

**BSR REAL ESTATE INVESTMENT TRUST**

**– and –**

**BSR TRUST, LLC**

**– and –**

**CERTAIN UNITHOLDERS THEREOF**

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**INVESTOR RIGHTS AGREEMENT**

**May 18, 2018**

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SCHEDULE A THE BAILEY/HUGHES HOLDERS  
SCHEDULE B REGISTRATION RIGHTS PROCEDURES

**THIS INVESTOR RIGHTS AGREEMENT** is made as of the 18th day of May, 2018.

**BETWEEN:**

**BSR REAL ESTATE INVESTMENT TRUST**, an unincorporated, open-ended real estate investment trust established under the laws of the Province of Ontario  
(the “**REIT**”)

-and-

**BSR TRUST, LLC**, a limited liability corporation established under the laws of Delaware

(“**BSR Operating LLC**”)

-and-

Certain unitholders of the REIT and BSR Operating LLC who are affiliates of John S. Bailey (the “**Bailey Holders**”) and who are affiliates of W. Daniel Hughes, Jr. (the “**Hughes Holders**”), as set forth on Schedule A hereto

(collectively, the “**Bailey/Hughes Holders**”)

**WHEREAS** the REIT is contemplating an underwritten initial public offering of trust units of the REIT (“**Units**”) pursuant to a long form prospectus filed with the securities regulatory authorities in each of the provinces and territories of Canada (the “**IPO**”);

**AND WHEREAS** in connection with the IPO, a subsidiary of the REIT will merge with and into BSR Operating LLC, with BSR Operating LLC continuing as the surviving entity;

**AND WHEREAS** in connection with the IPO, all of the issued and outstanding securities of BSR Operating LLC will be exchanged for new class B units of BSR Operating LLC (“**Class B Units**”);

**AND WHEREAS** the Class B Units are economically equivalent to Units and are redeemable by the holder thereof for cash or for Units (on a one-for-one basis subject to customary anti-dilution adjustments) as determined by BSR Operating LLC and as directed by the REIT in their sole discretion, provided that the Bailey/Hughes Holders may not exercise their right of redemption until 18 months following the closing of the IPO;

**AND WHEREAS** the parties desire to set forth their agreements regarding the Bailey/Hughes Holders’ rights as significant unitholders of the REIT and BSR Operating LLC.

**NOW THEREFORE**, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1 EFFECTIVENESS**

### **1.1 Effectiveness**

This Agreement shall become effective immediately upon closing of the IPO.

## **ARTICLE 2 DEFINITIONS AND INTERPRETATION**

### **2.1 Definitions**

In this Agreement, the following terms have the following meanings:

“**Affiliate**” means, as to any specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For this purpose the term “control” (including the terms “controlling”, “controlled by”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise;

“**Applicable Securities Laws**” means the securities legislation in each of the provinces and territories of Canada, including all rules, regulations, instruments, policies, notices, published policy statements and blanket orders thereunder or issued by one or more of the Canadian Securities Regulatory Authorities;

“**Bailey Holders**” has the meaning set out in the recitals to this Agreement;

“**Bailey Holders’ Designee**” has the meaning set out in Section 4.1(a) hereto;

“**Bailey/Hughes Holders**” has the meaning set out in the recitals to this Agreement;

“**Bailey/Hughes Information**” has the meaning set out in Section 4.3 hereto;

“**Bailey/Hughes Representative**” has the meaning set out in Section 8.1(a) hereto;

“**Bailey/Hughes Trustee**” means a Trustee that has been designated by the Bailey/Hughes Holders as a Nominee for election pursuant to Article 3 and that has been appointed to the Board;

“**Board**” means the board of trustees of the REIT;

“**Bought Deal**” means an underwritten public offering made on a “bought deal” basis in one or more Canadian province or territory pursuant to which an underwriter has committed to purchase securities of the REIT in a “bought deal” letter prior to the filing of a prospectus under Applicable Securities Laws;

“**BSR Operating LLC**” has the meaning set out in the recitals to this Agreement;

“**Business Day**” means a day on which banks are open for business in the City of Toronto, Ontario, other than a Saturday, Sunday or statutory holiday;

“**Canadian Securities Regulatory Authorities**” means, collectively, the securities regulatory authorities in each of the provinces and territories of Canada;

“**Class B Units**” has the meaning set out in the recitals to this Agreement;

“**Declaration of Trust**” means the amended and restated declaration of trust of the REIT, as it may be further amended or amended and restated from time to time;

“**Demand Notice**” has the meaning set out in Section 4.1;

“**Demand Registration**” has the meaning set out in Section 4.1;

“**Distribution**” means an offer or sale or other disposition or distribution of Units to the public by way of a Prospectus under Applicable Securities Laws;

“**Goodmans**” has the meaning set out in Section 10.16.

“**Hughes Holders**” has the meaning set out in the recitals to this Agreement;

“**Hughes Holders’ Designee**” has the meaning set out in Section 4.1(a) hereto;

“**Indemnified Party**” has the meaning set out in Section 4.6 hereto;

“**Indemnifying Party**” has the meaning set out in Section 4.6 hereto;

“**IPO**” has the meaning set out in the recitals to this Agreement;

“**Mitchell Williams**” has the meaning set out in Section 10.16;

“**Nominee**” means, with respect to a Trustee Election Meeting, a nominee proposed for election as a Trustee by the REIT and included as a nominee for election as a Trustee in the management information circular of the REIT relating to such Trustee Election Meeting;

“**Operating Agreement**” means the Fourth Amended and Restated Operating Agreement of BSR Operating LLC, as may be further amended or amended and restated from time to time;

“**Party**” or “**Parties**” means one or more of the parties to this Agreement;

“**Permitted Holder**” means any Affiliate or Subsidiary of any of the Bailey/Hughes Holders;

“**Permitted Transferee**” means, in each case to the extent such Person agrees in writing to be bound by the terms of this Agreement, any Permitted Holder to whom the rights of a Bailey/Hughes Holder are assigned pursuant to Section 10.4;

“**Person**” means an individual, partnership, limited partnership, corporation, company, unlimited liability company, trust, unincorporated organization, association, government, or any

department or agency thereof and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual;

“**Piggy-Back Registration**” has the meaning set out in Section 4.2(a) hereto;

“**Piggy-Back Units**” has the meaning set out in Section 4.2(a) hereto;

“**Pre-emptive Right Securities**” has the meaning set out in Section 5.1(a) hereto;

“**Prospectus**” means a “preliminary prospectus” and/or a “prospectus” as those terms are used in Applicable Securities Laws, including all amendments and supplements thereto, but excluding a base shelf prospectus or shelf prospectus supplement;

“**Registration Expenses**” means all out-of-pocket expenses incidental to the parties’ performance of, or compliance with, this Agreement in connection with a Distribution, including all registration and filing fees, all fees and expenses incurred complying with Applicable Securities Laws, all printing expenses, all internal expenses, all “road show” and marketing expenses, all listing fees, all registrars’ and transfer agents’ fees, the fees and disbursements of counsel for the REIT, BSR Operating LLC and any selling Bailey/Hughes Holders and of the REIT’s and BSR Operating LLC’s independent public accountants, including the expenses of any special audits and/or “comfort” letters required by or incidental to such performance and compliance, but excluding Selling Expenses;

“**REIT**” has the meaning set out in the recitals to this Agreement;

“**Selling Expenses**” means all underwriting commissions, discounts or brokers’ commissions incurred in connection with a Distribution of Units;

“**Subsidiary**” means, with respect to any Person, any corporation or other entity of which the majority of voting power of (a) the voting equity securities or (b) the outstanding equity interests (on fair market value basis) is owned, directly or indirectly, by such Person;

“**Tag-Along Offer**” has the meaning set out in Section 6.2 hereto;

