

**INVEST OPERATIONS TRUST**

**SECOND AMENDED AND RESTATED DECLARATION OF TRUST**

**DATED AS OF [JUNE 30, 2012]**

**DAVIES WARD PHILLIPS & VINEBERG LLP**

## INVEST OPERATIONS TRUST

### SECOND AMENDED AND RESTATED DECLARATION OF TRUST

THIS DECLARATION OF TRUST made in Toronto, Ontario as of the 5<sup>th</sup> day of May, 2010, as amended and/or restated on the 31<sup>st</sup> day of December, 2010, the 31<sup>st</sup> day of March, 2011, the 4<sup>th</sup> day of May, 2011, and the **[30<sup>th</sup> day of June, 2012]**.

WHEREAS the Trust was established pursuant to a Declaration of Trust dated as of May 5, 2010 (the "Original Declaration of Trust");

AND WHEREAS the Trust was on that date settled with \$30.00 in lawful money of Canada (the "Initial Contribution") which the Trustees thereupon invested;

AND WHEREAS the beneficiaries of the Trust are the Unitholders;

AND WHEREAS the Original Declaration of Trust was amended and/or restated in accordance with its provisions on December 31, 2010, March 31, 2011 and May 4, 2011 (as amended prior to the date hereof, the "Amended Declaration of Trust");

AND WHEREAS in order to implement the 2012 Reorganization and to accommodate the fact that following the 2012 Reorganization, the Units of the Trust will not be publicly traded, it is desirable to further amend and restate the Amended and Restated Declaration of Trust;

AND WHEREAS at the sole Voting Unitholder passed a written resolution dated December 31, 2011, in lieu of passing such resolution at a meeting of Unitholders, authorizing and approving the 2012 Reorganization and each of the transactions contemplated thereby, and such amendments to the Amended Declaration of Trust as, in the opinion of the Trustees, are necessary or desirable to give effect to the 2012 Reorganization;

AND WHEREAS at a meeting of the Non-Voting Unitholders of the Trust on February 23, 2012, the Non-Voting Unitholders duly passed a special resolution authorizing and approving the 2012 Reorganization and each of the transactions contemplated thereby, and such amendments to the Amended Declaration of Trust as, in the opinion of the Trustees, are necessary or desirable to give effect to the 2012 Reorganization;

AND WHEREAS, for greater certainty, the restatement of this Declaration of Trust shall not be deemed to constitute a termination of the Trust or a resettlement of this Declaration of Trust or the Trust created hereby;

NOW THEREFORE, the undersigned Trustees hereby confirm and declare that the Trustees hold in trust as trustees the said Initial Contribution and any and all other property, real, personal or otherwise, tangible or intangible, which has been to the date hereof or is hereafter transferred, conveyed or paid to or otherwise received by them as such Trustees or to which the Trust is otherwise entitled and all rents, income, profits and gains therefrom for the benefit of the Unitholders hereunder in accordance with and subject to the express provisions of this Declaration of Trust, to wit:

**ARTICLE 1**  
**THE TRUST AND DEFINITIONS**

**1.1**            **Definitions.**

For the purposes of this Declaration of Trust (including the recitals hereto), unless the context otherwise requires, the following terms shall have the respective meanings set out below:

**"2012 Reorganization"** means the reorganization of the Trust and the REIT pursuant to a plan of arrangement under the *Canada Business Corporations Act* and the *Trustee Act*, commencing on June 30, 2012 or such other date determined by the Trustees;

**"affiliate"** means, with respect to any Person (other than an individual), any other Person (other than an individual) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such other Person;

**"annuitant"** means the annuitant of a registered retirement savings plan or a registered retirement income fund, each as defined in the Tax Act;

**"associate"** has the meaning given thereto in the *Securities Act* (Ontario);

**"Declaration of Trust"** means this declaration of trust as amended, supplemented or amended and restated from time to time;

**"Exempt Plans"** means, collectively, trusts governed by registered retirement savings plans, registered retirement income plans, registered education savings plans, registered disability savings plans, tax-free savings accounts and deferred profit sharing plans, each as defined in the Tax Act;

**"Non-Voting Unit"** means a non-voting unit of interest in the Trust and includes a fraction of a Unit;

**"Non-Voting Unitholder"** means a Person whose name appears on the Register as a holder of one or more Non-Voting Units;

