is specified in the notice of the meeting, or by means of remote communication as set forth in Section 13 hereof, if so designated by the Board.



Section 5. REGULAR MEETINGS. The Board may establish regular meetings at any time in its sole discretion. The Board may provide, by resolution, the time and place of regular meetings of the Board without other notice than such resolution.

Section 6. SPECIAL MEETINGS. Special meetings of the Board may be called by or at the request of the chairperson of the Board, the lead Independent Trustee (if any), the executive chairperson, the chief executive officer, the president or a majority of the Trustees then in office.

Section 7. NOTICE OF SPECIAL MEETINGS. Notice of each special meeting of the Board shall be given by the secretary as hereinafter provided. Each notice shall state the time and place of the meeting, or that the meeting is being held by means of remote communication, and shall be delivered to each Trustee, either personally or by telephone or other standard form of telecommunication or electronic transmission, at least twenty-four (24) hours before the time at which the meeting is to be held, or by first-class mail, postage prepaid, addressed to the Trustee at his residence or usual place of business, and mailed at least three (3) days before the date on which the meeting is to be held.

Section 8. QUORUM AND VOTING. A majority of the Trustees then in office shall constitute a quorum for the transaction of business, provided that, if less than a majority of such Trustees is present at such meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the Declaration of Trust or these Bylaws, the vote of a majority or other percentage of a specified group of Trustees is required for action, a quorum must also include a majority or such other percentage of such group. Except as otherwise expressly required by the Declaration of Trust or these Bylaws, the action of a majority of the Trustees present at any meeting at which a quorum is present shall be the action of the Board. The Trustees present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough Trustees to leave fewer Trustees than required to establish a quorum. If enough Trustees have withdrawn from a meeting to leave fewer Trustees than required to establish a quorum, but the meeting is not adjourned, the action of a majority of that number of Trustees necessary to constitute a quorum at such meeting shall be the action of the Board, unless the concurrence of a greater proportion is required for such action by applicable law, the Declaration or these Bylaws.

Section 9. CHAIRPERSON OF THE BOARD. The Board may designate from among its members a chairperson of the Board, who shall not, solely by reason of such designation, be an officer of the Trust. The Board may designate the chair of the Board as an executive or non-executive chair. The chairperson of the Board shall perform such duties as may be assigned to him or her by these Bylaws or the Board.

Section 10. ORGANIZATION. The chairperson of the Board shall preside at each meeting of the Board. In the absence or inability of the chairperson of the Board to act, the president (if a Trustee), or, in the president's absence or inability to act, another Trustee chosen by a majority of the Trustees present, shall act as chair of the meeting and preside at the meeting. The secretary (or, in the secretary's absence or inability to act, any person appointed by the chair) shall act as secretary of the meeting and keep the minutes of the meeting.

Section 11. COMMITTEES. The Board may designate one (1) or more committees of the Board, including, but not limited to, an executive committee, an audit committee, an investment committee, and a nominating committee, each consisting of one (1) or more Trustees, provided that each committee consists of at least a majority of Independent Trustees. To the extent provided in the resolutions adopted by the Board, the committee or committees shall have and may exercise the powers of the Board in the management of the business and affairs of the Trust. Any committee or committees shall have the name or names determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and provide those minutes to the Board when required. The members of a committee present at any meeting, whether or not they constitute a quorum, may appoint a Trustee to act in the place of an absent member.

Section 12. CONSENT OF TRUSTEES IN LIEU OF A MEETING. Any action required or permitted to be taken at any meeting of the Board or any committee of the Board may be taken without a meeting if a majority of the members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the consent or consents, in paper or electronic form, are filed with the minutes of the proceedings of the Board or committee.

Section 13. REMOTE COMMUNICATION. Meetings of the Board or any committee of the Board may be conducted by means of remote communication or both at a physical location and by means of remote communication. Members of the Board or any committee of the Board may participate remotely in any Board or committee meeting via communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Section 14. COMPENSATION. Each Trustee shall be entitled to receive compensation, if any, as may from time to time be fixed by the Board, including a fee for each meeting of the Board or any committee thereof, regular or special, that such Trustee attends. Trustees may also be reimbursed by the Trust for all reasonable expenses incurred in traveling to and from the place of a Board or committee meeting.

Section 15. RATIFICATION. The Board or the shareholders may ratify any act or inaction (an "Act") by the Trust or its officers to the extent that the Board or the shareholders could have originally authorized the Act and, if so ratified, such Act shall have the same force and effect as if originally duly authorized, and such ratification shall be binding upon the Trust and its shareholders. Any Act questioned in any shareholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Trustee, officer or shareholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting or otherwise, may be ratified, before or after judgment, by the Board or by the shareholders, and such ratification shall constitute a bar to any claim or execution of any judgment in respect of such questioned Act.

Section 16. EMERGENCY PROVISIONS. Notwithstanding any other provision in the Declaration of Trust or these Bylaws, this Section 16 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board under Article III of these Bylaws cannot readily be obtained (an "Emergency"). During an Emergency, unless otherwise provided by the Board, (i) a meeting of the Board or a committee thereof may be called by any Trustee or officer by any means feasible under the circumstances;

(ii) notice of any meeting of the Board or a committee thereof during such an Emergency may be given less than 24 hours prior to the meeting to as many Trustees and by such means as may be feasible at the time, including publication, television or radio; and (iii) the number of Trustees necessary to constitute a quorum shall be one-third of the entire Board or committee thereof.

Section 17. GOVERNANCE. The Board may from time to time require all of its members (including any individual nominated to serve as a Trustee) to agree in writing as to matters of corporate governance, business ethics and confidentiality, as amended and supplemented from time to time in the discretion of the Board, while such persons serve as a Trustee.

Section 18. RELIANCE. Each Trustee, officer, employee or agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust whom the Trustee, officer, employee or agent reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the Trustee, officer, employee or agent reasonably believes to be within the person's professional or expert competence, or, with respect to a Trustee, by a committee of the Board on which the Trustee does not serve, as to a matter within its designated authority, if the Trustee reasonably believes the committee to merit confidence.

Section 19. CERTAIN RIGHTS OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS. A Trustee, officer, employee or agent shall have no responsibility to devote his or her full time to the affairs of the Trust. Any Trustee, officer, employee or agent, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar to, in addition to or in competition with those of or relating to the Trust.

## **ARTICLE IV**

### **OFFICERS**

Section 1. GENERAL PROVISIONS. The Board may, from time to time, appoint and remove officers, employees and other agents of the Trust, to serve at the pleasure of the Board, with such powers and duties as the Board may determine. The officers of the Trust may include one or more executive chairmen, chief executive officers, presidents, vice presidents, chief operating officers, chief financial officers, treasurers, secretaries, and such other officers with such powers and duties as the Board shall deem necessary or desirable. The officers of the Trust, if any, shall be appointed by the Board, except that the executive chairperson, chief executive officer or president may from time to time appoint one or more vice presidents or other subordinate officers. The duties of the officers of the Trust shall be as set forth in these Bylaws and as from time to time prescribed by the Board or, in the case of any officer other than the executive chairperson, chief executive officer or president, the executive chairperson, chief executive officer or president. Each officer shall serve until his or her successor is appointed and qualifies or until his or her death or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Appointment of an officer or agent shall not of itself create contract rights between the Trust and such officer or

agent. In the absence of any other appointment of such officers, solely for the purpose of executing and attesting any amendment to the Certificate or any other document required by law to be executed and/or attested by one or more officers of the Trust, the chairperson of the Board shall be the chief executive officer and president of the Trust and any individual signing as such at the direction of the Board shall be the secretary of the Trust.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Trust may be removed, with or without cause, by the Board, and any subordinate officer or agent of the Trust may be removed, with or without cause, by the executive chairperson, chief executive officer or president of the Trust, but any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Trust may resign at any time by delivering his or her resignation to the Board, or to the executive chairperson, chief executive officer, president or secretary of the Trust, if one is then appointed. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 3. EXECUTIVE CHAIRPERSON. The Board may designate one or more executive chairpersons. The executive chairperson shall have general responsibility for implementation of the policies of the Trust, as determined by the Board, and for the management of the business and affairs of the Trust. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed; and in general shall perform all responsibilities and duties incident to the office of executive chairperson and such other responsibilities and duties as may be prescribed by the Board from time to time.

