

**RAVENSOURCE FUND**

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**AMENDED AND RESTATED DECLARATION OF  
TRUST**

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**COMPUTERSHARE TRUST COMPANY OF CANADA  
TRUSTEE**

July 3, 2015

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## RAVENSOURCE FUND

### AMENDED AND RESTATED DECLARATION OF TRUST

**THIS AMENDED AND RESTATED DECLARATION OF TRUST** made in Toronto, Ontario as of the 3<sup>rd</sup> day of July, 2015 by **COMPUTERSHARE TRUST COMPANY OF CANADA** (successor to Montreal Trust Company of Canada) (the “**Trustee**”) at its principal office in Toronto, Ontario.

#### **WITNESSES THAT:**

**WHEREAS** the Trustee, pursuant to a declaration of trust dated the 28th day of April, 1997 (the “**Original Declaration**”), established a trust on the terms and conditions hereinafter set forth therein (the “**Fund**”);

**AND WHEREAS** John J. Ciardullo (the “**Settlor**”) paid to the Trustee an amount of fifteen dollars (\$15.00) for the purpose of constituting the Fund;

**AND WHEREAS** pursuant to the Original Declaration, beneficial interests in the Fund have been divided into transferable non-redeemable units of equal and undivided beneficial interest;

**AND WHEREAS** the Original Declaration was amended pursuant to a supplement dated January 15, 2001;

**AND WHEREAS** in accordance with its terms, the Original Declaration was amended and restated pursuant to the approval of unitholders of the Fund on August 22, 2003 (the “**2003 Declaration**”);

**AND WHEREAS** pursuant to the 2003 Declaration, the name of the Fund was changed from First Asia Income Fund to Ravensource Fund;

**AND WHEREAS** in accordance with its terms, the 2003 Declaration was amended and restated pursuant to the approval of unitholders of the Fund on July 1, 2008 (the “**2008 Declaration**”);

**AND WHEREAS** on July 1, 2008, an Administration Agreement was entered into between the Trustee and Stornoway Portfolio Management Inc.;

**AND WHEREAS** Section 15.1 of the 2008 Declaration permits the Trustee, after consultation with the Investment Manager, to modify or alter provisions of the 2008 Declaration without the approval of Unitholders if the change is made for the purpose of bringing the 2008 Declaration into conformity with applicable laws, rules and policies of Canadian securities regulators;

**AND WHEREAS** it is desirable to amend and restate the 2008 Declaration by executing this amended and restated declaration of trust (the “**Declaration of Trust**”) as permitted by Section 15.1 of the 2008 Declaration;

**AND WHEREAS**, for greater certainty, the restatement of the 2008 Declaration shall not be deemed to constitute a termination of the Fund created by the 2008 Declaration or a resettlement of the Declaration or the trust created thereby;

**AND WHEREAS** the Fund is known by the name “**Ravensource Fund**”;

**NOW, THEREFORE**, the Trustee hereby declares that it will continue to hold all Fund Property (as hereinafter defined) in trust to invest, manage and dispose of the same for the use and benefit of the Unitholders, their successors and assigns upon the trusts and subject to the express provisions of this Declaration of Trust.

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions.**

In this Declaration of Trust and the Recitals above, unless the subject matter or context otherwise requires, the following terms have the following meanings:

“**affiliate**” shall have the meaning ascribed thereto in the *Securities Act* (Ontario).

“**Agency Agreement**” means the agency agreement dated April 28, 1997 among Computershare Trust Company of Canada, in its capacity as Trustee of the Fund, EquitiLink International Management Limited, CIBC Wood Gundy Securities Inc., Midland Walwyn Capital Inc., Nesbitt Burns Inc., RBC Dominion Securities Inc., and ScotiaMcLeod Inc.

“**Annual Redeemed Units**” means Units of the Fund that are redeemed by the Fund pursuant to an Annual Redemption Request.

“**Annual Redemption Date**” means the Valuation Date immediately following August 31 each year.

“**Annual Redemption Payment Date**” means the date determined by the Investment Manager for the payment of the Annual Redemption Value for Annual Redeemed Units which is to be no later than the fifteenth business day following the Annual Redemption Date.

“**Annual Redemption Request**” means a written instrument, in form acceptable to the Investment Manager and the Fund’s registrar and transfer agent, requesting the redemption of Units owned by a Unitholder and specifying the number of Units to be redeemed, which is delivered to the Fund’s registrar and transfer agent, at its principal transfer office in the City of Toronto on or before the twentieth business day prior to the Annual Redemption Date.

“**Annual Redemption Value**” means the Net Asset Value per Unit as at the Annual Redemption Date (which for greater certainty, will reflect those expenses incurred to effect the redemption, and liquidate a sufficient portion of the Fund Property).

“**applicable United States Securities Legislation**” means applicable securities laws and regulations of the United States of America, its territories and possessions and political subdivisions thereof, including, for greater certainty but without limitation, the provisions of Regulation S made under the *Securities Act* of 1933 and the provisions of the *Investment Company Act* of 1940.