**"Person"** includes an individual, body corporate, partnership, limited partnership, joint venture, trust or unincorporated organization, the crown or any agency or instrumentality thereof, or any other entity recognized by law;

**"REIT"** means InnVest Real Estate Investment Trust, an open-ended unit trust established under the laws of the Province of Ontario;

**"REIT Unit"** means a unit of interest the REIT and includes a fraction of a REIT Unit;

**"Subsidiary"** means, with respect to any Person (other than an individual), a Person (other than an individual) controlled, directly or indirectly, by such Person;

"**Tax Act**" means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time;

"**Trust**" means the trust constituted hereunder but, for greater certainty, unless otherwise expressly provided, does not include any Subsidiaries or affiliates thereof;

"**Trustees**" means, as of any particular time, all of the trustees holding office under and in accordance with this Declaration of Trust, in their capacity as trustees hereunder; provided that following the 2012 Reorganization, "Trustees" means IOT Trustee Corp., a corporation incorporated under the laws of Canada and any additional or successor trustees;

"**Unit**" means a Voting Unit and/or a Non-Voting Unit, as the context requires;

"**Unitholder**" means a Person whose name appears on the register maintained by the Trust as a holder of one or more Units;

"**Voting Unit**" means a voting unit of interest in the Trust and includes a fraction of a Voting Unit; and

"**Voting Unitholder**" means a Person whose name appears on the Register as a holder of one or more Voting Units.

## 1.2 **Construction.**

In this Declaration of Trust, unless otherwise expressly stated or the context otherwise requires:

- (a) references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Declaration of Trust and not to any particular Article or Section of this Declaration of Trust;
- (b) references to an "Article" or "Section" are references to an Article or Section of this Declaration of Trust;
- (c) words importing the singular shall include the plural and *vice versa*, and words importing gender shall include the masculine, feminine and neuter genders;
- (d) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;
- (e) the words "includes" and "including", when following any general term or statement, is 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;
- (f) all dollar amounts refer to Canadian dollars unless otherwise specified; and

- (g) for greater certainty, unless otherwise expressly provided herein, where any reference is made in this Declaration of Trust or in any resolution of Unitholders or Trustees to the Trust as a party to any agreement or as an owner of property, or to an act to be performed by or a covenant given by the Trust, such reference shall be construed and applied for all purposes as if it referred to the Trustees, in their capacity as trustees of the Trust under this Declaration of Trust.

**1.3 Name.**

The name of the Trust is InnVest Operations Trust in its English form and Fonds d'opérations InnVest in its French form. As far as practicable and except as otherwise provided in this Declaration of Trust, the Trustees shall conduct the affairs of the Trust, hold property, execute all documents and take all legal proceedings under that name, in either its English or French form.

**1.4 Use of Name.**

Should the Trustees determine that the use of the name InnVest Operations Trust in its English form or in its French form is not practicable, legal or convenient, they may use such other designation, or they may adopt such other name for the Trust, as they deem appropriate, and the Trust may hold property and conduct its activities under such other designation or name.

**1.5 Office.**

The principal office and centre of administration of the Trust shall be at 5090 Explorer Drive, 7th Floor, Mississauga, Ontario, L4W 4T9 or at such other address in Canada as may be determined by the Trustees in their discretion. The Trust may have such other offices or places for the conduct of its affairs as the Trustees or management of the Trust or any of its Subsidiaries may from time to time determine to be necessary or desirable.

**1.6 Nature of the Trust.**

The Trust is an unincorporated open-ended investment trust. The Trust shall be governed by the general law of trusts, except as such general law of trusts has been or is from time to time modified, altered or abridged for the Trust by:

- (a) applicable laws and regulations or other requirements imposed by applicable securities or other regulatory authorities; and
- (b) the terms, conditions and trusts set forth in this Declaration of Trust.

The beneficial interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate *pro rata* in distributions when and as declared by the Trustees and distributions upon the termination of the Trust. The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustees or the Unitholders or any of them for any purpose be, or be deemed to be treated in any

way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the property of the Trust shall be solely that of beneficiaries in accordance with this Declaration of Trust.

## **ARTICLE 2**

### **TRUSTEES AND OFFICERS**

#### **2.1           Number.**

There shall be no fewer than one and no more than three Trustees. As of the date hereof, there shall be three Trustees. The number of Trustees may be changed by the Trustees in their sole discretion. A vacancy occurring among the Trustees may be filled by resolution of the remaining Trustees, if any. If there are no remaining Trustees, a new Trustee shall be elected in accordance with Section 2.4.