Section 4. CHIEF EXECUTIVE OFFICER. The Board may designate one or more chief executive officers. The chief executive officer shall have general responsibility for implementation of the policies of the Trust, as determined by the Board, and for the management of the business and affairs of the Trust. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed; and in general shall perform all responsibilities and duties incident to the office of chief executive officer and such other responsibilities and duties as may be prescribed by the Board from time to time.

Section 5. CHIEF OPERATING OFFICER. The Board may designate one or more chief operating officers. The chief operating officer shall have the responsibilities and duties as determined by the Board or the executive chairperson or chief executive officer.

Section 6. CHIEF FINANCIAL OFFICER. The Board may designate one or more chief financial officers. The chief financial officer shall have the responsibilities and duties as determined by the Board or the executive chairperson or chief executive officer.

Section 7. PRESIDENT. In the absence of an executive chairperson or chief executive officer, one or more presidents shall in general supervise and control all of the business and affairs of the Trust. In the absence of a designation of a chief operating officer by the Board, the president shall be the chief operating officer. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed; and in general shall perform all responsibilities and duties incident to the office of president and such other responsibilities and duties as may be prescribed by the Board from time to time.

Section 8. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the responsibilities and duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other responsibilities and duties as from time to time may be assigned to such vice president by the executive chairperson, chief executive officer, the president or the Board. The Board may designate one or more vice presidents as executive vice president, senior vice president, or vice president for particular areas of responsibility.

Section 9. SECRETARY. One or more secretaries shall (a) keep the minutes of the proceedings of the shareholders, the Board and committees of the Board, if any, in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the trust records and of the seal of the Trust; (d) keep a register of the post office address of each shareholder which shall be furnished to the secretary by such shareholder; (e) have general charge of the share transfer books of the Trust; and (f) in general perform such other responsibilities and duties as from time to time may be assigned to him or her by the executive chairperson, chief executive officer, the president or the Board.

Section 10. TREASURER. One or more treasurers shall have the custody of the funds and securities of the Trust, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Trust, shall deposit all moneys and other valuable effects in the name and to the credit of the Trust in such depositories as may be designated by the Board and in general perform such other responsibilities and duties as from time to time may be assigned to him or her by the executive chairperson, chief executive officer, the president or the Board. In the absence of a designation of a chief financial officer by the Board, the treasurer shall be the chief financial officer of the Trust.

The treasurer shall disburse the funds of the Trust as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the president and Board, at the regular meetings of the Board, if any, or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Trust.

Section 11. COMPENSATION. The compensation of the officers shall be fixed from time to time by or under the authority of the Board, except that the executive chairperson, chief executive officer or president may, from time to time, set the compensation for any vice president or other subordinate officer. No officer shall be prevented from receiving such compensation by reason of the fact that he or she is also a Trustee.

## ARTICLE V

### CONTRACTS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board may authorize any officer or agent of the Trust or the Board to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Trust and such authority may be general or confined to specific instances. Any agreement, loan, note, deed, mortgage, lease or other document shall be valid and binding upon the Trust when duly authorized or ratified by action of the Board and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall be signed by such officer or agent of the Trust or the Board in such manner as shall from time to time be determined by the Board.

Section 3. DEPOSITS. All funds of the Trust not otherwise employed shall be deposited or invested from time to time to the credit of the Trust as the Board, the executive chairperson, chief executive officer, the president, the chief financial officer, or any other officer or agent of the Trust or the Board designated by the Board may determine.

## ARTICLE VI

### SHARES

Section 1. CERTIFICATES. Except as may be otherwise provided by the Board or any officer of the Trust, shareholders of the Trust are not entitled to certificates evidencing the shares of beneficial interest held by them. In the event that the Trust issues shares of beneficial interest evidenced by certificates, such certificates shall be in such form as prescribed by the Board or a duly authorized officer. There shall be no differences in the rights and obligations of shareholders based on whether or not their shares are evidenced by certificates.

Section 2. TRANSFERS. All transfers of shares shall be made on the books of the Trust, by the holder of the shares, in person or by his or her attorney, in such manner as the Board or any officer of the Trust may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board or an officer of the Trust that such shares shall no longer be evidenced by certificates.

The Trust shall be entitled to treat the holder of record of any share of beneficial interest as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of beneficial interest will be subject in all respects to the Declaration of Trust and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. The Board or any officer or agent of the Trust may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Trust alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such shareholder and the Board or an officer of the Trust has determined that such certificates may be issued. Unless otherwise determined by the Board or an officer or agent of the Trust, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Trust a bond in such sums as it may direct as indemnity against any claim that may be made against the Trust.

Section 4. FIXING OF RECORD DATE. The Board may set, in advance, a record date for the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or determining shareholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of shareholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of shareholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of shareholders of record is to be held or taken.

When a record date for the determination of shareholders entitled to notice of and to vote at any meeting of shareholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

Section 5. SHARE LEDGER. The Trust shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate share ledger containing the name and address of each shareholder and the number of shares of each class held by such shareholder.

Section 6. FRACTIONAL SHARES; ISSUANCE OF UNITS. The Board may authorize the Trust to issue fractional shares or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Declaration of Trust or these Bylaws, the Board may authorize the Trust to issue units consisting of different securities of the Trust. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Trust, except that the Board may provide that for a specified period securities of the Trust issued in such unit may be transferred on the books of the Trust only in such unit.

**ARTICLE VII**  
**ACCOUNTING YEAR**

The Board shall have the power, from time to time, to fix the fiscal year of the Trust.

**ARTICLE VIII**  
**DISTRIBUTIONS**

Section 1. AUTHORIZATION. Dividends and other distributions upon the shares of beneficial interest of the Trust may be authorized by the Board, subject to the provisions of law and the Declaration of Trust. Dividends and other distributions may be paid in cash, property or shares of beneficial interest of the Trust, subject to the provisions of law and the Declaration of Trust.

Section 2. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Trust available for dividends or other distributions such sum or sums as the Board may from time to time, in its sole and absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Trust or for such other purpose as the Board shall determine, and the Board may modify or abolish any such reserve.

**ARTICLE IX**  
**SEAL**

Section 1. SEAL. The Board may authorize the adoption of a seal by the Trust. The seal, if any, shall contain the name of the Trust and the year of its formation and the words "Formed Maryland." The Board may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL. Whenever the Trust is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Trust.