“**Auditor**” shall mean the firm of chartered accountants holding office at any time pursuant to Section 11.3 hereof.

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday or any day on which banks are closed in Jersey, Channel Islands or in Toronto, Ontario.

“**CBCA**” shall mean the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, as amended.

“**CBCA Corporation**” shall mean a corporation incorporated under the CBCA, any of the securities of which (i) are or were part of a distribution to the public, (ii) remain outstanding, and (iii) are held by more than one person.

“**CDS**” shall mean CDS Clearing and Depository Services Inc.

“**Close of Business**” shall mean, on any Business Day 5:00 p.m. (local time) in Jersey, Channel Islands.

“**Custodian**” shall mean any custodian appointed by the Trustee under Section 8.15.

“**Debt Securities**” means any kind of debt security or debt-like instrument including without limitation, bonds, bills, commercial paper and treasury notes; floating rate notes; asset backed securities; income streams with debt-like characteristics; investments in infrastructure cash flows; eurobonds; convertible bonds, debentures and preference shares; interest rate and currency derivatives, both over-the-counter and exchange-traded; and currency spot and forward contracts.

“**Declaration of Trust**” shall mean this amended and restated declaration of trust, as amended, restated or modified from time to time.

“**Distribution Date**” means any Valuation Date as of which a distribution is made by the Fund pursuant to Section 6.1 hereof.

“**Extraordinary Resolution**” shall mean a resolution passed by the affirmative vote of 66 2/3% of the votes cast at a duly constituted meeting called for such purpose with two or more persons present in person or by proxy representing not less than 25% of the Units then outstanding.

“**Final Instalment Date**” and “**Final Instalments**” shall have the meaning attributed thereto in the Agency Agreement.



“**Fund**” means the trust existing pursuant to this Declaration of Trust.

“**Fund Property**” shall mean the property and assets of the Fund and includes all sums or property of any type and description committed to the Trustee for the account of the Fund (including the proceeds of subscriptions for Units), any income therefrom and other accretions thereto and any additions thereto or replacements thereof from time to time.

“**Income Tax Act**” shall mean the *Income Tax Act* (Canada), as now or hereafter amended, or successor statutes, and shall include regulations promulgated thereunder.

“**Investment Manager**” means the investment manager of the Fund from time to time appointed pursuant to Section 10.1 hereof.

“**Investment Objective**” means the investment objective of the Fund set out in Section 5.1, as amended from time to time in accordance with the provisions hereof.

“**Investment Restrictions**” mean the investment restrictions of the Fund set out in Section 5.3, as amended from time to time in accordance with the provisions hereof.

“**net asset value of the Fund**” or the “**Fund’s net asset value**” means, at any time, the net asset value per Unit at such time calculated in accordance with Section 6.3 hereof multiplied by the number of Units then outstanding.

“**net asset value per Unit**” means the net asset value per Unit determined in accordance with Section 6.3.

“**Net Capital Gains**” of the Fund for any calendar year shall equal the amount by which the capital gains of the Fund realized in the year exceed (i) the capital losses of the Fund realized in the year, (ii) the unapplied capital losses of the Fund for preceding years of the Fund to the extent that they may be applied against capital gains of the Fund for the year pursuant to the *Income Tax Act* and (iii) any Net Loss of the Fund for the year and any unapplied Net Losses of the Fund for preceding years of the Fund. For this purpose, “capital gains” and “capital losses” shall be computed in, accordance with the provisions of the *Income Tax Act*.

“**Net Income or Net Loss**” of the Fund for any calendar year means the income or loss of the Fund for such year computed in accordance with the provisions of the *Income Tax Act* (other than paragraph 82(1)(b) and subsection 104(6) of the *Income Tax Act*) regarding the calculation of income for the purposes of determining the “taxable income” of the Fund thereunder; provided, however, that (i) no account shall be taken of any possible gain or loss, whether realized or unrealized, that would, if realized, be a capital gain or capital loss for the purposes of the *Income Tax Act*; (ii) if an amount has been designated by the Fund under subsection 104(19) of the *Income Tax Act*, such designation shall be disregarded; (iii) all expenses or liabilities due or accruing due which are chargeable to income shall be deducted in computing income; and (iv) if such calculation results in income there shall be deducted the amount of any Net Losses of the Fund for any preceding years, and Net Income of the Fund for any period means the income of the Fund for such period computed in accordance with the foregoing as if that period were the taxation year of the Fund.

“**Ordinary Resolution**” shall mean a resolution passed by the affirmative vote of a majority of the votes cast at a duly constituted meeting called for such purpose with two or more persons present in person or by proxy representing not less than 15% of the Units then outstanding.

“**Person**” shall mean an individual, a corporation, limited partnership, general partnership, joint stock company or association, joint venture, association, company, trust, bank, trust company, land trust, investment trust, society or other entity, organization and syndicate whether incorporated or not, a trustee, executor, or other legal personal representative, and any government or agency thereof.

“**Reinvestment Plan**” has the meaning ascribed thereto in Section 6.2.