“**Tag-Along Sale**” has the meaning set out in Section 6.2 hereto;

“**Trustee**” means a trustee on the Board;

“**Trustee Election Meeting**” means any meeting of Unitholders of the REIT at which Trustees are to be elected to the Board;

“**Unitholders**” means holders of Units of the REIT;

“**Units**” has the meaning set out in the recitals to this Agreement;

“**Valid Business Reason**” has the meaning set out in Section 4.1(b)(v) hereto;

## 2.2 Rules of Construction

Unless the context otherwise requires, in this Agreement:

- (a) “**Agreement**”, “**this Agreement**”, “**the Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions mean or refer to this Agreement, as amended, supplemented or amended and restated from time to time, including the Schedules attached hereto or to any amendment to this Agreement, and any agreement or instrument supplemental hereto, and unless otherwise expressly stated herein, the expressions “**Article**”, “**Section**” and “**Schedule**” followed by a number or a letter mean and refer to the specified Article, Section or Schedule of this Agreement;
- (b) the division of this Agreement into Articles, Sections, subsections and clauses and the insertion of headings and a table of contents are provided for convenience of reference only and shall not affect the construction or interpretation thereof and all references to designated Articles, Sections or other subdivisions or to Schedules, are references to Articles, Sections or other subdivisions or to Schedules of this Agreement;
- (c) words importing the singular number only shall include the plural and *vice versa*, and words importing the use of any gender shall include all genders;
- (d) the words “includes” and “including”, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (e) if any date on which any action is required to be taken under this Agreement is not a Business Day, such action will be required to be taken on the next succeeding Business Day;
- (f) reference to any statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time, including every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation which supplements or supersedes such statute or any such regulation; and
- (g) “**Dollar**” or “**\$**”, in respect of all amounts referred to in this Agreement and all references to currency in this Agreement, unless otherwise expressly stated, shall mean U.S. dollars.

## 2.3 Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the

parties, be made in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, applied on a consistent basis.

### **ARTICLE 3 BOARD NOMINATION RIGHTS**

#### **3.1 Size and Composition of the Initial Board**

The Board shall consist of seven Trustees. The initial Trustees shall be John S. Bailey, William A. Halter, Bryan H. Held, W. Daniel Hughes, Jr., Neil Labatte (Chair), Graham D. Senst and Elizabeth A. Wademan.

#### **3.2 Designation of Nominees**

Pursuant to the terms and subject to the conditions set forth in this Article 3 and applicable law, in respect of any Trustee Election Meeting, the REIT shall take all necessary action to nominate at least four (4) Trustees who are independent within the meaning of Applicable Securities Laws and who are Canadian residents. In addition, in respect of any Trustee Election Meeting:

- (a) as long as the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, 30% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units) at the time such nomination is delivered in accordance with Section 3.3, the Bailey/Hughes Holders, as a group, shall be entitled to nominate three (3) of the Nominees;
- (b) as long as the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, less than 30% but 20% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units) at the time such nomination is delivered in accordance with Section 3.3, the Bailey/Hughes Holders, as a group, shall be entitled to nominate two (2) of the Nominees;
- (c) as long as the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, less than 20% but 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units) at the time such nomination is delivered in accordance with Section 3.3, the Bailey/Hughes Holders, as a group, shall be entitled to nominate one (1) of the Nominees;
- (d) as long as John Bailey is the Chief Executive Officer of the REIT, he shall comprise one of the Nominees of the Bailey/Hughes Holders under this Section 3.2; and
- (e) as long as the Bailey/Hughes Holders have nomination rights under this Section 3.2, the Board shall be restricted from nominating more than seven (7) Nominees for election at any Trustee Election Meeting. For greater certainty, this restriction shall not affect the ability of a Unitholder to nominate Trustees in accordance with the terms of the Declaration of Trust or applicable law.

For greater certainty, upon the first instance whereby the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, less than 10% of the then-outstanding Units

(determined as if all Class B Units are redeemed for Units), the Bailey/Hughes Holders shall no longer be entitled to designate any Nominees.

### **3.3 Nomination Procedures**

- (a) As long as the Bailey/Hughes Holders have a right to designate one (1) or more Nominees under Section 3.2, the REIT shall notify the Bailey/Hughes Holders of any Trustee Election Meeting at least 90 calendar days prior to the date of such Trustee Election Meeting.
- (b) As long as the Bailey/Hughes Holders have a right to designate one (1) or more Nominees under Section 3.2, the Bailey/Hughes Holders may notify the REIT of the Bailey/Hughes Holders' designated Nominee(s) at any time following receipt of the notice provided by the REIT in accordance with Section 3.3(a), but no less than 60 calendar days prior to the date of any Trustee Election Meeting. If, prior to the Trustee Election Meeting, the Nominee of the Bailey/Hughes Holders designated under Section 3.2 is unable or unwilling to serve as a Trustee, then the Bailey/Hughes Holders will be entitled to designate a replacement provided that such designation is provided in advance of the issuance of any management information circular relating to any Trustee Election Meeting or any written consent submitted to Unitholders of the REIT for the purpose of electing Trustees and except where the Bailey/Hughes Holders would have otherwise ceased to be entitled to designate such Nominee pursuant to Section 3.2.
- (c) If the Bailey/Hughes Holders fail to deliver notice to the REIT of their designated Nominee(s) at least 60 calendar days prior to the date of any Trustee Election Meeting, the Bailey/Hughes Holders shall be deemed to have designated the same Nominee(s) previously designated by the Bailey/Hughes Holders that serve(s) as (a) Bailey/Hughes Trustee(s) at such time, subject to such Nominee(s) satisfying any conditions for re-appointment to the Board.
- (d) The REIT shall (i) nominate for election and include in any management information circular relating to any Trustee Election Meeting (or submit to Unitholders by written consent, if applicable) each person designated as a Nominee of the Bailey/Hughes Holders under Section 3.2, (ii) recommend (and reflect such recommendation in any management information circular relating to any Trustee Election Meeting or in any written consent submitted to Unitholders of the REIT for the purpose of electing Trustees) that the Unitholders vote to elect such Nominee(s) as a Trustee for a term of office expiring at the subsequent annual meeting of the Unitholders, (iii) use reasonable commercial efforts to solicit, obtain proxies in favour of and otherwise support the election of such Nominee(s) at the applicable Trustee Election Meeting, each in a manner no less favourable than the manner in which the REIT supports its own Nominees for election at the applicable Trustees Election Meeting, and (iv) take all other reasonable steps which it considers in its sole discretion may be necessary or appropriate to recognize, enforce and comply with the rights of the Bailey/Hughes Holders under this Article 3.

- (e) The selection of Nominees, other than the Nominees designated by the Bailey/Hughes Holders pursuant to Section 3.2 (including when any designation right of the Bailey/Hughes Holders has not been exercised pursuant thereto), shall rest with the Board, or the Compensation, Governance and Nominating Committee, if so determined by the Board.

### **3.4 Replacement Appointment**

If any Nominee of the Bailey/Hughes Holders resigns, is removed or is unable to serve for any reason prior to the expiration of his or her term as a Trustee, then the Bailey/Hughes Holders shall be entitled to designate a replacement Trustee to be appointed by the Board as soon as reasonably practicable, except where the Bailey/Hughes Holders would have otherwise ceased to be entitled to designate such Nominee pursuant to Section 3.2.

### **3.5 Qualifications**

Notwithstanding anything to the contrary in this Agreement, all Trustees (including Bailey/Hughes Trustees) shall, at all times while serving on the Board, meet the qualification requirements to serve as a Trustee under the Declaration of Trust, Applicable Securities Laws and the rules of any stock exchange on which the Units are listed.

### **3.6 Written Consent or Resolutions**

The provisions of this Article 3 applicable to Trustee Election Meetings shall apply *mutatis mutandis* to any written consent or resolutions of Unitholders relating to the election of Trustees.