**ARTICLE X**

**WAIVER OF NOTICE**

Whenever any notice of a meeting is required to be given pursuant to the Declaration of Trust or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

**ARTICLE XI**

**AMENDMENT OF BYLAWS**

The Board shall have the exclusive power, at any time, to adopt, amend, alter or repeal any provision of these Bylaws and to make new Bylaws.

**ARTICLE XII**

**INVESTMENT POLICY**

Subject to the provisions of the Declaration of Trust, the Board may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Trust as it shall deem appropriate in its sole discretion.

**ARTICLE XIII**

**MISCELLANEOUS**

All references to the Declaration of Trust shall include all amendments and supplements thereto.

*As adopted December 1, 2023*

**ADVISORY AGREEMENT**  
**AMONG**  
**STARWOOD CREDIT REAL ESTATE INCOME TRUST**  
**AND**  
**STARWOOD CREDIT ADVISORS, L.L.C.**

## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions	1
2. Appointment	4
3. Duties of the Advisor	4
4. Authority of Advisor	7
5. Bank Accounts	8
6. Records; Access	8
7. Limitations on Activities	8
8. Other Activities of the Advisor	9
9. Relationship with Trustees and Officers	10
10. Compensation	11
11. Expenses	12
12. Other Services	15
13. No Joint Venture	16
14. Term	16
15. Termination by the Parties	16
16. Assignment to an Affiliate	16
17. Payments to and Duties of Advisor Upon Termination	16
18. Indemnification by the Trust	17
19. Indemnification by Advisor	17
20. Non-Solicitation	17
21. Miscellaneous	17
22. Trademark	19

## ADVISORY AGREEMENT

**THIS ADVISORY AGREEMENT** (this “Agreement”), dated as of December 1, 2023 (the “Effective Date”), is by and among Starwood Credit Real Estate Income Trust, a Maryland statutory trust (the “Trust”), and Starwood Credit Advisors, L.L.C., a Delaware limited liability company (the “Advisor”). Capitalized terms used herein shall have the meanings ascribed to them in Section 1 below.

### WITNESSETH

**WHEREAS**, the Trust intends to qualify as a REIT, and to invest its funds in investments permitted by the terms of Sections 856 through 860 of the Code;

**WHEREAS**, the Trust desires to avail itself of the knowledge, experience, sources of information, advice, assistance and certain facilities available to the Advisor and to have the Advisor undertake the duties and responsibilities hereinafter set forth, on behalf of, and subject to the supervision of, the board of trustees of the Trust (the “Board”), all as provided herein; and

**WHEREAS**, the Advisor is willing to undertake to render such services, subject to the supervision of the Board, on the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms have the definitions hereinafter indicated:

“**4-Quarter Performance Measurement Period**” shall have the meaning set forth in Section 10(c).

“**Acquisition Expenses**” shall mean any and all expenses incurred by the Trust, the Advisor or any of their respective Affiliates either in connection with the selection, evaluation, structuring, acquisition, origination, financing and development of any investments, whether or not acquired, including, without limitation, legal fees and expenses, travel and communications expenses, costs of appraisals, accounting fees and expenses and title insurance premiums and the costs of performing due diligence.

“**Adjusted Capital**” means cumulative net proceeds generated from sales of Class T Common Shares, Class S Common Shares, Class D Common Shares and Class I Common Shares (including proceeds from the distribution reinvestment plan) reduced for Distributions from non-liquidating dispositions of its investments paid to Class T, Class S, Class D, and Class I shareholders and amounts paid to Class T, Class S, Class D, and Class I Shareholders for share repurchases pursuant to the Trust’s share repurchase plan.

“**Advisor**” shall have the meaning set forth in the preamble of this Agreement.

“**Advisor Expenses**” shall have the meaning set forth in Section 11(a).

“**Affiliate**” shall have the meaning set forth in the Declaration of Trust.

“**Agreement**” shall have the meaning set forth in the preamble of this Agreement.

“**Annual Hurdle Rate**” shall have the meaning set forth in Section 10(c).

“**Applicable Hurdle Rate**” shall have the meaning set forth in Section 10(c).

“**Board**” shall have the meaning set forth in the Recitals.

“**Bylaws**” shall mean the bylaws of the Trust, as amended from time to time.

“**Cause**” shall mean, with respect to the termination of this Agreement, fraud, criminal conduct, willful misconduct or willful or gross negligent breach of fiduciary duty by the Advisor in connection with performing its duties hereunder.

“**CEA**” shall mean the U.S. Commodities Exchange Act, as amended.

“**Change of Control**” shall mean any event (including, without limitation, issue, transfer or other disposition of shares of the Trust, merger, share exchange or consolidation) after which any “person” (as that term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Trust representing greater than 50% or more of the combined voting power of Trust’s then outstanding securities, respectively; provided, that, a Change of Control shall not be deemed to occur as a result of any widely distributed offering of the Shares.

“**Class D Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Class E Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Class I Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Class S Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Class T Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Common Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Core Earnings**” shall mean for the applicable performance measurement period, the net income (loss) attributable to shareholders of Class T Common Shares, Class S Common Shares, Class D Common Shares, and Class I Common Shares, computed in accordance with GAAP, including realized gains (losses) not otherwise included in GAAP net income (loss) and excluding (i) non-cash equity compensation expense, (ii) the Performance Fee, (iii) depreciation and amortization, (iv) any unrealized gains or losses or other non-cash items that are included in net income for the applicable reporting period, regardless of whether such items are included in other comprehensive income or loss, or in net income, (v) one-time events pursuant to changes in GAAP, and (vi) certain non-cash adjustments and certain material non-cash income or expense items, in each case after discussions between the Advisor and the Independent Trustees and approved by a majority of the Independent Trustees.

“**Dealer Manager**” shall mean Starwood Capital, L.L.C., or such other Person selected by the Board to act as the dealer manager or distribution agent.

“**Declaration of Trust**” shall mean the Declaration of Trust of the Trust, dated as of December 1, 2023, as it may be amended, supplemented or restated from time to time.

“**Distributions**” shall mean any distributions, pursuant to Section 7.6 of the Declaration of Trust, by the Trust to owners of Common Shares, including distributions that may constitute a return of capital for federal income tax purposes.

“**Effective Date**” shall have the meaning set forth in the preamble of this Agreement.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**GAAP**” shall mean generally accepted accounting principles as in effect in the United States of America from time to time.

“**Independent Trustee**” shall have the meaning set forth in the Declaration of Trust.

“**Initial Partial-Quarter Performance Measurement Period**” shall have the meaning set forth in Section 10(c).

“**Investment Company Act**” shall mean the Investment Company Act of 1940, as amended.

“**Investment Guidelines**” shall mean the investment guidelines adopted by the Board, as amended from time to time, pursuant to which the Advisor has discretion to acquire and dispose of investments for the Trust without the prior approval of the Board.

“**Management Fee**” shall have the meaning set forth in Section 10(a).

“**NAV**” shall have the meaning set forth in the Declaration of Trust.

“**Organization and Offering Expenses**” shall have the meaning set forth in the Declaration of Trust.

“**Other Starwood Accounts**” shall mean investment funds, REITs, vehicles, accounts, products and/or other similar arrangements sponsored, advised and/or managed by Starwood, whether currently in existence or subsequently established (in each case, including any related successor funds, alternative vehicles, separately managed accounts, supplemental capital vehicles, surge funds, over-flow funds, co-investment vehicles and other entities formed in connection with Starwood side-by-side or additional general partner investments with respect thereto).

“**Partial-Year Performance Measurement Period**” shall have the meaning set forth in Section 10(c).