#### **2.2           Term of Office.**

Subject to Section 2.6, Trustees shall hold office for an indefinite term; provided that Trustees appointed by the Trustees to fill a vacancy in accordance with Section 2.1 shall be appointed for a term expiring at the conclusion of the next meeting of Unitholders (which shall be held within one year of such appointment) or until their successors are elected or appointed and shall be eligible for election or re-election.

#### **2.3           Qualifications of Trustees.**

Prior to the 2012 Reorganization, a Trustee shall be an individual at least 18 years of age, who is not an individual of unsound mind who has been found to be of unsound mind by a court in Canada or elsewhere, and who does not have the status of bankrupt. Following the 2012 Reorganization, a Trustee may also be a corporation formed for the purpose of acting as trustee hereunder or a professional trust company qualified to act as a trustee of an unincorporated open-ended investment trust. Trustees are not required to hold Units. A majority of the Trustees must be residents of Canada for the purposes of the Tax Act. If at any time a majority of Trustees are not resident Canadians because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstance of any Trustee who was a resident Canadian Trustee, the remaining Trustees, so long as they constitute a quorum, shall appoint a sufficient number of resident Canadian Trustees to comply with these requirements.

#### **2.4           Election of Trustees.**

The election of the Trustees shall be by the vote of the Voting Unitholders at a meeting duly called for that purpose. An individual, corporation or trust company elected or appointed to hold office as a Trustee (other than an individual, corporation or trust company that is serving as a Trustee immediately prior to such appointment or election) is not a Trustee and is deemed not to have been elected or appointed to hold office as a Trustee unless:

- (a) in the case of an individual, he, or, in the case of a corporation or trust company, an authorized representative of such corporation or trust company (each a

"Representative"), was present at the meeting when the election or appointment took place and he or the Representative, as the case may be, did not refuse to hold office as a Trustee; or

- (b) he or the Representative, as the case may be, was not present at the meeting when the election or appointment took place and (i) he or the Representative, as the case may be, consented in writing to hold office as a Trustee and be bound by the terms of this Declaration of Trust before, or within ten days after, his or its election or appointment; or (ii) he or the Representative, as the case may be, has acted as a Trustee pursuant to his or its election or appointment.

## **2.5 Resignations and Removal of Trustees.**

A Trustee may resign at any time by an instrument in writing signed by him or it and delivered or mailed to the President or, if there is no President, the Chair. Such resignation shall take effect on the date such notice is given or at any later time specified in the notice. A Trustee may be removed at any time with or without cause by a majority of the votes cast at a meeting of the Voting Unitholders called for that purpose or by the written consent of the Voting Unitholders holding in the aggregate not less than a majority of the outstanding Units entitled to vote thereon or with cause by a resolution passed by an affirmative vote of not less than two-thirds of the other Trustees, if any.

## **2.6 Vacancies.**

The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, insolvency, dissolution, adjudicated incompetence or other incapacity to exercise the duties of the office or upon the removal of such Trustee. No such vacancy shall operate to annul this Declaration of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder.

## **2.7 Successor and Additional Trustees.**

The right, title and interest of the Trustees in and to the property of the Trust shall vest automatically in all individuals who may hereafter become Trustees upon their due election or appointment and qualification without any further act, and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such right, title and interest shall vest in the Trustees.

# **ARTICLE 3 TRUSTEES' POWERS AND DUTIES**

## **3.1 Business of the Trust.**

The Trust may carry on such activities as may be determined from time to time by the Trustees.

### **3.2 General Powers.**

The Trustees shall have, without further or other authorization and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the assets of the Trust and over the affairs of the Trust to the same extent as if the Trustees were the sole owners of such assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust.

### **3.3 Standard of Care.**

The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and discharge their duties hereunder as Trustees honestly, in good faith and in the best interests of the Trust and the Unitholders and, in connection therewith, that they exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.

### **3.4 Reliance Upon Trustees.**

Any Person dealing with the Trust in respect of any matters pertaining to the assets of the Trust and any right, title or interest therein or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by any single Trustee or, without limiting the foregoing, such other Persons as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any such other Persons to act for and on behalf and in the name of the Trust. No Persons dealing with the Trustees shall be bound to see to the application of any funds or property passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees for monies or other consideration shall be binding upon the Trust.