### **3.7 Quorum**

As long as the Bailey/Hughes Holders, as a group, have the right to designate at least two (2) Nominees under Section 3.2, the quorum for any meeting of Trustees shall require, in addition to all applicable requirements of the Declaration of Trust, the presence (in person or by telephonic or electronic means) of at least one (1) Bailey/Hughes Trustee, and the REIT agrees not to transact any business at any meeting of Trustees except in compliance with this Section 3.7. If a quorum is not obtained at any meeting, the meeting shall be adjourned and may be reconvened (provided that only matters contained in the original meeting notice shall be transacted upon at such reconvened meeting) upon not less than five Business Days' notice to the Trustees, at which reconvened meeting the quorum shall be the Trustees present at such meeting provided that the quorum requirements under the Declaration of Trust have otherwise been satisfied.

## **ARTICLE 4 REGISTRATION RIGHTS**

### **4.1 Demand Registration Rights**

- (a) Subject to the limitations set out in Section 4.1(b), after the period ending 18 months following the date hereof, at any time and from time to time, the Bailey/Hughes Holders may, if at such time the Bailey/Hughes Holders seeking to exercise their rights under this Section 4.1, together with their Affiliates and joint actors, own, control or direct, directly or indirectly, in the aggregate, at least 10%

of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), require the REIT to use reasonable commercial efforts to file one or more Prospectuses and take such other steps as may be reasonably necessary to facilitate an offering in Canada of all or any portion of the Units held by the Bailey/Hughes Holders (the “**Demand Registration**”), provided that such Demand Registration may only be exercised by one designee on behalf of the Bailey Holders (the “**Bailey Holders’ Designee**”) and one designee on behalf of the Hughes Holders (the “**Hughes Holders’ Designee**”), respectively, by giving written notice (a “**Demand Notice**”) of such Demand Registration to the REIT. The Bailey Holders’ Designee and the Hughes Holders’ Designee will each be entitled to request not more than one (1) Demand Registration per calendar year. The REIT shall, subject to Applicable Securities Laws, use reasonable commercial efforts to file one or more Prospectuses under Applicable Securities Laws in order to permit the offer and sale or other disposition or Distribution in Canada of all or any portion of the Bailey Holders’ Units or the Hughes Holders’ Units, as the case may be, requested to be included in such Demand Registration by the Bailey Holders’ Designee or the Hughes Holder Designee, respectively. The REIT shall cooperate in a timely manner in connection with such disposition and the procedures in Schedule B shall apply.

- (b) Notwithstanding Section 4.1(a), the REIT shall not be obliged to effect a Demand Registration:
- (i) during the period starting 14 calendar days prior to and ending upon the expiry of any black-out periods applicable to the REIT, except as may be otherwise agreed by the REIT and the underwriters managing such offering;
  - (ii) with respect to any Demand Notice received from the Bailey Holders’ Designee that is delivered within 90 calendar days of a previous Demand Notice from the Bailey Holders’ Designee, or with respect to any Demand Notice received from the Hughes Holders’ Designee that is delivered within 90 calendar days of a previous Demand Notice from the Hughes Holders’ Designee;
  - (iii) that is a Demand Registration in respect of Units that would reasonably be expected to result in gross proceeds of less than \$15 million;
  - (iv) in a jurisdiction outside any of the provinces and territories of Canada; or
  - (v) in the event that the Trustees who are not Bailey/Hughes Trustees determine in their good faith judgement that there is a Valid Business Reason (as defined below) and that it is, therefore, in the best interests of the REIT to defer the filing of a Prospectus at such time, in which case the REIT’s obligations under this Section 4.1 will be deferred for a period of not more than 90 calendar days from the date of receipt of the request of the Bailey Holders’ Designee or the Hughes Holders’ Designee, as the case may be; provided that such right of deferral may not be exercised

more than once in any one (1) year period. For the purposes of this Section 4.1(b)(v), “**Valid Business Reason**” means a determination by a majority of the Trustees who are not Bailey/Hughes Trustees that the effect of the filing of a Prospectus:

- (A) would reasonably be expected to adversely affect a pending or proposed acquisition, merger, amalgamation, recapitalization, consolidation, reorganization, financing or similar transaction involving the REIT or its subsidiaries that is material to the REIT or any negotiations, discussions or pending proposals with respect thereto; or
  - (B) would require the disclosure of material non-public information that the REIT has a *bona fide* business purpose for preserving or not disclosing publicly in the good faith judgement of such Trustees.
- (c) Any request by the Bailey Holders’ Designee or the Hughes Holders’ Designee, as the case may be, pursuant to Section 4.1(a) hereof shall:
- (i) specify the number of Units that the Bailey Holders or Hughes Holders, as the case may be, intend to offer and sell;
  - (ii) express the intention of the Bailey Holders or the Hughes Holders, as the case may be, to offer or cause the offering of such Units;
  - (iii) describe the nature or methods of the proposed offer and sale thereof and the jurisdictions in which such offer shall be made;
  - (iv) contain the undertaking of the Bailey Holders or the Hughes Holders, as the case may be, to provide all such information as may be required in order to permit the REIT to comply with all Applicable Securities Laws; and
  - (v) specify whether such offer and sale shall be made by an underwritten public offering.
- (d) In the case of an underwritten public offering initiated pursuant to this Section 4.1, the Bailey/Hughes Holders exercising their Demand Registration Right will, subject to the REIT’s prior approval, which approval shall not be unreasonably withheld, have the right to select the lead underwriter or underwriters of such Demand Registration.
- (e) The REIT shall have the right to retain counsel of its choice to assist it in fulfilling its obligations under this Agreement. The REIT’s expenses in respect of a Demand Registration, whether or not completed, will be borne by the Bailey Holders or the Hughes Holders exercising the Demand Registration Right, as the case may be, except where such failure to complete the Demand Registration is due solely to any action taken or failure to act by the REIT, in which case the

REIT will bear the expenses of the Demand Registration. If both the REIT and Bailey/Hughes Holders are selling Units in an offering or Distribution, the expenses of the Demand Registration will be shared by the REIT and the applicable Bailey/Hughes Holders on a proportionate basis, according to the number of Units being distributed by each.

- (f) Subject to the following, the REIT may distribute Units in addition to the Units in connection with a Demand Registration. If a Demand Registration is an underwritten offering and the lead underwriter or underwriters advise the REIT in writing that in their good faith opinion the number of Units and, if permitted hereunder, other securities requested to be included in such offering, exceeds the number of Units and other securities, if any, that can be sold in an orderly manner in such offering within a price range acceptable to the Bailey Holders or the Hughes Holders, as the case may be, then the REIT shall include in such registration (i) first, the number of Units the Bailey Holders or the Hughes Holders, as the case may be, propose to sell and (ii) second, the number of other securities, if any, that may be accommodated in such registration based on the written advice of the lead underwriter or underwriters.