“**Performance Fee**” shall have the meaning set forth in Section 10(c).

“**Person**” shall mean an individual, corporation, business trust, estate, trust, partnership, joint venture, limited liability company or other legal entity.

“**PPM**” shall have the meaning set forth in the Declaration of Trust.

“**REIT**” shall have the meaning set forth in the Declaration of Trust.

“**Services**” shall have the meaning set forth in Section 8(c).

“**Shares**” shall have the meaning set forth in the Declaration of Trust.

“**Starwood**” means, collectively, Starwood Capital Group Holdings, L.P., a Delaware limited partnership, and any Affiliate thereof.

“**Starwood Names**” shall have the meaning set forth in Section 22.

“**Shareholder Servicing Fee**” shall mean the shareholder servicing fee payable to the Dealer Manager and reallowable to soliciting dealers with respect to Shares, as applicable and as described in the PPM.

“**Shareholder**” shall have the meaning set forth in the Declaration of Trust.

“**Termination Date**” shall mean the date of termination of this Agreement or expiration of this Agreement in the event this Agreement is not renewed for an additional term.

“**Trustees**” shall have the meaning set forth in the Declaration of Trust.

“**Trust**” shall have the meaning set forth in the preamble of this Agreement.

“**Upfront Sales Load**” shall have the meaning set forth in the Declaration of Trust.

“**Valuation Guidelines**” shall mean the valuation guidelines of the Trust as have been adopted by the Board, as amended from time to time.

2. **Appointment.** The Trust hereby appoints the Advisor to serve as its investment adviser on the terms and conditions set forth in this Agreement, and the Advisor hereby accepts such appointment. Except as otherwise provided in this Agreement, the Advisor hereby agrees to use its commercially reasonable efforts to perform the duties set forth herein, provided that the Company reimburses the Advisor for costs and expenses in accordance with Section 11.

3. **Duties of the Advisor.** Subject to the oversight of the Board and the terms and conditions of this Agreement and the Investment Guidelines and consistent with the provisions of the Trust’s most recent PPM, the Declaration of Trust and Bylaws, the Advisor will have plenary authority with respect to the management of the business and affairs of the Trust and will be responsible for implementing the investment strategy of the Trust. The Advisor will perform (or cause to be performed through one or more of its Affiliates or third parties) such services and activities relating to the selection of investments and rendering investment advice to the Trust as may be appropriate or otherwise mutually agreed from time to time, which may include, without limitation:

(a) serving as an advisor to the Trust with respect to the establishment and periodic review of the Investment Guidelines for the Trust's investments, financing activities and operations;

(b) sourcing, evaluating and monitoring the Trust's investment opportunities and executing the acquisition, origination, management, financing and disposition of the Trust's assets, in accordance with the Investment Guidelines and the Trust's investment policies, strategies, objectives and limitations, subject to oversight by the Board;

(c) with respect to prospective acquisitions, originations, purchases, sales, exchanges or other dispositions of investments, conducting negotiations on the Trust's behalf with borrowers, sellers, purchasers and other counterparties and, if applicable, their respective agents, advisors and representatives, and determining the structure and terms of such transactions;

(d) providing the Trust with portfolio management and other related services;

(e) serving as the Trust's advisor with respect to decisions regarding any of the Trust's financings, hedging activities or borrowing, including (1) assisting the Trust in developing criteria for financing that is specifically tailored to the Trust's investment objectives, (2) advising the Trust with respect to obtaining appropriate financing for the investments (which, in accordance with applicable law and the terms and conditions of this Agreement and the Declaration of Trust and Bylaws, as applicable, may include financing by the Advisor or its Affiliates) and (3) negotiating and entering into, on the Trust's behalf, financing arrangements (including one or more credit facilities), repurchase agreements, interest rate or currency swap agreements, hedging arrangements, foreign exchange transactions, derivative transactions, and other agreements and instruments required or appropriate in connection with the Trust's activities;

(f) engaging and supervising, on the Trust's behalf and at the Trust's expense, independent contractors, advisors, consultants, attorneys, accountants, administrators, auditors, appraisers, independent valuation agents, escrow agents and other service providers (which may include Affiliates of the Advisor) that provide various services with respect to the Trust, including, without limitation, accounting, investment banking, securities brokerage, mortgage brokerage, credit analysis, risk management services, asset management services, loan servicing, other financial, legal or accounting services, due diligence services, underwriting review services, and all other services (including custody and transfer agent and registrar services) as may be required by Trust's activities or investments (or potential investments);

(g) communicating on the Trust's behalf with the holders of any of the Trust's equity or debt securities as required to satisfy the reporting and other requirements of any governmental bodies or agencies or trading markets and to maintain effective relations with such holders;

(h) advising the Trust in connection with policy decisions to be made by the Board;



- (i) providing the daily management of the Trust, including performing and supervising the various administrative functions reasonably necessary for the management of the Trust;
- (j) engaging one or more sub-advisors with respect to the management of the Trust, including, where appropriate, Affiliates of the Advisor;
- (k) evaluating and recommending to the Board hedging strategies and engaging in hedging activities on the Trust's behalf, consistent with the Trust's qualification as a REIT and with the Investment Guidelines;
- (l) investing and reinvesting any moneys and securities of the Trust (including investing in short-term investments pending investment in other investments, payment of fees, costs and expenses, or payments of dividends or Distributions to the Shareholders) and advising the Trust as to its capital structure and capital raising;
- (m) determining valuations for the assets and liabilities of the Trust and calculate, as of the last day of each month, the NAV per Common Share in accordance with the Valuation Guidelines, and in connection therewith, obtain appraisals performed by a third party appraisal firms, as needed, or conduct fair valuation determinations concerning the value of the Trust's assets and liabilities;
- (n) providing input in connection with the appraisals of the Trust's investments, as needed;
- (o) monitoring the Trust's investments for events that may be expected to have a material impact on the most recent estimated values;
- (p) monitoring each appraiser's valuation process to ensure that it complies with the Valuation Guidelines;
- (q) delivering to, or maintaining on behalf of, the Trust copies of appraisals obtained in connection with its investments, if any;
- (r) in the event that the Trust is a commodity pool under the CEA, acting as the Trust's commodity pool operator for the period and on the terms and conditions set forth in this Agreement, including, for the avoidance of doubt, the authority to make any filings, submissions or registrations (including for exemptive or "no action" relief) to the extent required or desirable under the CEA (and the Trust hereby appoints the Advisor to act in such capacity and the Advisor accepts such appointment and agrees to be responsible for such services);
- (s) placing, or arranging for the placement of, orders of investments pursuant to the Advisor's investment determinations for the Trust either directly with the issuer or with a broker or dealer (including any Affiliated broker or dealer);
- (t) making from time to time, or at any time reasonably requested by the Board, reports to the Board of its performance of services to the Trust under this Agreement, including reports with respect to potential conflicts of interest involving the Advisor or any of its Affiliates;

(u) advising the Trust regarding the Trust's ability to elect REIT status, and thereafter maintenance of the Trust's status as a REIT, and monitoring compliance with the various REIT qualification tests and other rules set out in the Code and the regulations promulgated thereunder;

(v) taking all necessary actions to enable the Trust to make required tax filings and reports, including soliciting Shareholders for required information to the extent provided by the REIT provisions of the Code;

(w) assisting the Trust in maintaining the registration of the Shares under federal and state securities laws, as applicable, with respect to any offering and complying with all federal, state and local regulatory requirements applicable to the Trust with respect to any offering and the Trust's business activities (including the Sarbanes-Oxley Act of 2002, as amended), including, with respect to any offering, preparing or causing to be prepared all supplements to the PPM and financial statements and all reports and documents, if any, required under the Securities Act of 1933, as amended, and the Exchange Act; and

(x) performing such other services from time to time in connection with the management of the Trust's investment activities as the Board shall reasonably request and/or the Advisor shall deem appropriate under the particular circumstances.