“**Securities Act (Ontario)**” shall mean the *Securities Act*, R.S.O., 1990, c.S.5, as now or hereafter amended, or successor statutes, and shall include regulations and rules promulgated thereunder.

“**Settlor**” shall mean John J. Ciardullo.

“**Trustee**” shall mean Computershare Trust Company of Canada (successor to Montreal Trust Company of Canada), or such other person as may be appointed the Trustee by the Unitholders in accordance with the provisions hereof.

“**United States person**” means any national or resident of the United States or its territories or possessions, any corporation, partnership or other entity created or organized in or under the laws of the United States, its territories or possessions or any political subdivision thereof and any estate or trust which is subject to United States federal income taxation regardless of the source of its income.

“**Unitholder**” means any Person which has purchased and continues to own Units and “holder” has a corresponding meaning.

“**Units**” means the units in the Fund issued or to be issued hereunder, for the time being outstanding, each representing an equal and undivided beneficial interest in the Fund, and, where appropriate, includes fractions of Units.

“**Valuation Date**” means (a) each Thursday, or such other day or days of the week as designated by the Investment Manager from time to time by notice in writing to the Trustee provided that if a day that would otherwise be a Valuation Date is not a Business Day then the immediately preceding Business Day will be a Valuation Date instead; (b) the last Business Day in each fiscal quarter of the Fund; and (c) December 31 of each year.

## **1.2 Quantity, Gender and Other Terms.**

In this Declaration of Trust whenever the singular form is used, the same shall include the plural as and when required by the context. Words denoting one gender include the other or the neuter, and words denoting the neuter denote either gender, unless a contrary intention is to be inferred from or required by the subject matter or context. References in this

Declaration of Trust to “hereof, “herein”, and “hereunder” shall be deemed to refer to the Declaration of Trust and shall not be limited to the particular text, Article, or Section in which such words appear.

### **1.3 Table of Contents and Section Headings.**

The Table of Contents and Section headings have been inserted for convenience only and are not a part of this Declaration of Trust.

### **1.4 Canadian Currency.**

For the purpose of the issue and redemption of Units and for any distribution to Unitholders, the price, value or amount distributed by or paid to or by the Trustee out of the assets of the Fund shall be distributed or paid in Canadian funds (other than non-cash distributions or payments in specie of property denominated in currencies other than Canadian funds, which distributions or payments shall be valued in Canadian funds at the prevailing exchange rate as of the effective date of such distribution or payment).

### **1.5 Acts and Obligations of the Fund.**

Any reference in this Declaration of Trust to an act to be performed by the Fund or to an obligation of the Fund shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustee on behalf of the Fund or an obligation assumed by or imposed upon the Trustee in its capacity as trustee of the Fund, as the case may be.

### **1.6 International Financial Reporting Standards.**

Where the Chartered Professional Accountants of Canada has adopted recommendations or generally accepted accounting principles concerning the treatment of an accounting matter, such recommendations or generally accepted accounting principles shall be applicable to the matters they cover. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with International Financial Reporting Standards on a consistent basis.

### **1.7 Statutes.**

Any reference in this Declaration of Trust to a statute or regulations thereunder shall be deemed to be a reference to such statute or regulation as amended, re-enacted or replaced from time to time and reference to specific parts, paragraphs or sections thereof shall include all amendments, re-enactments or replacements, unless the express provisions hereof otherwise require.

**ARTICLE 2  
THE FUND**

**2.1 Name.**

The unit trust hereby existing is known by the name “**Ravensource Fund**” or by such other name as the Trustee, after consultation with the Investment Manager, may from time to time specify.

**2.2 Head Office.**

The Fund shall have its head office at the principal office of the Trustee in Toronto from time to time, or at such other place within Ontario as the Trustee may from time to time designate.

**2.3 Fiscal Year.**

The first fiscal period of the Fund shall end on December 31, 1997 and thereafter each fiscal year shall correspond to the calendar year. In this Declaration of Trust, reference to a fiscal year of the Fund shall, where the context so permits, include reference to the first fiscal period of the Fund.

**2.4 Nature of Fund.**

2.4.1 The general law of trusts shall govern the Fund, the Units and the Fund Property, except as such general law of trusts has been or is from time to time modified, altered or abridged for investment trusts and for this Fund by:

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

The beneficiaries of the Fund are the holders of the single class of transferable, non-redeemable Units of the Fund. Subject to Section 3.1 each Unit ranks equally with every other Unit. The beneficial interest of a holder of a Unit shall be limited to the right to participate pro rata in distributions when and as declared including the proceeds of liquidation of the Fund Property upon termination of the Fund. The rights of a Unitholder shall be only those rights which are conferred upon the Unitholder hereunder, and the liabilities and obligations of a Unitholder shall be only those liabilities and obligations which are imposed upon Unitholders hereunder. The relationship of the Unitholders to the Trustee, to the Fund and to the Fund Property shall be solely in their capacities as beneficiaries in accordance with the rights conferred and liabilities and obligations imposed upon the Unitholders hereunder.