#### 4.2 Piggy-Back Registration Rights

- (a) If, after the period ending 18 months following the date hereof, the REIT proposes to qualify the issuance of any Units under Applicable Securities Laws or to make a Distribution, the REIT will promptly give the Bailey/Hughes Holders written notice of the proposed qualification or Distribution, provided that at such time, the Bailey/Hughes Holders seeking to exercise their rights under this Section 4.2, must, together with their Affiliates and joint actors, own, control or direct, directly or indirectly, in the aggregate, at least 10% of the then-outstanding Units (determined as if all Class B Units are redeemed for Units). Upon the written request of the Bailey/Hughes Holders seeking to exercise their rights under this Section 4.2 (and for greater certainty, no other Person) delivered within two (2) Business Days after notice by the REIT, the REIT will, subject to Applicable Securities Laws, use reasonable commercial efforts to, in conjunction with the proposed qualification or Distribution, cause to be included in such offering all of the Units that the Bailey/Hughes Holders have requested (the “**Piggy-Back Units**”) to be included in such offering (a “**Piggy-Back Registration**”) in accordance with the procedures set forth in Schedule B, unless the lead underwriter(s) for the REIT determine that including any such Piggy-Back Units in the Distribution would materially adversely affect (including, without limitation, the price range acceptable to the REIT) the REIT’s Distribution. If the lead underwriter(s) make such a determination, the REIT shall include in such registration (i) first, the number of securities the REIT proposes to sell and (ii) second, subject to the preceding sentence, the number of Piggy-Back Units, if any, that may be accommodated in such registration. The REIT’s expenses in respect of a Piggy-Back Registration will be borne by the REIT, provided that any underwriting commission on the sale of Piggy-Back Units and the costs of the Bailey/Hughes Holders’ counsel will be borne by the Bailey/Hughes Holders.

- (b) If the proposed Distribution is not completed within 180 calendar days of such request, the related notice of a Piggy-Back Registration delivered by the Bailey/Hughes Holders hereunder shall be deemed to be withdrawn and the notice contemplated by Section 4.2(a) shall be deemed to have not been given (in each case, unless otherwise agreed between the REIT and the Bailey/Hughes Holders).
- (c) If the REIT receives a Bought Deal letter relating to a Distribution, the REIT shall give the Bailey/Hughes Holders such notice as is practicable under the circumstances given the speed and urgency with which Bought Deals are currently carried out in common market practice of its rights to participate thereunder and the Bailey/Hughes Holders shall have at least 24 hours from the time the REIT notifies them (in accordance with Section 4.2(a)) of such Bought Deal to provide the Piggy-Back Registration notice referred to in Section 4.2(a).

### **4.3 Rights and Obligations of the Bailey/Hughes Holders**

The Bailey/Hughes Holders will furnish to the REIT such information and execute such documents regarding the Units and the intended method of disposition thereof as the REIT may reasonably require in order to effect the requested qualification for sale or other disposition. If an underwritten public offering is contemplated, the Bailey/Hughes Holders shall execute an underwriting agreement containing customary representations, warranties and indemnities (and contribution covenants) relating only to written information furnished by or on behalf of the Bailey/Hughes Holders expressly for use in connection with such Prospectus (the “**Bailey/Hughes Information**”) for the benefit of the REIT and the underwriters; provided that the obligation to indemnify shall be limited to the gross proceeds received by the Bailey/Hughes Holders from the sale of Units pursuant to such Distribution and will apply only to any misrepresentations or omissions of material facts in relation to the Bailey/Hughes Information. The Bailey/Hughes Holders shall have the right to withdraw from a proposed underwritten public offering at any time prior to the signing of any binding agreement in respect of the offering (including, for clarity, an underwriting agreement or Bought Deal letter), without incurring any obligation to the REIT or any proposed underwriter except, in the case of a Demand Registration, to pay the expenses of the proposed underwritten public offering in the event that the offering does not proceed. The Bailey/Hughes Holders shall notify the REIT immediately upon the occurrence of any event as a result of which any of the aforesaid Prospectuses includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they are made.

### **4.4 Indemnification by the REIT**

In connection with any Demand Registration or Piggy-Back Registration, the REIT will indemnify and hold harmless, to the fullest extent permitted by law, the Bailey/Hughes Holders and each of their respective directors, officers and employees from and against any loss (excluding loss of profits), liability, claim, damage and expense whatsoever, including any amounts paid in settlement of any investigation, order, litigation, proceeding or claim, joint or several, as incurred, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, or any amendment thereto, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a

material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or as incurred, arising out of or based upon any failure by the REIT to comply with Applicable Securities Laws; provided that the REIT will not be liable under this Section 4.4 for any settlement of any action effected without its written consent, which consent will not be unreasonably withheld or delayed; provided further that the indemnity provided for in this Section 4.4, in respect of the Bailey/Hughes Holders, will not apply to any loss, liability, claim, damage or expense to the extent arising out of or based upon any untrue statement or omission or alleged untrue statement or omission made in reliance upon information furnished to the REIT by the Bailey/Hughes Holders or the underwriters of the offering for use in the Prospectus. Any amounts advanced by the REIT to an Indemnified Party (as defined in Section 4.6) pursuant to this Section 4.4 as a result of such losses will be returned to the REIT if it is finally determined by a court in a judgment not subject to appeal or final review that such Indemnified Party was not entitled to indemnification by the REIT.

#### **4.5 Indemnification by the Bailey/Hughes Holders**

- (a) In connection with any Demand Registration or Piggy-Back Registration, the selling Bailey Holders will jointly and severally indemnify and hold harmless to the fullest extent permitted by law any selling Hughes Holders, the REIT and each of the REIT's trustees, officers and employees from and against any loss (excluding loss of profits), liability, claim, damage and expense whatsoever, including any amounts paid in settlement of any investigation, order, litigation, proceeding or claim, joint or several, as incurred, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, or any amendment thereto, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or as incurred, arising out of or based upon any failure by the selling Bailey Holders to comply with Applicable Securities Laws, but in any case only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Prospectus included solely in reliance upon information furnished to the REIT by the selling Bailey Holders for use in the Prospectus; provided that the selling Bailey Holders will not be liable under this Section 4.5 for any settlement of any action effected without their written consent, which consent will not be unreasonably withheld or delayed. Any amounts advanced by the selling Bailey Holders to an Indemnified Party pursuant to this Section 4.5 as a result of such losses will be returned to the respective selling Bailey Holders if it is finally determined by a court in a judgment not subject to appeal or final review that such Indemnified Party was not entitled to indemnification by the selling Bailey Holders.
- (b) In connection with any Demand Registration or Piggy-Back Registration, the selling Hughes Holders will jointly and severally indemnify and hold harmless to the fullest extent permitted by law any selling Bailey Holders, the REIT and each of the REIT's trustees, officers and employees from and against any loss (excluding loss of profits), liability, claim, damage and expense whatsoever,

including any amounts paid in settlement of any investigation, order, litigation, proceeding or claim, joint or several, as incurred, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Prospectus, or any amendment thereto, including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or as incurred, arising out of or based upon any failure by the selling Hughes Holders to comply with Applicable Securities Laws, but in any case only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Prospectus included solely in reliance upon information furnished to the REIT by the selling Hughes Holders for use in the Prospectus; provided that the selling Hughes Holders will not be liable under this Section 4.5 for any settlement of any action effected without their written consent, which consent will not be unreasonably withheld or delayed. Any amounts advanced by the selling Hughes Holders to an Indemnified Party pursuant to this Section 4.5 as a result of such losses will be returned to the respective selling Hughes Holders if it is finally determined by a court in a judgment not subject to appeal or final review that such Indemnified Party was not entitled to indemnification by the selling Hughes Holders.