#### **4. Authority of Advisor.**

(a) Pursuant to the terms of this Agreement (including the restrictions included in this Section 4 and in Section 7), and subject to the continuing and exclusive authority of the Board over the management of the Trust, the Board (by virtue of its approval of this Agreement and authorization of the execution hereof by the officers of the Trust) hereby delegates to the Advisor the authority to take, or cause to be taken, any and all actions and to execute and deliver any and all agreements, certificates, assignments, instruments or other documents and to do any and all things that, in the judgment of the Advisor, may be necessary or advisable in connection with the Advisor's duties described in Section 3, including the making of any investment that fits within the Investment Guidelines and objectives, policies and limitations of the Trust and within the discretionary limits and authority as granted to the Advisor from time to time by the Board.

(b) Notwithstanding the foregoing, any investment that does not fit within the Investment Guidelines will require the prior approval of the Board or any duly authorized committee of the Board, as the case may be. Except as otherwise set forth herein, in the Investment Guidelines or in the Declaration of Trust, any investment that fits within the Investment Guidelines may be made by the Advisor on the Trust's behalf without the prior approval of the Board or any duly authorized committee of the Board.

(c) The prior approval of a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in the transaction will be required for each transaction to which the Advisor or its Affiliates is a party.

(d) The Board will review the Investment Guidelines periodically, in its discretion, and may, at any time upon the giving of notice to the Advisor, amend the Investment Guidelines; provided, however, that such modification or revocation shall be effective upon receipt by the Advisor or such later date as is specified by the Board and included in the notice provided to the Advisor and such modification or revocation shall not be applicable to investment transactions to which the Advisor has committed the Trust prior to the date of receipt by the Advisor of such notification, or if later, the effective date of such modification or revocation specified by the Board.

(e) The Advisor may retain, for and on behalf, and at the sole cost and expense, of the Trust, such services as the Advisor deems necessary or advisable in connection with the management and operations of the Trust, which may include Affiliates of the Advisor or unaffiliated third parties; provided, that any such services may only be provided by Affiliates to the extent such services are approved by a majority of the Trustees (including a majority of the Independent Trustees) not otherwise interested in such transactions as being fair and reasonable to the Trust and on terms and conditions not less favorable to the Trust than those available from non-Affiliated third parties. In performing its duties under Section 3, the Advisor shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by the Advisor at the Trust's sole cost and expense.

5. **Bank Accounts.** The Advisor may establish and maintain one or more bank accounts in the name of the Trust and any subsidiary thereof and may collect and deposit into any such account or accounts, and disburse from any such account or accounts, any money on behalf of the Trust, consistent with the Advisor's authority under this Agreement, provided that no funds shall be commingled with the funds of the Advisor; and the Advisor shall from time to time render, upon request by the Board, its audit committee or the auditors of the Trust, appropriate accountings of such collections and payments to the Board, its audit committee and the auditors of the Trust, as applicable.

6. **Records; Access.** The Advisor shall maintain, or shall cause to be maintained, appropriate records of its activities hereunder and make such records, or shall cause such records to be made, available for inspection by the Board and by counsel, auditors and authorized agents of the Trust, at any time or from time to time during normal business hours. The Advisor shall at all reasonable times have access to the books and records of the Trust.

7. **Limitations on Activities.** The Advisor shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Investment Guidelines, (ii) would adversely and materially affect the qualification of the Trust as a REIT under the Code or the status of the Trust as an entity excluded from investment company status under the Investment Company Act, or (iii) would materially violate any law, rule or regulation of any governmental body or agency having jurisdiction over the Trust or of any exchange on which the securities of the Trust may be listed or that would otherwise not be permitted by the Declaration of Trust or Bylaws. If the Advisor is ordered to take any action by the Board, the Advisor shall notify the Board if it is the Advisor's reasonable judgment that such action would adversely and materially affect such status or violate any such law, rule or regulation or the Declaration of Trust or Bylaws. Notwithstanding the foregoing, neither the Advisor nor any of its Affiliates shall be liable to the Trust, the Board, or the Shareholders for any act or omission by the Advisor or any of its Affiliates, except as provided in Section 19 of this Agreement.

## 8. Other Activities of the Advisor.

(a) Nothing in this Agreement shall (i) prevent the Advisor or any of its Affiliates, officers, trustees or employees from engaging in other businesses or from rendering services of any kind to any other Person or entity, whether or not the investment objectives or policies of any such other Person are similar to those of the Trust, including, without limitation, the sponsoring, closing, advising and/or managing of any Other Starwood Accounts, (ii) in any way bind or restrict the Advisor or any of its Affiliates, officers, directors or employees from buying, selling or trading any securities or commodities for their own accounts or for the account of others for whom the Advisor or any of its Affiliates, officers, directors or employees may be acting, or (iii) prevent the Advisor or any of its Affiliates, officers, directors or employees from receiving fees or other compensation or profits from such activities described in this Section 8(a) which shall be for the sole benefit of the Advisor's (and/or its Affiliates, officers, directors or employees) benefit. While information and recommendations supplied to the Trust shall, in the Advisor's reasonable and good faith judgment, be appropriate under the circumstances and in light of the investment objectives and policies of the Trust, such information and recommendations may be different in certain material respects from the information and recommendations supplied by the Advisor or any Affiliate of the Advisor to others (including, for greater certainty, the Other Starwood Accounts and their investors, as described more fully in Section 8(b)).

(b) The Advisor and the Trust acknowledge and agree that, notwithstanding anything to the contrary contained herein, (i) the Advisor and its Affiliates sponsor, advise and/or manage Other Starwood Accounts and may in the future sponsor, advise and/or manage additional Other Starwood Accounts and (ii) with respect to Other Starwood Accounts with investment objectives or guidelines that overlap with the Trust's, the Advisor and its Affiliates will allocate investment opportunities between the Trust and such Other Starwood Accounts in accordance with Starwood's prevailing policies and procedures on a basis that the Advisor and its Affiliates determine to be reasonable in their sole discretion, and there may be circumstances where investments that are consistent with the Investment Guidelines may be shared with or allocated to one or more Other Starwood Accounts (in lieu of the Trust) in accordance with Starwood's prevailing policies and procedures.