2.4.2 The relationship of the Trustee to a Unitholder and the relationship of one Unitholder to another is not and shall not be treated as that of partners or joint venturers or as that of principal and agent or as members of a society, association, limited partnership or corporation or as that of shareholders of a corporation or other joint stock company but shall be

that of a trust as herein described with each Unitholder being a beneficiary of the Fund, with no relationship of any one beneficiary to any other beneficiary save that of each being a beneficiary under the same Fund.

**2.5 Duration.**

The Fund existing hereby, except as otherwise provided herein, shall continue until terminated in accordance with this Declaration of Trust, provided that the termination occurs no earlier than 15 days and no later than 90 days following the issuance of a press release disclosing the termination.

**ARTICLE 3  
UNITS**

**3.1 Unlimited Issue.**

Units shall not have or be deemed to have any nominal or par value. The number of Units of the Fund which may be issued is unlimited and fractional Units (i.e. fractions or parts of Units) may be issued. Fractions of Units shall carry and be subject to the provisions hereof applicable to whole Units in the proportion which they bear to one Unit, except that no holder of a fraction of a Unit, as such, shall be entitled to notice of, or to attend or vote at, meetings of Unitholders of the Fund. Units may, if the Trustee so determines upon the recommendation of the Investment Manager be issued in one or more series, and the Trustee may, upon the recommendation of the Investment Manager, fix the rights, privileges and restrictions attaching to any particular series of Units, provided that no series of Units shall have rights or privileges superior to those of any then outstanding Units, whether as to voting rights, distributions, entitlement to proceeds of liquidation on termination of the Fund or otherwise, unless the issuance thereof is approved by an Extraordinary Resolution of Unitholders.

**3.2 Allotment and Issue.**

Subject to the limitations of this Section 3.2, the Fund may allot and issue Units at such time or times and in such manner (including pursuant to the Reinvestment Plan in effect pursuant to Article 6), and for such consideration and to such Person, Persons or class of Persons as the Trustee, after consultation with the Investment Manager (except in respect of the issuance of Units in accordance with Article 6 in which circumstances such consultation will not be required), shall determine, having regard to such matters as would be considered by the board of directors of a CBCA Corporation when issuing shares in comparable circumstances. Units may be issued as fully paid and non-assessable or, in the discretion of the Trustee, upon the advice of the Investment Manager, may be issued for payment in instalments. Where payment for a Unit is to be made in instalments, beneficial ownership of the Unit may be represented by an instalment receipt until all instalments for the Unit have been fully paid. The Fund may enter into agreements or contracts in connection with the issue of such instalment receipts pursuant to which the rights, privileges and restrictions attaching to instalment receipts representing beneficial ownership of Units, including, without limitation, the rights of the holders of such instalment receipts prior to the payment in full of amounts due in respect of their Units, may be determined.

### **3.3 Rights, Warrants and Options.**

Subject to the restrictions contained in Section 3.2, the Trustee may, upon the recommendation of the Investment Manager, create and issue rights, warrants or options to subscribe for fully paid Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustee may determine at the time of issuance. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustee may determine. A right, warrant or option is not a Unit and a holder thereof is not a Unitholder.

### **3.4 Commissions and Discounts.**

Subject to Section 3.2, the Trustee may provide for the payment of commissions to Persons in consideration of their subscribing or agreeing to subscribe whether absolutely or conditionally for Units or of their agreeing to procure subscriptions therefor, whether absolute or conditional, having regard to such matters as would be considered by the board of directors of a CBCA Corporation when issuing shares in comparable circumstances.

### **3.5 Transferability and Information.**

3.5.1 Subject to any restrictions which may apply where Units have not been fully paid for, or under applicable law, and subject to the provisions of Article 4 in the event Units are issued in book entry only form, the Units are freely transferable and the Trustee shall not impose any restriction on the transfer of Units unless such restriction is necessary or desirable, in the opinion of counsel to the Fund, for the following purposes:

- (a) as a condition of obtaining or maintaining the status of the Fund as a “unit trust” or a “mutual fund trust” under the *Income Tax Act*;
- (b) to obtain, maintain or renew any licences, rights, status or powers pursuant to any other applicable laws, regulations or other requirements imposed by any stock exchange or other applicable regulatory authorities; or
- (c) to prevent the Fund from being subject to laws, rules or regulations governing investment funds of a jurisdiction other than Canada.

If any such restriction is or becomes necessary, the Trustee shall have the power to restrict the transfer of Units on the books of the Fund without liability to Unitholders or others who are thereby restricted from making a transfer.

3.5.2 The Unitholders shall, upon demand from time to time, disclose to the Trustee in writing such information with respect to direct and indirect ownership of Units as the Trustee may deem necessary to comply with any of the foregoing.