#### **4.6 Defense of the Action by the Indemnifying Parties**

Each party entitled to indemnification under this Article 4 (the “**Indemnified Party**”) will give written notice to the party or parties required to provide indemnification (the “**Indemnifying Party**”) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, but the omission to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability which it may have to the Indemnified Party pursuant to the provisions of this Article 4 except to the extent of the damage or prejudice, if any, suffered by such delay in notification. The Indemnifying Party will assume the defence of such action, including the employment of counsel to be chosen by the Indemnifying Party to be reasonably satisfactory to the Indemnified Party, and payment of expenses. The Indemnified Party will have the right to employ its own counsel in any such case, but the legal fees and expenses of such counsel will be at the expense of the Indemnified Party, unless (a) the employment of such counsel is authorized in writing by the Indemnifying Party in connection with the defence of such action, (b) the Indemnifying Party fails to assume the defence of such claim within a reasonable time after receipt of notice of such claim (including not having employed counsel to take charge of the defence of such claim), or (c) the Indemnified Party reasonably concludes, based on the opinion of counsel, a conflict of interest may exist between the Indemnified Party and the Indemnifying Party with respect to such claims, including because there may be defences available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party (in each of cases (b) and (c), the Indemnifying Party will not have the right to direct the defence of such action on behalf of the Indemnified Party if the Indemnified Party notifies the Indemnifying Party that the Indemnified Party has elected to employ separate counsel), in any of which events the reasonable fees and expenses will be borne by the Indemnifying Party. No Indemnifying Party, in the defence of any such claim or litigation, will, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into

any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

#### **4.7 Contribution**

If the indemnification provided for in this Article 4 is unavailable to a party that would have been an Indemnified Party under this Article 4 in respect of any losses, liabilities, claims, damages and expenses referred to herein, then each party that would have been an Indemnifying Party hereunder will, in lieu of indemnifying such Indemnified Party, contribute to the amount paid or payable by such Indemnified Party as a result of such losses, liabilities, claims, damages and expenses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and such Indemnified Party on the other hand in connection with the statement or omission that resulted in such losses, liabilities, claims, damages and expenses, as well as any other relevant equitable considerations. The relative fault will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or such Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party under this Section 4.7 as a result of the losses, liabilities, claims, damages and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding. The REIT and the Bailey/Hughes Holders agree that it would not be just and equitable if contribution pursuant to this Section 4.7 were determined by *pro rata* allocation or by any other method of allocation which does not take into account the equitable considerations referred to above in this Section 4.7.

#### **4.8 Survival**

The indemnification provided for under this Article 4 will survive the expiry of this Agreement and will remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Party or any officer, director or controlling Person of such Indemnified Party.

#### **4.9 Conflict**

Notwithstanding the foregoing, to the extent that the provisions regarding indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions of the underwriting agreement shall prevail.

#### **4.10 Acting as Trustees**

- (a) The REIT hereby acknowledges and agrees that, with respect to this Article 4, the Bailey/Hughes Holders are contracting as agent for the other Indemnified Parties referred to in Section 4.4. In this regard, the Bailey/Hughes Holders will act as trustee for such Indemnified Parties of the covenants of the REIT under this Article 4 with respect to such Indemnified Parties and accepts these trusts and will hold and enforce those covenants on behalf of such Indemnified Parties.

- (b) The Bailey/Hughes Holders hereby acknowledge and agree that, with respect to this Article 4, the REIT is contracting on its own behalf and as agent for the other Indemnified Parties referred to in Section 4.5. In this regard, the REIT will act as trustee for such Indemnified Parties of the covenants of the Bailey/Hughes Holders under this Article 4 with respect to such Indemnified Parties and accepts these trusts and will hold and enforce those covenants on behalf of such Indemnified Parties.

#### **4.11 Short Form Eligibility**

After the REIT has become a “reporting issuer” under Applicable Securities Laws in any province or territory of Canada, the REIT agrees to use its reasonable best efforts to make available and maintain short form prospectus eligibility pursuant to National Instrument 44-101 – *Short Form Prospectus Distributions*. For greater certainty, references herein to a “prospectus” shall, as applicable, include a short form prospectus.

### **ARTICLE 5 PRE-EMPTIVE RIGHTS**

#### **5.1 Pre-Emptive Right**

- (a) Subject to Section 5.2, no equity securities or securities convertible into or exchangeable or redeemable for equity securities or an option or other right to acquire any such securities of the REIT, BSR Operating LLC or any of their respective Subsidiaries (collectively, “**Pre-emptive Right Securities**”) will be issued, distributed or offered by the REIT, BSR Operating LLC or any of their respective Subsidiaries and no option or other right for the acquisition of or subscription for any Pre-emptive Right Securities will be granted at any time after the date hereof other than to an Affiliate of the REIT, BSR Operating LLC or any of their respective Subsidiaries and except upon compliance with the following provisions.
- (b) Except as set forth in Section 5.1(c) below, no Person shall have any pre-emptive preferential participation or similar right or rights to subscribe for or acquire any Pre-emptive Right Securities.
- (c) Except for Excluded Issuances (as defined below), if the REIT, BSR Operating LLC or any of their respective Subsidiaries proposes to issue, distribute or offer any Pre-emptive Right Securities other than to an Affiliate thereof, the Bailey/Hughes Holders (provided that the Bailey/Hughes Holders (which, for greater certainty, includes any of their Permitted Transferees) at such time own, control or direct, directly or indirectly, in the aggregate, at least 10% of the then-outstanding Units (determined as if all Class B Units are redeemed for Units)) shall be entitled to participate in such issuance, distribution or offering on a *pro rata* basis (determined as if all Class B Units are redeemed for Units), but only to the extent necessary to maintain their then respective proportional interest in the

REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be.

- (d) At least five (5) Business Days prior to the closing of any such proposed issuance, distribution or offering, the REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, shall deliver to the Bailey/Hughes Holders a notice in writing offering the Bailey/Hughes Holders the opportunity to subscribe for a *pro rata* number of Pre-emptive Right Securities. The offer will contain a description of the terms and conditions relating to the Pre-emptive Right Securities and will, to the extent known, state the price at which the Pre-emptive Right Securities are to be issued, distributed or offered and the date on which the such issuance, distribution or offering of Pre-emptive Right Securities is to be completed and will state that the Bailey/Hughes Holders, if any wish to subscribe for Pre-emptive Right Securities, may do so by giving written notice of the exercise of the subscription right granted hereby to the REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, within five (5) Business Days after the date upon which the notice contemplated hereby is received by the Bailey/Hughes Holders (or deemed to be received pursuant to Section 10.9), provided that, in the case of the REIT, if the REIT receives a Bought Deal letter (which for the purposes of Sections 5.1(d) and (e) means a fully underwritten commitment from an underwriter or underwriters) relating to such distribution, the REIT shall give the Bailey/Hughes Holders such notice as is practicable under the circumstances given the speed and urgency with which Bought Deals are currently carried out in common market practice of its rights to participate thereunder and the Bailey/Hughes Holders shall have at least 24 hours from the time the REIT notifies them of such Bought Deal to provide the written notice to the REIT specified in this Section 5.1(d). The Bailey/Hughes Holders will be entitled to participate in the issuance of the Pre-emptive Right Securities at the most favourable price and on the most favourable terms as such Pre-emptive Right Securities are to be offered to any party, excluding Selling Expenses and other Registration Expenses.
- (e) If any of the Pre-emptive Right Securities of any issue are not subscribed for within the period of five (5) Business Days after they are offered to the Bailey/Hughes Holders (or in the event that the REIT receives a Bought Deal letter, the applicable subscription period contemplated by Section 5.1(d)), the REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, may offer such unsubscribed Pre-emptive Right Securities within the period of 90 calendar days after the expiration of such applicable period to any Person, but the price at which such Pre-emptive Right Securities may be issued will not be less than the subscription price offered to the Bailey/Hughes Holders and the terms of payment for such Pre-emptive Right Securities will not be more favourable to such Person than the terms of payment offered to the Bailey/Hughes Holders.
- (f) The right to subscribe for Pre-emptive Right Securities under this Section 5.1 and the legal or beneficial ownership of such right to subscribe may be assigned in

whole or in part to Permitted Holders, provided that written notice of any such assignment shall be sent promptly to the REIT and BSR Operating LLC.