### **3.5 Determinations of Trustees Binding.**

All determinations of the Trustees that are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is an Exempt Plan or registered pension fund or plan as defined in the Tax Act, or other similar fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.



**ARTICLE 4**  
**UNITS**

**4.1           Units.**

The beneficial interests in the Trust shall be divided into two classes of units, the Voting Units and the Non-Voting Units, with the rights and privileges described in this Article 4. The number of Units which the Trust may issue is unlimited. Each Unit when issued shall vest indefeasibly in the holder thereof. Following the 2012 Reorganization, the issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without Unitholder approval.

**4.2           Entitlement and Ranking of Units.**

Each Unit shall represent an equal undivided beneficial interest in any distributions by the Trust, whether of net income, net realized capital gains or other amounts, and, in the event of termination or winding-up of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities, and no Unit shall have preference or priority over any other Unit.

**4.3           Voting Rights.**

Each Voting Unit shall entitle the holder thereof to one vote at any meeting of Unitholders called by the Trustees, in their sole and absolute discretion. No Non-Voting Unit shall entitle the holder thereof to any right to vote at a meeting of Unitholders.

**4.4           Consideration for Units.**

A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services received by the Trust that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust.

**4.5           No Pre-Emptive Rights.**

No Persons shall be entitled, as a matter of right, to subscribe for or purchase any Units). There are no pre-emptive rights attaching to the Units.

**4.6           Fractional Units.**

If as a result of any act of the Trustees hereunder, any Person becomes entitled to a fraction of a Unit, such Person shall not be entitled to receive a certificate therefor. Fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units, entitle the holders thereof to notice of or to attend or to vote at meetings of Unitholders in

respect of which the holders of whole Units are so entitled. Subject to the foregoing, such fractional Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Units in the proportion that they bear to a whole Unit.

#### **4.7 Legal Ownership of Assets of the Trust.**

The legal ownership of the assets of the Trust and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, and the Unitholders shall have no interest therein other than the beneficial interest in the Trust conferred by the Units issued hereunder as described in Section 1.6. Unitholders shall have no right to compel any partition, division or distribution of the Trust or any of the assets of the Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Declaration of Trust. No Unitholder has or shall be deemed to have any right of ownership in any of the assets of the Trust.

#### **4.8 Non-Resident Ownership Constraint.**

At no time may more than 49% of the aggregate number of Voting Units and Non-Voting Units be held for the benefit of non-residents of Canada (within the meaning of the Tax Act) and/or partnerships that are not Canadian partnerships (within the meaning of the Tax Act).

#### **4.9 Death of Unitholders.**

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate of the deceased Unitholder to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

#### **4.10 Redemption of Units.**

Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder, upon written notice, in a form satisfactory to the Trustees, delivered to the Trustees at the head office of the Trust, all or any part of the Units registered in the name of the Unitholder. Upon receipt by the Trustees of the notice to redeem Units in accordance with this Section 4.10, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the "Redemption Price") equal to the fair market value of a Unit on the date on which the Units were tendered to the Trust for redemption (the "Redemption Date"), as determined by the Trustees in their sole discretion. The Redemption Price shall, subject to receipt of all necessary regulatory approvals, be paid and satisfied by way of a distribution *in specie* to such Unitholder of notes of the Trust or a Subsidiary of the Trust ("Notes") having a fair market value, as determined by the Trustees, equal to the Redemption Price of the Units so tendered by such Unitholder for redemption. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed (or, in the event there is no such subsidiary, with other assets of the Trust selected by the Trustee

and having a fair market value determined by them to be equal to the Redemption Price). All Units which are redeemed under this Section 4.10 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued. The amount of any capital gains realized in a year by the Trust as a result of the redemption of Units pursuant to this Section 4.10 may, for purposes of computing the net income of the Trust under the Tax Act or other tax legislation, be treated as having been paid in the year by the Trust to the Unitholders redeeming Units in such year.

**4.11**            **Purchase of Units.**

(a)     The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit and on a basis determined by the Trustees in compliance with all applicable securities laws, regulations, rules, blanket orders, notices or policies or the rules or applicable policies of any stock exchange. For the avoidance of doubt, the purchase for cancellation by the Trust of all or substantially all of the Voting Units and all of the Non-Voting Units in consideration for REIT Units pursuant to the 2012 Reorganization is expressly permitted (the "2012 Repurchase").