3.5.3 Without limiting the generality of Subsection 3.5.1(a), in order to maintain the Fund’s status under the *Income Tax Act* as a “mutual fund trust”, the Trustee shall at no time permit Persons who are non-residents of Canada within the meaning of the *Income Tax Act* to be

or to become the beneficial owners of a majority of the Units. For the purposes of ensuring that non-residents of Canada do not become the beneficial owners of a majority of the Units:

- (a) the transfer agent and registrar may, on instruction from the Trustee, require declarations as to the jurisdiction of residence of beneficial owners of Units. (The Trustee, however, shall not be obliged to require such declarations unless the Trustee has received actual knowledge that the restrictions in this Section with respect to ownership by non-residents have been or will be breached);
- (b) if, as a result of obtaining declarations pursuant to clause (a), above, the transfer agent and registrar becomes aware that the beneficial owners of 49% of the Units then outstanding are or may be non-residents of Canada or that such situation is imminent, the transfer agent and registrar on instruction from the Trustee:
  - (i) may make a public announcement with respect to that situation; and
  - (ii) shall not accept a subscription from or issue or register a transfer of Units to a Person unless that person provides a declaration that the Person is not a non-resident of Canada;
- (c) if, notwithstanding the foregoing, the transfer agent and registrar determines at any time that a majority of the Units are beneficially held by non-residents of Canada, the transfer agent and the registrar may, on instruction from the Trustee, send a notice to non-resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the transfer agent and registrar may consider equitable and practicable, requiring such non-resident Unitholders to sell their Units or a portion thereof to Canadian residents within a specified period of time which shall be not less than 60 days;
- (d) if a Unitholder has received a notice as provided in clause (i) and has not sold his Units or a portion thereof and has not provided the transfer agent and registrar with satisfactory evidence that he is not a non-resident of Canada and that his Units are not beneficially owned by a non-resident of Canada within the period specified in the notice, the transfer agent and registrar shall suspend the voting and distribution rights attaching to Units held by such Unitholder and may, on instruction from the Trustee, sell the Units on behalf of such Unitholder and upon such sale the affected Unitholder shall cease to be a Unitholder and his rights shall be limited to receiving the net proceeds of such sale.

3.5.4 Without limiting the generality of Subsection 3.5.1(b), and except as is permitted in accordance with applicable United States Securities Legislation without thereby obligating the Fund to comply with the registration, disclosure or other provisions of applicable United States Securities Legislation governing the activities of investment funds, as determined by the Investment Manager, the sale or transfer of a Unit to a United States person is prohibited unless and until otherwise determined by the Investment Manager, and the transfer agent and registrar shall not be under any obligation to record a transfer to any person, firm or corporation which it believes in good faith to be a United States person.

3.5.5 Subject to Section 7.5, unless and until it shall have been required so to do under the terms hereof, the Trustee shall not be bound to do or take any proceeding with respect to this Section 3.5 by virtue of the powers conferred on it hereby; nor shall the Trustee be required to take notice of the holdings of non-resident holders of Units unless and until notified in writing of an existing or imminent breach of foreign ownership restrictions as contemplated in Section 3.5.

### **3.6 Register of Unitholders.**

A Register shall be kept by or on behalf of the Fund which shall contain the names and addresses of registered Unitholders, the respective numbers of Units held by them, the certificate numbers of the certificates, if any, representing such Units and a record of all transfers thereof. Subject to the provisions of Article 4, only Unitholders whose Units are so recorded shall be entitled to receive distributions and to exercise or enjoy the rights of Unitholders hereunder. The Person registered as a Unitholder on the Register shall be treated as the owner of such Unit(s) for all purposes, including without limitation payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders. The Trustee shall not be bound to recognize any transfer or attempted transfer, pledge or other disposition of a Unit, or any equitable or other claim with respect thereto, whether or not the Trustee shall have actual or other notice thereof, until such Unit(s) shall have been transferred on the Register as herein provided. Notwithstanding the foregoing, in the event Units are issued in book entry only form, the provisions of Article 4 shall apply.

### **3.7 Transfer Agents and Registrars.**

The Trustee shall (or may appoint one or more chartered banks or banking institutions, trust companies, or other Persons to so act) act as transfer agent and registrar for the Units of the Fund and the Trustee may provide for the transfer of Units in one or more places within or outside Canada (provided that if such appointments are made there shall be a transfer agent and registrar within the Province of Ontario). Such transfer agents and registrars shall perform those functions and duties usually performed by transfer agents and registrars of shares of corporations having share capital, including maintaining the Register and all other necessary or appropriate books (which may be kept on a computer or similar device) for recording original issues and registering and transferring the Units of the Fund. In the case of an original issue of Units, the transfer agent or registrar may rely and act upon the written instruction of the Trustee without inquiry into the receipt by the Fund of, or the sufficiency of, the consideration for such original issue. The Trustee shall cause similar registers to be created and maintained by or on behalf of the Fund for other securities issued by the Fund, where appropriate. The Trustee shall fulfil the obligations of registrar, transfer agent and distribution agent set out in any document addressing the obligations of the registrar, transfer agent and distribution agent and signed by the Trustee as such.

### **3.8 Transfer of Units.**

Units shall be, for all purposes of the Fund and this Declaration of Trust, personal and moveable property, and shall, subject to Section 3.5, be transferable at any time and from time to time by endorsement and delivery of such evidence or instrument of transfer as the Trustee or the transfer agent and registrar may accept. Transfers shall be recorded on the



Register and shall only become effective when so recorded. If Units are issued in book entry only form, the provisions of Article 4 shall apply.