(c) In connection with the services of the Advisor hereunder, the Trust and the Board acknowledge and agree that (i) as part of Starwood's regular businesses, personnel of the Advisor and its Affiliates may from time-to-time work on other projects and matters (including with respect to one or more Other Starwood Accounts), and that conflicts may arise with respect to the allocation of personnel between the Trust and one or more Other Starwood Accounts and/or the Advisor and such other Affiliates, (ii) unless prohibited by the Declaration of Trust, Other Starwood Accounts may invest, from time to time, in investments in which the Trust also invests (including at a different level of an issuer's capital structure (e.g., an investment by an Other Starwood Account in a mezzanine debt interest with respect to the same issuer to whom the Trust has made a mortgage loan)) and while Starwood will seek to resolve any such conflicts in a fair and reasonable manner in accordance with its prevailing policies and procedures with respect to conflicts resolution among Other Starwood Accounts generally (as described in the PPM), such transactions are not required to be presented to the Board or any committee thereof for approval (unless otherwise required by the Declaration of Trust or the Investment Guidelines), and there can be no assurance that any conflicts will be resolved in the Trust's favor, (iii) the Trust will from

time to time pay fees to the Advisor and its Affiliates, including portfolio entities of Other Starwood Accounts, for providing various services described in the PPM (collectively, “Services”), which fees will be in addition to the compensation paid to the Advisor pursuant to Section 10 hereof, (iv) the Advisor and its Affiliates, the Advisor and its Affiliates may from time to time receive fees from portfolio entities or other issuers for providing Services, including with respect to Other Starwood Accounts and related portfolio entities, and while such fees may give rise to conflicts of interest, the Trust will not receive the benefit of any such fees, and (v) the terms and conditions of the governing agreements of such Other Starwood Accounts (including with respect to the economic, reporting, and other rights afforded to investors in such Other Starwood Accounts) are materially different from the terms and conditions applicable to the Trust and the Shareholders, and neither the Trust nor the Shareholders (in such capacity) shall have the right to receive the benefit of any such different terms applicable to investors in such Other Starwood Accounts as a result of an investment in the Trust or otherwise. The Advisor shall keep the Board reasonably informed on a periodic basis in connection with the foregoing.

(d) The Advisor is not permitted to consummate on the Trust’s behalf any transaction that involves (i) the sale of any investment to or (ii) the acquisition of any investment from Starwood, any Other Starwood Account or any of their Affiliates unless such transaction is approved by a majority of the Trustees, including a majority of the Independent Trustees, not otherwise interested in such transaction as being fair and reasonable to the Trust. The Advisor will seek to resolve any conflicts of interest in a fair and reasonable manner in accordance with its prevailing policies and procedures with respect to conflicts resolution among Other Starwood Accounts generally, but only those transactions set forth in this Section 8(d) will be expressly required to be presented for approval to the Independent Trustees or any committee thereof (unless otherwise required by the Declaration of Trust or the Investment Guidelines).

(e) For the avoidance of doubt, it is understood that neither the Trust nor the Board has the authority to determine the salary, bonus or any other compensation paid by the Advisor to any director, officer, member, partner, employee, or shareholder of the Advisor or its Affiliates, including any person who is also a Trustee, officer or employee of the Trust.

**9. Relationship with Trustees and Officers.** Subject to Section 7 of this Agreement and to restrictions advisable with respect to the qualification of the Trust as a REIT, directors, managers, officers and employees of the Advisor or an Affiliate of the Advisor or any corporate parent of an Affiliate, may serve as a Trustee or officer of the Trust, except that no director, officer or employee of the Advisor or its Affiliates who also is a Trustee or officer of the Trust shall receive any compensation from the Trust for serving as a Trustee or officer other than (a) reasonable reimbursement for travel and related expenses incurred in attending meetings of the Board or (b) as otherwise approved by the Board, including a majority of the Independent Trustees, and no such Trustee shall be deemed an Independent Trustee for purposes of satisfying the Trustee independence requirement set forth in the Declaration of Trust. For so long as this Agreement is in effect, the Advisor shall have the have the right to designate two Trustees for election to the Board. Furthermore, the Board shall consult with the Advisor in connection with filling of any vacancies created by the removal, resignation, retirement or death of any Trustee (other than in connection with a removal by Shareholders in accordance with the Declaration of Trust).

## 10. Compensation.

(a) The Trust will pay the Advisor a management fee (the "Management Fee") equal to 1.25% of NAV per annum for the Class T Common Shares, Class S Common Shares, Class D Common Shares, and Class I Common Shares, payable monthly in arrears, before giving effect to any accruals for the Management Fee, the Shareholder Servicing Fee, the Performance Fee or any Distributions. The Advisor shall receive the Management Fee as compensation for services rendered hereunder. For the avoidance of doubt, no Management Fee shall be paid on Class E Common Shares.

(b) The Advisor has agreed to waive the Management Fee for the first three months following the Effective Date.

(c) The Trust shall pay the Advisor a performance fee (the "Performance Fee"), which is accrued monthly and payable quarterly (or part thereof that the Advisory Agreement is in effect) in arrears. Commencing with the calendar quarter representing the fourth full calendar quarter completed after the Effective Date, the Performance Fee shall be an amount, not less than zero, equal to (i) 12.5% of Core Earnings for the immediately preceding four calendar quarters (each such period, a "4-Quarter Performance Measurement Period"), subject to a hurdle rate, expressed as an annual rate of return on average Adjusted Capital, equal to 5.0% (the "Annual Hurdle Rate"), minus (ii) the sum of any Performance Fees paid to the Advisor with respect to the first three calendar quarters in the applicable 4-Quarter Performance Measurement Period. As a result, the Advisor does not earn a Performance Fee for any calendar quarter until Core Earnings for the applicable 4-Quarter Performance Measurement Period exceed the Annual Hurdle Rate.

For each of the three full calendar quarters preceding the initial 4-Quarter Performance Measurement Period, the Performance Fee shall be an amount, not less than zero, equal to (i) 12.5% of cumulative Core Earnings for all of the full calendar quarter periods completed since the Effective Date (each such period, a "Partial-Year Performance Measurement Period"), subject to the Applicable Hurdle Rate (as defined below), which is calculated by multiplying 5% by a fraction consisting of (x) a numerator equal to the number of full calendar quarter periods included in the Partial-Year Performance Measurement Period, and (y) a denominator equal to 4, minus (ii) the sum of any Performance Fees paid to the Advisor with respect to the prior Partial-Year Performance Measurement Periods.

In the event that the period from the Effective Date through the first calendar quarter end date following such date is shorter than a full calendar quarter (such period, the "Initial Partial-Quarter Performance Measurement Period"), the Performance Fee for the Initial Partial-Quarter Performance Measurement Period shall be an amount, not less than zero, equal to (i) 12.5% of Core Earnings for the Initial Partial-Quarter Performance Measurement Period, subject to the Applicable Hurdle Rate, which is calculated by multiplying 5% by a fraction consisting of (x) a numerator equal to the number of calendar days included in the Initial Partial-Quarter Performance Measurement Period, and (y) a denominator equal to 365. For the sake of clarity, neither the Core Earnings for, nor the number of calendar days included in, the Initial Partial-Quarter Performance Period, will be factored into the computation of Performance Fees for subsequent Partial-Year Performance Measurement Periods or 4-Quarter Performance Measurement Periods.