- (g) If any Bailey/Hughes Holder exercises its right to subscribe for Pre-emptive Right Securities granted under Section 5.1(c), then the REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, shall, subject to the receipt and continued effectiveness of all required approvals (including the approval(s) of the Toronto Stock Exchange and any other stock exchange or over-the-counter market on which the Units or Pre-emptive Right Securities are then listed and/or traded and any required approvals under Applicable Securities Laws), which approvals the REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, shall use all reasonable commercial efforts to promptly obtain (including by applying for any necessary price protection confirmations and seeking unitholder approval (if required)), issue to such Bailey/Hughes Holder, against payment of the subscription price payable in respect thereof, that number of Pre-emptive Right Securities so subscribed for by such Bailey/Hughes Holder. The REIT, BSR Operating LLC or any of their respective Subsidiaries, as the case may be, shall use its reasonable commercial efforts to list the Pre-emptive Right Securities (or the underlying securities into which such Pre-emptive Right Securities are convertible or exchangeable) subscribed for by a Bailey/Hughes Holder pursuant to this Article 5 on each such securities exchange or quotation system on which such Pre-emptive Right Securities (or the underlying securities into which such Pre-emptive Right Securities are convertible or exchangeable) are already listed or quoted (if such Pre-emptive Right Securities are not already so listed or quoted).

## **5.2 Non-Applicability of Pre-Emptive Right**

The provisions of Section 5.1 will not apply to issuances of Pre-emptive Right Securities in any of the following circumstances (the “**Excluded Issuances**”):

- (a) to participants in a distribution reinvestment or similar plan, if any;
- (b) in respect of the exercise or issuance of options, warrants, rights or other securities issued under security based compensation arrangements of the REIT or BSR Operating LLC;
- (c) in respect of the exercise of the Class B Units redemption right for Units, as set out in the Operating Agreement of BSR Operating LLC;
- (d) to Unitholders in lieu of cash distributions;
- (e) as full or partial consideration for the purchase of real property by the REIT or its subsidiaries;
- (f) in respect of the exercise by a holder of a conversion, exchange or other similar right pursuant to the terms of a security in respect of which the Bailey/Hughes

Holders were granted the right to exercise their pre-emptive rights or in respect of which the pre-emptive rights did not apply;

- (g) pursuant to a Unitholders' rights plan of the REIT;
- (h) to the REIT, BSR Operating LLC or any Subsidiary or Affiliate thereof; and
- (i) pursuant to the IPO (including, for the avoidance of doubt, in connection with the exercise of any over-allotment option in connection therewith).

## **ARTICLE 6 DRAG-ALONG AND TAG-ALONG RIGHTS**

### **6.1 Drag-Along Rights**

- (a) In the event that the REIT proposes to enter into a transaction or series of related transactions involving (i) the transfer, directly or indirectly, of all or substantially all of its assets to an un-Affiliated third party, and the subsequent winding up, dissolution or termination of the REIT, or (ii) the exchange of Units for securities of an un-Affiliated third-party issuer or successor issuer, then the Bailey/Hughes Holders, if at such time the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, 20% or less of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), shall be obligated, on the written request of the REIT, to convert the Class B Units held by them into Units, as contemplated in the Operating Agreement of BSR Operating LLC.
- (b) In addition to Section 6.1(a), in the event of a take-over bid that is accepted by the holders of not less than 90% of the Units (determined as if all Class B Units are redeemed for Units) by a Person (including Persons acting jointly or in concert with such Person) and such Person has exercised its right to acquire Units held by "dissenting offerees" (including Units issuable upon the redemption of Class B Units) in accordance with the Declaration of Trust, then the Bailey/Hughes Holders and their respective Affiliates shall be obligated on the written request of the REIT to convert the Class B Units held by them into Units, as contemplated by the Operating Agreement of BSR Operating LLC, which conversion will be effected immediately prior to the acquisition by the offeror of the Units issuable upon redemption thereof.
- (c) To exercise the rights set forth in this Section 6.1, the REIT shall provide the Bailey/Hughes Holders a written notice containing (i) the name and address of the proposed transferee of assets of the REIT or Units, as the case may be, (ii) the proposed purchase price and terms of payment, and (iii) other material terms and conditions of the proposed transferee's offer. Upon receipt of such notice, the Bailey/Hughes Holders and their respective Affiliates shall be obligated to redeem the Class B Units held by them into Units, as contemplated by the Operating Agreement. Notwithstanding anything to the contrary in this Section 6.1, if the sale to a proposed transferee under this Section 6.1 is not consummated within 180 calendar days of delivery of the notice referred to above, then the

Bailey/Hughes Holders shall no longer be obligated to redeem their Class B Units pursuant to that particular transaction, but shall remain subject to the provisions of this Section 6.1.

## 6.2 Tag-Along Rights

- (a) In the event that the REIT proposes to enter into a transaction or series of related transactions involving the direct or indirect transfer of any of the class A units of BSR Operating LLC held, directly or indirectly, by the REIT or any permitted assignee (a “**Tag-Along Sale**”), if at such time the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, 10% or more of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), the REIT shall notify the Bailey/Hughes Holders, in writing, of the proposed transfer and its terms and conditions, and shall obtain from the proposed transferee a bona fide offer addressed to the Bailey/Hughes Holders to purchase a *pro rata* portion (determined as if all Class B Units are redeemed for Units) of the Class B Units held by them (the “**Tag-Along Offer**”). Within 15 calendar days of the date of the Bailey/Hughes Holders’ receipt of such notice and Tag-Along Offer, the Bailey/Hughes Holders shall notify the REIT if they elect to participate in such Tag-Along Offer. The Bailey/Hughes Holders shall have the right to require that, as a condition of such Tag-Along Sale, the proposed transferee purchase, at the sole option of the Bailey/Hughes Holders, a *pro rata* portion of the Class B Units held by them, on the same terms and subject to the same conditions as are applicable to the Tag-Along Sale. The Tag-Along Offer shall be irrevocable and shall be open for acceptance for 15 calendar days after the Bailey/Hughes Holder’s receipt of the Tag-Along Offer.

## ARTICLE 7 PROTECTIVE PROVISIONS

### 7.1 Transactions Requiring Consent of the Bailey/Hughes Holders

Notwithstanding anything to the contrary set forth in this Agreement, the Declaration of Trust or the Operating Agreement, as long as the Bailey/Hughes Holders own, control or direct, directly or indirectly, in the aggregate, at least 33% of the then-outstanding Units (determined as if all Class B Units are redeemed for Units), neither the REIT nor BSR Operating LLC may, without the prior written consent of the Bailey/Hughes Holders, take any of the following actions:

- (a) enter into merger, consolidation, or business combination, not in the ordinary course of business;
- (b) sell, assign, convey or otherwise dispose of all or substantially all of BSR Operating LLC’s assets;
- (c) adopt any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization or recapitalization or commencement of any case, proceeding or action seeking relief under any existing or future laws relating to bankruptcy,

insolvency, conservatorship or relief of debtors or the REIT and/or BSR Operating LLC;

- (d) add, change or remove any restriction on the business or businesses that BSR Operating LLC may carry on;
- (e) effect any subdivision, re-division, consolidation, exchange, reclassification, reorganization, recapitalization, split, combination or similar change in any units or other securities of BSR Operating LLC;
- (f) change the size of the Board of the REIT; or
- (g) agree or commit to any of the preceding actions.