**3.9 Successors in Interest of Unitholders.**

Subject to the provisions of Article 4, if Units are issued in book entry only form, any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not the Fund, the Trustee or a transfer agent or registrar of the Fund shall have actual or other notice of such death, bankruptcy, incompetence or other event.

**3.10 Units Held Jointly or In Fiduciary Capacity.**

The Trustee may treat two or more Persons holding any Unit as joint tenants of the entire interest therein unless their ownership is expressly otherwise recorded on the Register of the Fund, but no entry shall be made in the Register that any Person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any Person recorded as a holder of any Unit may, subject to the provisions herein contained, be described in the Register or on any certificate as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

**3.11 Performance of Trusts.**

The Trustee, the Unitholders, and any transfer agent or other agent of the Fund or the Trustee shall not be bound to see to the performance of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the Units or any interests therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or interests therein by any such Unitholder or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any Person as having any interest therein, except for the Person recorded as Unitholder.

**3.12 Subdivision or Consolidation of Units.**

The Trustee, upon the recommendation of the Investment Manager, may at any time or times determine that each Unit of the Fund shall be subdivided or consolidated into such number of Units as the Trustee may determine, whereupon each Unit of the Fund shall stand so subdivided or consolidated and the register will be amended accordingly. If certificates representing Units of the Fund have been issued, the Trustee shall, upon any such subdivision or consolidation, cause to be sent to each Unitholder then holding a certificate, at his risk, additional or replacement certificates.

### **3.13 Repurchase of Units.**

3.13.1 Subject to applicable law, the Fund shall be entitled at any time and from time to time to purchase for cancellation the whole or any part of the Units then outstanding, and without limitation to the foregoing the Fund may purchase for cancellation any fractional Units.

3.13.2 Upon payment by the Fund to a Unitholder of the purchase price of the Units purchased, the Fund shall be discharged from all liability to the Unitholder in respect of the Units so purchased except any liability to pay any distributions then declared but not yet paid.

### **3.14 Annual Redemption Right.**

3.14.1 By delivering an Annual Redemption Request to be received by the Fund's registrar and transfer agent on or before the twentieth business day prior to the applicable Annual Redemption Date, subject to compliance with applicable laws and the provisions hereof, Unitholders shall be entitled to require the Fund to redeem some or all of their Units outstanding as of the Annual Redemption Date.

3.14.2 For each Unit redeemed in accordance with the provisions of this Section 3.14, the Fund shall pay to or to the order of the holder thereof the Annual Redemption Value on or before the Annual Redemption Payment Date, subject to the Fund's election to re-circulate Units pursuant to Section 3.15.

3.14.3 From and after the Annual Redemption Date, Annual Redeemed Units shall cease to be entitled to share in the income or any participation in the assets of the Fund and the holder thereof shall not be entitled to exercise any of the rights of a holder of Units in respect of such Annual Redeemed Units, other than the right to receive the Annual Redemption Value therefor. Annual Redeemed Units shall be deemed to be outstanding until, but not after, the close of business on the Annual Redemption Date.

3.14.4 An Annual Redemption Request shall be irrevocable upon receipt by the Fund's registrar and transfer agent.

3.14.5 The amount of any income or capital gains realized in a year by the Fund as a result of any disposition of Fund Property undertaken to permit or facilitate the redemption of Units pursuant to this Section 3.15 may, for purposes of computing the Net Income and the Net Capital Gains under the *Income Tax Act* or other tax legislation, be treated as having been paid in the year by the Fund to the Unitholders redeeming Units in such year and may be designated by the Fund as such income or a taxable capital gain to such Unitholders. In addition, the Fund may distribute, allocate and designate Net Income and Net Capital Gains of the Fund to a Unitholder who has redeemed Units during the year in an amount equal to the Unitholder's share, at the time of redemption, of the Fund's Net Income and Net Capital Gains for the year or such other amount that is determined by the Fund to be reasonable.

### **3.15 Resale of Units Surrendered for Redemption.**

3.15.1 The Fund may enter into an agreement (a "**Recirculation Agreement**") prior to the Annual Redemption Date with one or more investment dealers (which may be affiliates of

the Investment Manager and/or Trustee) designated by the Investment Manager (a “**Recirculation Agent**”) whereby a Recirculation Agent will agree, subject to the terms of a Recirculation Agreement, to use commercially reasonable efforts to find purchasers for any Units surrendered for redemption prior to the relevant Annual Redemption Payment Date. The Fund may, but is not obligated to, require a Recirculation Agent to seek such purchasers and, if the Fund requests the Recirculation Agent to seek a purchaser for one or more Units and a purchaser is so found, then the amount to be paid on the Annual Redemption Payment Date to the Unitholder who surrendered such Units for redemption will be an amount equal to the proceeds of the sale of the Units less any applicable commission, provided that such amount will not be less than the Redemption Price per Unit. The Trustee shall have no liability for any actions of a Recirculation Agent, and the Trustee, in relying upon a Recirculation Agent, shall be deemed to have complied with its obligations under Section 7.5. If a purchaser is not found for a Unit recirculated as provided herein prior to the relevant Annual Redemption Payment Date, such Unit shall be redeemed on the Annual Redemption Payment Date for the Annual Redemption Value that would have been payable but for the Fund’s election to recirculate the Unit.