(b)     Effective on July 1, 2012 or such other date determined by the Trustees, in exchange for the Voting Units and Non-Voting Units repurchased pursuant to the 2102 Repurchase, IOT shall distribute to Unitholders 15/85 of a REIT Unit for each Unit so repurchased.

**ARTICLE 5**  
**FEES AND EXPENSES**

**5.1**            **Expenses.**

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments out of property of the Trust, including:

- (a)     interest and other costs of borrowed money;
- (b)     fees and expenses of lawyers, accountants, auditors, appraisers and other agents or consultants employed by or on behalf of the Trust;
- (c)     compensation, remuneration and expenses of the Trustees;
- (d)     fees and expenses connected with the acquisition, disposition and ownership of real property interests or mortgage loans or other property;
- (e)     insurance as considered necessary by the Trustees;
- (f)     expenses in connection with payments of distributions on Units;
- (g)     expenses in connection with communications to Unitholders and the other bookkeeping and clerical work necessary in maintaining relations with Unitholders;

- (h) expenses of changing or terminating the Trust;
- (i) fees and charges of transfer agents, registrars, indenture trustees and other trustees and custodians;
- (j) all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units or other securities of the Trust and other required governmental filings; and
- (k) all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities formed to hold real property or other property of the Trust.

## **ARTICLE 6**

### **MEETINGS OF UNITHOLDERS**

#### **6.1 Meetings.**

The Trustees shall have power at any time to call meetings of the Unitholders at such time and place as the Trustees may determine. Unitholders holding in the aggregate not less than 5% of the aggregate number of outstanding Units may requisition the Trustees in writing to call a meeting of the Unitholders for the purposes stated in the requisition. If the Trustees do not within 21 days after receiving the requisition call a meeting, any Unitholder who signed the requisition may call the meeting. Unless such notice is waived by each Unitholder entitled to vote thereat, notice of all meetings of the Unitholders shall be mailed or delivered by the Trustees to each Unitholder entitled to vote at such meeting not less than 21 nor more than 60 days before the meeting. Notice of any meeting of the Unitholders shall state the purposes of the meeting.

#### **6.2 Quorum.**

A quorum for any meeting of Unitholders shall be one individual present in person, being a Unitholder or representing by proxy one or more Unitholders who hold in the aggregate not less than 25% of the votes attached to all outstanding Units entitled to vote at such meeting, provided that if there is only one such Unitholder the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if convened on the requisition of Unitholders, shall be dissolved, but in any other case shall stand adjourned to such day being not less than 10 days later and to such place and time as may be appointed by the Chair of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either in person or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same. The Chair or, if the Chair is not present, the Vice-Chair, or any other Trustee determined by the Trustees, shall be the Chair of any meeting of the Unitholders.

**6.3 Voting.**

Holders of Units may attend and vote, either in person or by proxy, at all meetings of Unitholders at which such holders are entitled to vote in accordance with the provisions hereof. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders entitled to vote thereon. The Chair of any such meeting shall not have a second or casting vote.

**6.4 Resolution in Lieu of Meeting.**

Notwithstanding any other provision of this Declaration of Trust, a resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of Unitholders is as valid as if it had been passed at a meeting of Unitholders.

**6.5 Actions by Unitholders.**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a written resolution in lieu thereof) in accordance with this Article 6.

**ARTICLE 7**  
**AMENDMENTS AND TERMINATION**

**7.1 Amendments by the Trustees.**

This Declaration of Trust may be amended by the vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

**7.2 No Termination.**

No amendment to or amendment and restatement of this Declaration of Trust, whether pursuant to this Article 7 or otherwise, shall be construed as a termination of the Trust and the settlement or establishment of a new trust.

**7.3 Duration of the Trust.**

Unless the Trust is sooner terminated as otherwise provided herein, the Trust shall continue in full force and effect so long as any property of the Trust is held by the Trustees, and the Trustees shall have all the powers and discretions, expressed and implied, conferred upon them by law or by this Declaration of Trust.

**7.4 Termination by Unitholders.**

The Trust may be terminated by the vote of at least two-thirds of the votes cast at a meeting of Unitholders called for that purpose.