Once Core Earnings exceed the Applicable Hurdle Rate, the Advisor shall be entitled to a “catch-up” fee equal to the amount of Core Earnings in excess of the Applicable Hurdle Rate, until Core Earnings for the applicable performance measurement period exceed a percentage of average Adjusted Capital equal to the Applicable Hurdle Rate divided by 0.875 (or 1 minus 0.125) for the applicable performance measurement period. Thereafter, the Advisor shall be entitled to receive 12.5% of Core Earnings. “Applicable Hurdle Rate” means (i) the Annual Hurdle Rate with respect to a 4-Quarter Performance Measurement Period or (ii) the Annual Hurdle Rate as adjusted above with respect to a Partial-Year Performance Measurement Period and the Initial Partial-Quarter Measurement Period, as applicable. The Performance Fee shall be calculated based on the full Management Fee earned and regardless of whether the Advisor elects to receive such fee in cash, Class I Common Shares or Class E Common Shares

(d) The Management Fee and Performance Fee may be paid, at the Advisor’s election, in cash or cash equivalent aggregate NAV amounts of Class I Common Shares or Class E Common Shares, or any combination thereof. If the Advisor elects to receive any portion of its Management Fee or Performance Fee in Common Shares, the Advisor or any subsequent transferee thereof may elect to have the Trust repurchase such Common Shares from the Advisor or such transferee at a later date at a repurchase price per Common Share equal to the then NAV per Common Share of such class. Common Shares obtained by the Advisor or any subsequent transferee will not be subject to the Trust’s share repurchase plan, including the repurchase limits or any reduction or penalty for an early repurchase.

(e) In the event this Agreement is terminated or its term expires without renewal, the Advisor will be entitled to receive each of its prorated Management Fee and Performance Fee through the date of termination. Such pro ration shall take into account the number of days of any partial calendar month or calendar year for which this Agreement was in effect.

(f) In the event the Trust commences a liquidation of its investments during any calendar year, the Trust will pay the Advisor the Management Fee and the Performance Fee from the proceeds of the liquidation.

#### **11. Expenses.**

(a) Subject to Sections 4(e) and 11(b), the Advisor shall be responsible for the expenses related to any and all personnel of the Advisor who provide investment advisory services to the Trust pursuant to this Agreement (including, without limitation, each of the officers of the Trust and any Trustees who are also directors, officers or employees of the Advisor or any of its Affiliates), including, without limitation, salaries, bonus and other wages, payroll taxes and the cost of employee benefit plans of such personnel, and costs of insurance with respect to such personnel (“Advisor Expenses”).

(b) In addition to the compensation paid to the Advisor pursuant to Section 10 hereof, the Trust shall pay all of its costs and expenses directly or reimburse the Advisor or its Affiliates for costs and expenses of the Advisor and its Affiliates incurred on behalf of the Trust other than Advisor Expenses. Without limiting the generality of the foregoing, it is specifically agreed that the following costs and expenses of the Trust are not Advisor Expenses and shall be paid by the Trust and shall not be paid by the Advisor or Affiliates of the Advisor:

(i) Organization and Offering Expenses;

(ii) Acquisition Expenses;

(iii) fees, costs and expenses in connection with the issuance and transaction costs incident to the trading, origination, settling, disposition and financing of the Trust's investments (whether or not consummated), including brokerage commissions, hedging costs, prime brokerage fees, custodial expenses, clearing and settlement charges, and other investment costs fees and expenses actually incurred in connection with the pursuit, making, holding, originating, settling, monitoring or disposing of actual or potential investments;

(iv) the actual cost of goods and services used by the Trust and obtained from either Affiliates of the Advisor or Persons not Affiliated with the Advisor, including fees paid to administrators, consultants, attorneys, technology providers and other services providers, and brokerage fees paid in connection with the origination, acquisition and/or sale of investments;

(v) all fees, costs and expenses of legal, tax, accounting, consulting, auditing (including internal audit), finance, administrative, investment banking, capital market, transfer agency, escrow agency, custody, prime brokerage, asset management, data or technology services and other non-investment advisory services rendered to the Trust by the Advisor or its Affiliates in compliance with Section 4(e) including, without limitation, salaries, bonus and other wages, payroll taxes and the cost of employee benefit plans and insurance with respect to all personnel of the Advisor other than those who provide investment advisory services to the Trust or serve as executive officers of the Trust, as described above;

(vi) expenses of acquiring, originating, managing and disposing the Trust's investments, whether payable to an Affiliate of the Advisor or a non-Affiliated Person;

(vii) the compensation and expenses of the Trustees (excluding those trustees who are directors, officers or employees of the Advisor) and the cost of liability insurance to indemnify the Trustees and officers and expenses incurred in connection with preparation of materials for meetings of the Board and its committees;

(viii) interest and fees and expenses arising out of borrowings made by the Trust, including, but not limited to, costs associated with the establishment and maintenance of any of the Trust's credit facilities, other financing arrangements, or other indebtedness of the Trust (including commitment fees, accounting fees, legal fees, closing and other similar costs) or any of the Trust's securities offerings, whether or not any facilities arrangements or indebtedness are implemented or such securities are offered;



(ix) expenses connected with communications to holders of the Trust's securities or securities of any subsidiary of the Trust and other bookkeeping and clerical work necessary in maintaining relations with holders of such securities and in complying with the continuous reporting and other requirements of governmental bodies or agencies, including, without limitation, all costs of preparing and filing required reports with the SEC, the costs payable by the Trust to any transfer agent and registrar, expenses in connection with the listing and/or trading of the Trust's securities on any exchange, the fees payable by the Trust to any such exchange in connection with its listing, costs of preparing, printing and mailing the Trust's annual report to the Shareholders and proxy materials, if any, with respect to any meeting of the Shareholders and any other reports or related statements;

(x) the Trust's allocable share of costs associated with technology-related expenses, including without limitation, any computer software or hardware, electronic equipment or purchased information technology services from third-party vendors or Affiliates of the Advisor, technology service providers and related software/hardware utilized in connection with the Trust's investment and operational activities;

(xi) the Trust's allocable share of expenses incurred by managers, officers, personnel and agents of the Advisor for travel on the Trust's behalf and other out-of-pocket expenses incurred by them in connection with the purchase, financing, refinancing, sale or other disposition of an investment;

(xii) expenses relating to compliance-related matters and regulatory filings relating to the Trust's activities (including, without limitation, expenses relating to the preparation and filing of Form PF, Form ADV, reports to be filed with the U.S. Commodity Futures Trading Commission, reports, disclosures, and/or other regulatory filings of the Advisor and its Affiliates relating to the Trust's activities (including the Trust's pro rata share of the costs of the Advisor and its Affiliates of regulatory expenses that relate to the Trust and Other Starwood Accounts));

(xiii) the costs of any litigation involving the Trust or its assets and the amount of any judgments or settlements paid in connection therewith, trustees and officers liability or other insurance and indemnification or extraordinary expense or liability relating to the affairs of the Trust;

(xiv) all taxes and statutory, regulatory or license fees or other governmental charges;

(xv) all insurance costs incurred in connection with the operation of the Trust's business except for the costs attributable to the insurance that the Advisor elects to carry for itself and its personnel;

(xvi) expenses incurred in connection with maintaining the status of the Trust as a REIT or the payments of interest, dividends or Distributions in cash or any other form authorized or caused to be made by the Board to or on account of holders of the Trust's securities, including, without limitation, in connection with any distribution reinvestment plan;

(xvii) any judgment or settlement of pending or threatened proceedings (whether civil, criminal or otherwise) against the Trust, or against any Trustee or officer of the Trust or in his or her capacity as such for which the Trust is required to indemnify such Trustee or officer by any court or governmental agency;

(xviii) expenses incurred in connection with the formation, organization, continuation, liquidation and/or restructuring of any corporation, partnership, joint venture or other entity through which the Trust's investments are made or in which any such entity invests; and

(xix) expenses incurred related to industry association memberships or attending industry conferences on behalf of the Trust.

(c) The Advisor may, at its option, elect not to seek reimbursement for certain expenses during a given period, which determination shall not be deemed to construe a waiver of reimbursement for similar expenses in future periods.