## **ARTICLE 8 BAILEY/HUGHES REPRESENTATIVE**

### **8.1 Bailey/Hughes Representative**

- (a) The Bailey/Hughes Holders shall have a person serve as their collective representative (the “**Bailey/Hughes Representative**”) who shall in their name and on their behalf (i) with respect to all matters relating to this Agreement, including exercising any rights of the Bailey/Hughes Holders, as a group, under this Agreement, executing and delivering any amendment, restatement, supplement or modification to or of this Agreement and any waiver of any claim or right arising out of this Agreement; and (ii) in general, to do all other things and to perform all other acts, including executing and delivering all agreements, certificates, receipts, instructions, and other instruments, contemplated by, or deemed advisable in connection with, this Agreement.
- (b) The Bailey/Hughes Holders grant the Bailey/Hughes Representative a power of attorney constituting the Bailey/Hughes Representative with full power of substitution, as its true and lawful attorney to act on behalf of the Bailey/Hughes Holders, as a group, with full power and authority in its name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, any instrument, deed, resolution, agreement or document in connection with carrying out the activities of the REIT contemplated by this Agreement.
- (c) The Parties will be entitled to rely upon any document or other instrument delivered by the Bailey/Hughes Representative as being authorized or directed to be delivered by the Bailey/Hughes Holders, and the Parties (other than the Bailey/Hughes Holders) will not be liable to any Bailey/Hughes Holder for any action taken or omitted to be taken by a Party (other than the Bailey/Hughes Holders) based on such reliance.
- (d) The Bailey/Hughes Representative shall initially be John S. Bailey; provided, however, that the Bailey/Hughes Holders may remove and replace the Bailey/Hughes Representative from time to time by delivering a written notice to

the REIT signed by the Bailey/Hughes Holders, which, for greater certainty, includes their Permitted Transferees, owning a majority of the total Units owned by the Bailey/Hughes Holders (determined as if all Class B Units are redeemed for Units) at the time of such notice.

- (e) Each Bailey/Hughes Holder who becomes a party to this Agreement after the date hereof agrees to the terms and conditions of this Section 8.1 (including the appointment of the Bailey/Hughes Representative as contemplated herein).

## **ARTICLE 9 AMENDMENTS**

### **9.1 Amendments and Modifications**

This Agreement may not be amended or modified except by an agreement in writing executed by the Parties.

### **9.2 Changes in Capital of the REIT**

At all times after the occurrence of any event which results in a change to the Units or Class B Units, this Agreement will forthwith be amended and modified as necessary in order that it will apply with full force and effect, with appropriate changes, to all new securities into which the Units or Class B Units are so changed, and the Parties will execute and deliver a supplemental agreement giving effect to and evidencing such necessary amendments and modifications.

## **ARTICLE 10 GENERAL**

### **10.1 Application of this Agreement**

The terms of this Agreement shall apply *mutatis mutandis* to any units or other securities:

- (a) resulting from the conversion, reclassification, redesignation, subdivision, consolidation or other change to any of the Units or Class B Units held by the Bailey/Hughes Holders; or
- (b) of the REIT or BSR Operating LLC or any successor entity that may be received by the Bailey/Hughes Holders on a merger, amalgamation, arrangement or other reorganization of or including the REIT or BSR Operating LLC;

and, prior to any action referred to in (a) or (b) above being taken, the Parties shall give due consideration to any changes that may be required to this Agreement in order to give effect to the intent of this Section 10.1.

### **10.2 Termination**

This Agreement will automatically terminate upon the earliest to occur of the following events:

- (a) the first date on which the Bailey/Hughes Holders (which, for greater certainty, includes their Permitted Transferees) do not own, control or direct, directly or indirectly, in the aggregate, at least 10% of the then-outstanding Units of the REIT (determined as if all Class B Units are redeemed for Units);
- (b) the Agreement is terminated by written agreement of the Parties; and
- (c) the dissolution or liquidation of the REIT or BSR Operating LLC.

### **10.3 Assignment**

- (a) This Agreement is not assignable by the Bailey/Hughes Holders without the REIT's and BSR Operating LLC's prior written consent other than to one or more Permitted Transferees and in compliance with Section 10.4.
- (b) This Agreement is not assignable by the REIT or BSR Operating LLC, except with the prior written consent of the Bailey/Hughes Holders.

### **10.4 Permitted Transferees**

The rights of the Bailey/Hughes Holders hereunder may be assigned (but only with all related obligations as set forth below) in connection with a transfer of Units or Class B Units to a Permitted Transferee of the Bailey/Hughes Holder. Without prejudice to any other or similar conditions imposed hereunder with respect to any such transfer, no assignment permitted under the terms of this Section 10.4 will be effective unless the Permitted Transferee to which the assignment is being made, if not already a Bailey/Hughes Holder, has delivered to the REIT and BSR Operating LLC a written acknowledgment and agreement in form and substance reasonably satisfactory to the REIT and BSR Operating LLC that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 10.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 10.4.

### **10.5 Co-operation**

In respect of all Distributions that occur during the term of this Agreement, the REIT, BSR Operating LLC, the Bailey/Hughes Holders and each of their respective representatives shall use reasonable commercial efforts to comply with all Applicable Securities Laws and stock exchange requirements, including the execution and filing of all necessary documents and prospectus certificates and the taking of all such other steps as may be necessary under Applicable Securities Laws and stock exchange requirements to qualify the Distribution.

### **10.6 Further Assurances**

Each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

## 10.7 Time

Time is of the essence of this Agreement.

## 10.8 Enurement

This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

## 10.9 Public Filing

The Parties hereby consent to the public filing of this Agreement if any Party is required to do so by law or by applicable regulations or policies of any regulatory agency of competent jurisdiction or any stock exchange.

## 10.10 Notices to Parties

Any notice, approval, consent, information, payment, request or other communication (in this Section, a “**Notice**”) to be given under or in connection with this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

(a) if to the REIT:

BSR Real Estate Investment Trust  
c/o BSR Trust, LLC  
1400 W. Markham  
Suite 202  
Little Rock, Arkansas 72201

Attention: Chief Executive Officer  
Chair of the Board

E-mail: john.bailey@bsrtrust.com  
neil.labatte@gdcap-inc.com

with a copy (which shall not constitute notice) to:

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto, ON M5K 1S2

Attention: Stephen Pincus  
Brad Ross

Email: spincus@goodmans.ca  
bross@goodmans.ca

and a copy (which shall not constitute notice) to:

Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
425 West Capitol Avenue  
Suite 1800  
Little Rock, Arkansas 72201

Attention: Harry Hamlin  
Nicole Lovell  
Jennifer Pierce

Email: hhamlin@mwlaw.com  
nlovell@mwlaw.com  
jpierce@mwlaw.com

(b) if to BSR Operating LLC:

BSR Trust, LLC  
1400 W. Markham  
Suite 202  
Little Rock, Arkansas 72201

Attention: Chief Executive Officer  
Chair of the Board

E-mail: john.bailey@bsrtrust.com

with a copy (which shall not constitute notice) to:

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto, ON M5K 1S2

Attention: Stephen Pincus  
Brad Ross

Email: spincus@goodmans.ca  
bross@goodmans.ca

and a copy (which shall not constitute notice) to:

Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
425 West Capitol Avenue  
Suite 1800  
Little Rock, Arkansas 72201

Attention: Harry Hamlin  
Nicole Lovell  
Jennifer Pierce

Email: hhamlin@mwlaw.com  
nlovell@mwlaw.com  
jpierce@mwlaw.com

(c) if to the Bailey/Hughes Holders:

BSR Trust, LLC  
1400 W. Markham  
Suite 202  
Little Rock, Arkansas 72201

Attention: John S. Bailey  
E-mail: john.bailey@bsrtrust.com

with a copy (which shall not constitute notice) to:

Goodmans LLP  
333 Bay Street, Suite 3400  
Toronto, ON M5K 1S2

Attention: Stephen Pincus  
Brad Ross

Email: spincus@goodmans.ca  
bross@goodmans.ca

and a copy (which shall not constitute notice) to:

Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
425 West Capitol Avenue  
Suite 1800  
Little Rock, Arkansas 72201

Attention: Harry Hamlin  
Nicole Lovell  
Jennifer Pierce

Email: hhamlin@mwlaw.com  
nlovell@mwlaw.com  
jpierce@mwlaw.com

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two (2) Business Days after being sent by overnight courier. Each of the Parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other Parties hereto.