3.15.2 A Recirculation Agreement may be terminated in accordance with its terms. In such circumstances, or from time to time as the Investment Manager may determine, the Fund may enter into other similar agreements with investment dealers.

### **3.16 Units Pending Resale by the Fund.**

3.16.1 On the Fund redeeming or otherwise acquiring any Units pursuant to Section 3.13, Section 3.14 or Section 3.15.1 the Fund shall not become or be considered to be a Unitholder and, pending the sale of such Units, the rights, privileges and obligations attached to issued and outstanding Units shall be suspended for such Units, and such Units shall not be considered to be issued and outstanding Units for the purposes of calculating Net Asset Value per Unit. Notwithstanding the foregoing sentence, upon the sale of one or more Units that have been so previously redeemed or otherwise acquired by the Units, such Units shall then be entitled to the rights and privileges and subject to the obligations of this Declaration of Trust and shall be considered to be issued and outstanding for the purposes of this Declaration of Trust.

## **ARTICLE 4 BOOK ENTRY SYSTEM**

### **4.1 Definitions.**

For the purposes of this Article 4:

- (a) “Beneficial Holder” means any person who holds a beneficial interest in Book Entry Only Units as shown on the books of the Depositary or a Depositary Participant;
- (b) “Book Entry Only Units” means Units and any other securities issued from time to time in accordance with this Declaration of Trust, entitling the beneficial owner to an interest in the property and assets of the Fund, that are issued in book entry only form represented by one or more global unit certificate(s);

- (c) “Depository” means CDS Clearing and Depository Services Inc. and includes any successor corporation or any other depository subsequently appointed by the Fund as the depository in respect of the Book Entry Only Units; and
- (d) “Depository Participant” means a broker, dealer, bank, other financial institution or other person for whom, from time to time, a Depository effects book entry for the Book Entry Only Units deposited with the Depository.

#### **4.2 Book Entry Certificate.**

If the Fund elects to issue Units or other securities in book entry only form, it shall request that the registrar and transfer agent register such Book Entry Only Units in the name of the Depository or its nominee in such denominations as the Fund may specify. A global unit certificate or certificates representing such Book Entry Only Units registered in the name of the Depository or its nominee and authenticated by the Trustee will be held by the Depository. No Beneficial Holder will receive definitive certificate(s) representing such Beneficial Holder’s interest in the Book Entry Only Units except as provided in Section 4.5 hereof. Unless and until definitive certificates have been issued to the Beneficial Holders pursuant to Section 4.5 hereof:

- (a) the Fund and the Trustee may deal with the Depository for all purposes (including the making of distributions on the Book Entry Only Units) as the sole holder of the Book Entry Only Unit and the authorized representative of the Beneficial Holders;
- (b) the rights of the Beneficial Holders shall be exercised only through the Depository and shall be limited to those established by law and agreements between such Beneficial Holders and the Depository or the Depository Participants;
- (c) the Depository will make book entry transfers among the Depository Participants and receive and transmit distributions on the Book Entry Only Units to such Depository Participants; and
- (d) whenever this Declaration of Trust requires or permits actions to be taken based upon instructions or directions of Unitholders evidencing a specified percentage of the outstanding Units, the Depository shall be deemed to be counted in that percentage only to the extent that it has received instructions to such effect from the Beneficial Holders or the Depository Participants and has delivered such instructions to the Trustee.

#### **4.3 Notice to Clearing Agency.**

Whenever a notice or other communication is required to be provided to Unitholders, unless and until definitive certificate(s) have been issued to Beneficial Holders pursuant to Section 4.5 hereof, the Trustee shall provide all such notices and communications to the Depository and the Depository shall deliver such notices and communications to the Beneficial Holders in accordance with the *Securities Act* (Ontario) and other applicable securities laws (including national policies or instruments).

#### **4.4 Liability.**

Subject to compliance with the provisions of Section 4.3, neither the Fund nor the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made by the Depositary to or for the benefit of Beneficial Holders on account of their beneficial interest in any Book Entry Only Units.