**7.5 Effect of Termination.**

Upon the termination of the Trust, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed proportionately to the Unitholders. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

**ARTICLE 8**  
**LIABILITIES OF THE TRUSTEES AND OTHERS**

**8.1 Liability and Indemnification of the Trustees.**

The Trustees shall at all times be indemnified and saved harmless out of the property of the Trust from and against all liabilities, damages, losses, debts and claims whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including legal fees and disbursements on a solicitor-and-his-own-client basis) which they sustain or incur in or about or in relation to the affairs of the Trust. Further, the Trustees shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or its assets. The Trust may advance moneys to a Trustee, officer of other individual for the costs, charges and expenses of a proceeding referred to above.

**8.2 Liability of the Trustees.**

The Trustees shall not be liable to the Trust or to any Unitholder, annuitant or any other Person for the acts, omissions, receipts, neglects or defaults of any Person, firm or corporation employed or engaged by it as permitted hereunder, or for joining in any receipt or act of conformity or for any loss, damage or expense caused to the Trust through the insufficiency or deficiency of any security in or upon which any of the monies of or belonging to the Trust shall be paid out or invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any Person, firm or corporation with whom or which any monies, securities or property of the Trust shall be lodged or deposited, or for any loss occasioned by error in judgment or oversight on the part of the Trustees, or for any other loss, damage or misfortune which may happen in the execution by the Trustees of their duties hereunder.

**8.3 Reliance Upon Advice.**

The Trustees may rely and act in good faith on, and shall not be responsible or held liable for any loss or damage resulting from so relying or acting on, (a) any financial statements of the Trust represented to the Trustee by an officer of the Trust or in a written report of the auditor of the Trust to fairly reflect the financial condition of the Trust, or (b) a report of a person whose profession lends credibility to a statement made by such person.

**8.4 Liability of Unitholders and Others.**

Notwithstanding any other provision of this Declaration of Trust, no Unitholder or annuitant under a plan of which a Unitholder acts as trustee or carrier shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or annuitant for any liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Trust property or the affairs of the Trust, including for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such liability. Each Unitholder and annuitant under a plan of which a Unitholder acts as trustee or carrier shall be entitled to be reimbursed out of the assets of the Trust in respect of any payment of a Trust obligation made by such Unitholder or annuitant.

**ARTICLE 9  
GENERAL**

**9.1 Execution of Instruments.**

The Trustees shall have power from time to time to appoint any Trustee or Trustees or any Person or Persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing.

**9.2 Manner of Giving Notice.**

Any notice required or permitted by the provisions of this Declaration of Trust to be given to a Unitholder or a Trustee shall be deemed conclusively to have been given if given either by delivery or by prepaid first-class mail addressed to the Unitholder at his address shown on the register maintained by the Trust or to the Trustee at the last address provided by such Trustee to the President of the Trust, as the case may be.

**9.3 Failure to Give Notice.**

The failure by the Trustees, by accident or omission or otherwise unintentionally, to give any Unitholder, any Trustee or the auditors of the Trust any notice provided for herein shall not affect the validity, effect, taking effect or time of taking effect of any action referred to in such notice, and the Trustees shall not be liable to any Unitholder for any such failure.

**9.4 Fiscal Year.**

The fiscal year of the Trust shall end on December 31 in each year.

**9.5 Trust Property to be Kept Separate.**

The Trustees shall maintain the property of the Trust separate from all other property in their possession.

**9.6 Trustees May Hold Units.**

Any Trustee or associate of a Trustee may be a Unitholder or may be an annuitant.

**9.7 Trust Records.**

The Trust shall prepare and maintain, at its principal office or at any other place in Canada designated by the Trustees, records containing: (i) the Declaration of Trust; and (ii) minutes of meetings and resolutions of Unitholders. The Trust shall also prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the Trustees and any committee thereof. Such records shall be kept at the principal office of the Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

**9.8 Consolidations.**

Any one or more Trustees may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended or amended and restated.

**9.9 Counterparts.**

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

**9.10 Severability.**

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of the Declaration of Trust and shall not affect or impair any of the remaining provisions thereof.

**9.11 Governing Law.**

This Declaration of Trust shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province. Any and all disputes arising under this Declaration of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Ontario and each of the Trustees hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

*[Remainder of page left intentionally blank.]*



**IN WITNESS WHEREOF** the Trustees appearing below, having been duly authorized to execute and deliver this Declaration of Trust, have caused these presents to be signed and sealed as of the date first above written.

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Kenneth D. Gibson, Trustee

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Tamara L. Lawson, Trustee

SIGNED, SEALED & DELIVERED  
In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
George Kosziwka, Trustee