An accidental omission in the giving of, or failure to give, a Notice required by this Agreement will not invalidate or affect in any way the legality of any meeting or other proceeding in respect of which such Notice was or was intended to be given.

#### **10.11 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral agreements between such Parties, in connection with the subject matter hereof. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, relating to the subject matter hereof except as specifically set forth in this Agreement.

#### **10.12 Waiver**

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

#### **10.13 Consent**

Where a provision of this Agreement requires an approval or consent by a Party and written notification of such approval or consent is not delivered within the applicable time in accordance with this Agreement, then the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

#### **10.14 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. Each Party to this Agreement agrees that any action or proceeding arising out of or relating to this Agreement may be instituted in the courts of the Province of Ontario, waives any objection which it may have now or hereafter to the venue of any such action or proceeding, irrevocably submits to the non-exclusive jurisdiction of such courts in any such action or proceeding, agrees to be bound by any judgment of such courts and agrees not to seek, and hereby waives, any review of the merits of any such judgment by the courts of any other jurisdiction.

#### **10.15 Severability**

If any term or other provision of this Agreement shall be determined by a court, administrative agency or arbitrator in any jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not render the entire Agreement invalid and shall not affect the validity, legality or enforceability of such term or other provision in any other jurisdiction. Rather, this Agreement shall be construed as if not containing the particular invalid, illegal or unenforceable provision, and all other provisions of this Agreement shall nevertheless remain in

full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent permitted under applicable Law.

#### **10.16 Counsel Acting for More Than One Party**

The REIT, BSR Operating LLC and the Bailey/Hughes Holders have been advised and acknowledge to each other and to Goodmans LLP (“**Goodmans**”) and Mitchell, Williams, Selig, Gates & Woodyard, PLLC (“**Mitchell Williams**”) that (a) Goodmans and Mitchell Williams are acting in connection with this Agreement (and all other agreements among the parties hereto being entered into as part of the IPO) as counsel to and jointly representing the REIT, BSR Operating LLC and, in certain respects, the Bailey/Hughes Holders, (b) in this role, information disclosed to Goodmans and Mitchell Williams by one Party hereto will not be kept confidential and will be disclosed to the other and each of the REIT, BSR Operating LLC and the Bailey/Hughes Holders consent to Goodmans and Mitchell Williams so acting and (c) should a conflict arise among any of the REIT, BSR Operating LLC and the Bailey/Hughes Holders, Goodmans and Mitchell Williams may not be able to continue to act for any of such Parties hereto.

#### **10.17 Liability Limitations**

Each of the Parties acknowledge the obligations of the REIT under this Agreement and that such obligations will not be personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property (including, without limitation, any property consisting of or arising from a distribution of any kind or nature by the REIT) of any of the Trustees, Unitholders, officers, employees, agents or annuitants or beneficiaries of any plan of which a Unitholder acts as Trustee or carrier, of the REIT, but the property of the REIT or a specific portion thereof only shall be bound.

#### **10.18 Counterparts**

This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed signature page to this Agreement by a Party by facsimile or electronic transmission shall be as effective as delivery of a manually executed copy of this Agreement by such Party.

*[Remainder of page left intentionally blank]*

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BSR REAL ESTATE INVESTMENT TRUST**

Per: “John S. Bailey”  
Name: John S. Bailey  
Title: Chief Executive Officer

**BSR TRUST, LLC**

Per: “John S. Bailey”  
Name: John S. Bailey  
Title: Chief Executive Officer

*[Additional Signatures to Follow]*

**[BAILEY/HUGHES HOLDERS SIGNATURES REDACTED (ORIGINAL SIGNED) -  
CONFIDENTIAL INFORMATION]**

**SCHEDULE A**  
**THE BAILEY/HUGHES HOLDERS**

[REDACTED - CONFIDENTIAL INFORMATION]

**SCHEDULE B**  
**REGISTRATION RIGHTS PROCEDURES**

**1. Registration Procedures**

Whenever the REIT is under an obligation pursuant to the provisions of this Agreement to effect the qualification of Units in connection with a Distribution of any Units by the Bailey/Hughes Holders, the REIT shall do the following:

- (a) as expeditiously as practicable (and in any event not more than 30 calendar days after receipt of a Demand Notice) prepare and file with the appropriate Canadian Securities Regulatory Authorities a Prospectus and any other documents reasonably necessary, including amendments and supplements in respect of those documents, to permit the sale or other disposition and, in so doing, act as expeditiously as is practicable and in good faith to settle all deficiencies and obtain those receipts and clearances and provide those undertakings and commitments as may be reasonably required by any Canadian Securities Regulatory Authority, all as may be necessary to permit the offer and sale or Distribution in compliance with all Applicable Securities Laws;
- (b) furnish to the selling Bailey/Hughes Holders such number of copies of the Prospectus (including any preliminary prospectus), any documents incorporated by reference in such Prospectus and such other documents as such Bailey/Hughes Holders may reasonably request in order to facilitate the offer and sale or Distribution of the Units;
- (c) if an underwritten public offering is contemplated, execute and perform the obligations under an underwriting agreement in a form satisfactory to the selling Bailey/Hughes Holders, acting reasonably, containing customary representations, warranties and indemnities for the benefit of such Bailey/Hughes Holders and the underwriter(s) (such indemnities to include, without limitation, an indemnity of the selling Bailey/Hughes Holders and the underwriter(s) for any claims or damages that may arise due to the Prospectus containing a misrepresentation (as defined in the Applicable Securities Laws));
- (d) in the case of a Demand Registration, subject to Applicable Securities Laws, keep the Prospectus effective until the selling Bailey/Hughes Holders have completed the sale or disposition described in the Prospectus, but for no longer than 60 calendar days, provided that the selling Bailey/Hughes Holders use reasonable commercial efforts to complete the sale or disposition as soon as reasonably practicable;
- (e) use its reasonable commercial efforts to furnish to the underwriter(s) involved in the Distribution all documents as they may reasonably request;
- (f) notify the Bailey/Hughes Holders promptly, when a Prospectus is required to be delivered under the Applicable Securities Laws in respect of the Units, of the happening of any event as a result of which the aforesaid Prospectus includes an

untrue statement of a material fact, or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or if it is necessary to amend or supplement such Prospectus to comply with Applicable Securities Laws, and to promptly prepare and file with the Canadian Securities Regulatory Authorities or similar governmental authorities a supplement to or amendment of such document as may be reasonably necessary to correct such untrue statement or eliminate such omission so that such document, as amended or supplemented, will comply with law, and furnish to the Bailey/Hughes Holders as many copies of such supplement or amendment as the Bailey/Hughes Holders may reasonably request;

- (g) use its reasonable commercial efforts to list such Units on each securities exchange or quotation system on which Units are then listed or quoted, if such Units are not already so listed or quoted;
- (h) use its reasonable commercial efforts to prevent the issuance of any cease trade order suspending the use of any Prospectus, and if any such order is issued, to promptly obtain the withdrawal of any such order;
- (i) subject to entering into confidentiality agreements satisfactory to the REIT, acting reasonably, in connection with the preparation and filing of a Prospectus, the REIT will give the Bailey/Hughes Holders and its counsel, accountants and other agents and the underwriter and/or its advisors participating in any Distribution pursuant to such Prospectus the opportunity to participate in the preparation of the Prospectus, and each amendment thereof or supplement thereto, and will give each of them such access to its financial records, pertinent corporate documents, material contracts and properties of the REIT and its Subsidiaries as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Trustees, directors, officers and employees of the REIT and its Subsidiaries to supply all information reasonably requested by the Bailey/Hughes Holders and such underwriters or their respective counsel, in order to conduct a reasonable investigation; and
- (j) take such other actions and execute and deliver such other documents as may be reasonably necessary to give full effect to the rights of the Bailey/Hughes Holders under this Agreement.