(d) Any reimbursement payments owed by the Trust to the Advisor may be offset by the Advisor against amounts due to the Trust from the Advisor. Cost and expense reimbursement to the Advisor shall be subject to adjustment at the end of each calendar year in connection with the annual audit of the Trust.

(e) Notwithstanding the foregoing, the Advisor shall pay for all Organization and Offering Expenses (other than Upfront Sales Loads and Shareholder Servicing Fees) incurred prior to the first anniversary of the Effective Date. All Organization and Offering Expenses (other than Upfront Sales Loads and Shareholder Servicing Fees) paid by the Advisor pursuant to this Section 11(e) shall be reimbursed by the Trust to the Advisor in 60 equal monthly installments commencing with the first anniversary of the Effective Date.

(f) Notwithstanding the foregoing, the Advisor may pay for certain of the costs and expenses of the Company contemplated by Section 11(b) above (excluding Organization and Offering Expenses) prior to the first anniversary of the Effective Date. All such expenses (excluding Organization and Offering Expenses) paid by the Advisor pursuant to this Section 11(f) shall be reimbursed by the Trust to the Advisor in 60 equal monthly installments commencing with the first anniversary of the Effective Date.

**12. Other Services.** Should the Board request that the Advisor or any director, manager, officer or employee thereof render services for the Trust other than set forth in Section 3, such services shall be separately compensated at such rates and in such amounts as are agreed by the Advisor and the Independent Trustees, subject to the limitations contained in the Declaration of Trust, and shall not be deemed to be services pursuant to the terms of this Agreement.

13. **No Joint Venture.** The Trust, on the one hand, and the Advisor, on the other, are not partners or joint venturers with each other, and nothing in this Agreement shall be construed to make them such partners or joint venturers or impose any liability as such on either of them.

14. **Term.** This Agreement shall continue in effect for two years from the Effective Date, subject to an unlimited number of successive two-year renewals if approved by a majority of the Board and a majority of the Independent Trustees.

15. **Termination by the Parties.** This Agreement may be terminated (i) at the option of the Advisor immediately upon a Change of Control of the Trust, (ii) immediately by the Trust for Cause or upon the bankruptcy of the Advisor or (iii) upon a breach of a material provision of this Agreement by the Advisor and such breach continues for a period of 30 days after written notice thereof specifying such breach and requesting that the same be remedied in such 30-day period (or 45 days after written notice of such breach if the Advisor takes steps to cure such breach within 30 days of the written notice). The provisions of Sections 17 through 22 survive termination of this Agreement.

16. **Assignment to an Affiliate.** Except as set forth herein, the Advisor shall not assign, sell or otherwise dispose of all or any part of its right, title and interest in and to this Agreement to any Persons other than an Affiliate without the approval of a majority of the Trustees (including a majority of the Independent Trustees). Notwithstanding the foregoing, the Advisor may assign any rights to receive fees or other payments under this Agreement to any Person without obtaining the consent of the Board. This Agreement shall not be assigned by the Trust without the approval of the Advisor, except in the case of an assignment by the Trust to a corporation or other organization which is a successor to all of the assets, rights and obligations of the Trust, in which case such successor organization shall be bound hereunder and by the terms of said assignment in the same manner as the Trust is bound by this Agreement. This Agreement shall be binding on successors to the Trust resulting from a Change of Control or sale of all or substantially all the assets of the Trust, and shall likewise be binding on any successor to the Advisor.

17. **Payments to and Duties of Advisor Upon Termination.** After the Termination Date, the Advisor shall not be entitled to compensation for further services hereunder except it shall be entitled to receive from the Trust within 30 days after the effective date of such termination all unpaid reimbursements of expenses and all earned but unpaid fees payable to the Advisor prior to termination of this Agreement.

(a) The Advisor shall promptly upon termination:

- (i) pay over to the Trust all money collected and held for the account of the Trust pursuant to this Agreement, after deducting any accrued compensation and reimbursement for its expenses to which it is then entitled;
- (ii) deliver to the Board a full accounting, including a statement showing all payments collected by it and a statement of all money held by it, covering the period following the date of the last accounting furnished to the Board;
- (iii) deliver to the Board all assets, including all investments, and documents of the Trust then in the custody of the Advisor; and



with a required copies to: Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
Attention: Benjamin Wells / Ryan Bekkerus  
Email: bwells@stblaw.com / rbekkerus@stblaw.com

Simpson Thacher & Bartlett LLP  
900 G Street NW  
Washington, D.C. 20001  
Attention: Daniel B. Honeycutt  
Email: daniel.honeycutt@stblaw.com

The Advisor: Starwood Credit Advisors, L.L.C.  
2340 Collins Avenue  
Miami Beach, FL 33139  
Attention: Office of the General Counsel  
Email: rinaldi@starwood.com

with a required copies to: Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
Attention: Benjamin Wells / Ryan Bekkerus  
Email: bwells@stblaw.com / rbekkerus@stblaw.com

Simpson Thacher & Bartlett LLP  
900 G Street NW  
Washington, D.C. 20001  
Attention: Daniel B. Honeycutt  
Email: daniel.honeycutt@stblaw.com

Any party may at any time give notice in writing to the other parties of a change in its address for the purposes of this Section 21(a).

(b) **Modification.** This Agreement shall not be changed, modified, terminated, or discharged, in whole or in part, except by an instrument in writing signed by the parties hereto, or their respective successors or assignees.

(c) **Severability.** The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

(d) **Governing Law; Exclusive Jurisdiction; Jury Trial.** The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the State of New York. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in Borough of Manhattan, New York for purposes of any suit, action or other proceeding arising from this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding

for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts. Each of the parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(e) **Entire Agreement.** This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

(f) **Indulgences, No Waivers.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

(g) **Gender; Number.** Words used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

(h) **Headings.** The titles and headings of Sections and Subsections contained in this Agreement are for convenience only, and they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

(i) **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law (e.g., [www.docusign.com](http://www.docusign.com))), or other transmission method. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

22. **Trademark.** The Advisor hereby grants the Trust a fully paid-up, royalty-free, non-exclusive, non-transferable license to use the name "Starwood Credit Real Estate Income Trust" and to use "Starwood," "SCRED," and "SCREDIT" as constituent parts of the names of each of their Affiliates and to use such names in connection with their materials (including those

used in connection with the Trust's website) (collectively, the "Starwood Names") solely in connection with the operation, maintenance and execution of business of the Trust. All rights in and to the Starwood Names not expressly granted herein to the Trust are retained and reserved by the Advisor (or its Affiliates). The Trust agrees not to contest the validity of the Advisor's (or its Affiliates') rights to the Starwood Names. At no time during the term of the Agreement or following the termination of the Agreement shall the Trust have any right, title or interest to the name or goodwill attached to the Starwood Names. Upon the termination of this Agreement at any time and for any reason, all of the Trust's right, title and interest in and to the use of the Starwood Names shall terminate and any goodwill thereto shall continue to vest in the Advisor (or its Affiliates). The Trust shall have sixty (60) days from the date of termination to cease all further use of the Starwood Names.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Advisory Agreement as of the date and year first above written.

Starwood Credit Real Estate Income Trust

By: /s/ John P. McCarthy

Name: John P. McCarthy

Title: Chairperson of the Board and Trustee

Starwood Credit Advisors, L.L.C.

By: /s/ Dennis G. Schuh

Name: Dennis G. Schuh

Title: Managing Director