#### **4.5 Definitive Certificates.**

If:

- (a) the Depositary advises the Fund that it is no longer willing or able to discharge properly its responsibilities as depositary with respect to the Book Entry Only Units and the Fund is unable to locate a qualified successor;
- (b) the Trustee, upon the recommendation of the Investment Manager, advises the Depositary in writing that it has elected to terminate the book entry only system through the Depositary; or
- (c) if Beneficial Holders representing not less than 51% of the voting rights attaching to the Book Entry Only Units then outstanding advise the Trustee and the Depositary in writing, through Depositary;

the Trustee shall so notify the Depositary and request that the Depositary notify all Beneficial Holders of the occurrence of any such event and of the availability to Beneficial Holders of definitive unit certificate(s). As soon as is reasonably practicable thereafter, upon the surrender by the Depositary to the Trustee of the global unit certificate or certificates representing the Book Entry Only Units, the Fund shall execute and the Trustee shall certify and issue through the Depositary definitive unit certificate(s) in a form adopted by the Trustee and prepared in compliance with all applicable laws to the same extent as if the Fund were a CBCA Corporation, register such certificates in the names of the Beneficial Holders (or in such names as the Beneficial Holders may instruct) and deliver such certificates in accordance with the instructions of the Beneficial Holders and cause the names of such Beneficial Holders (or such other Persons as the Beneficial Holders have instructed) to be entered on the Register. Neither the Fund nor the Trustee shall be liable for any delay in delivery of such instructions. Upon the issuance of definitive unit certificate(s), the Trustee shall recognize the registered holders of the definitive unit certificate(s) as holders of Units.

## **ARTICLE 5 INVESTMENTS**

#### **5.1 Investment Objective.**

The principal investment objective of the Fund is to achieve absolute annual returns, with an emphasis on capital gains, through investment in selected North American securities that the Investment Manager may from time to time recommend as being a suitable investment for the Fund.

## 5.2 Investment Practices.

The Fund will invest the Fund Property primarily in North American high yield and distressed debt securities, and in small capitalization equity securities.

## 5.3 Investment Restrictions.

5.3.1 The Fund shall be subject to the investment restrictions listed below, except in the event that the Fund converts to an open-end fund, in which event the investment restrictions will be amended as necessary or desirable to ensure that the Fund complies with applicable legal or regulatory requirements for open-end funds at that time. If a percentage restriction on investment or use of assets set forth below is adhered to at the time a transaction is effected, later changes to the market value of the investment or the value of the total assets of the Fund will not be considered a violation of the restriction and will not require the disposition of any security from the Fund's portfolio (except for the restrictions in Section 5.3.1 hereof which must be complied with at all times and which may necessitate the selling of securities from time to time). For the purposes of this Section, the "total assets" of the Fund means the value of the assets of the Fund, determined with reference to Subsection 6.3.2, without reduction for any liabilities of the Fund. The Fund may not:

- (a) after the Final Instalment Date, borrow money such that the Fund's total indebtedness exceeds 30% of the total assets of the Fund, provided that short-term credits necessary for settlement of securities transactions are not considered borrowings;
- (b) purchase or sell commodity contracts, including futures contracts and options thereon, which would result in leveraging of the Fund;
- (c) purchase put or call options on securities (including Debt Securities), securities indices or foreign currencies or write put or call options on securities (including Debt Securities), securities indices or foreign currencies if the aggregate of (i) the premium paid for such options purchased by the Fund and (ii) the premium received for such options written by the Fund, would exceed 10% of the total assets of the Fund at the time of the purchase or writing of such option;
- (d) guarantee the securities or obligations of any issuer;
- (e) act as an underwriter, except to the extent that the Fund may be deemed to be an underwriter in connection with the sale of securities in its portfolio; or
- (f) make any investment that would result in the Fund failing to qualify as a "unit trust" within the meaning of the *Income Tax Act*. At the date hereof, in order to ensure the Fund qualifies as a "unit trust" within the meaning of the *Income Tax Act*:
  - (i) at least 80% of the property of the Fund at all times must consist of shares, bonds, mortgages, marketable securities, cash, and, under proposed amendments to the *Income Tax Act* (which, when enacted, will be

retroactively applicable to the Fund from its inception), notes or similar obligations;

- (ii) at least 95% of its income for each taxation year of the Fund must be derived from, or from dispositions of, investments described in (i) above; and
- (iii) at no time may more than 10% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or a province of Canada or a Canadian municipality.

5.3.2 All investment restrictions shall comply with applicable laws, regulations or other requirements imposed by applicable regulatory authorities. If any such regulatory authority having jurisdiction over the Fund or any Fund Property shall enact any law, regulation or requirement which is in conflict with any investment restriction then in force, such investment restriction in conflict shall, if the Trustee on advice of counsel to the Fund so resolves, be deemed to have been amended to the extent necessary to resolve any such conflict, and any such resolution of the Trustee shall not require approval of the Unitholders, whether or not such amendment is material.

5.3.3 Notwithstanding the foregoing restrictions (other than Section 5.3.1(a)), pending the purchase of Debt Securities, the Fund may invest the proceeds of any offering of Units of the Fund in short-term investments comprised of treasury bills, issued by the Canadian and U.S. governments and having terms to maturity of 90 days or less and comparable securities of other issuers.

5.3.4 The Fund may invest in the securities of investment funds which invest primarily in Debt Securities, provided that such funds are not managed by the Investment Manager or any of its affiliates and provided that any administration, management, advisory or other fees paid by the Fund in respect of such investment funds will be deducted from the investment management fees otherwise payable to the Investment Manager.

## **5.4 Use Of Derivatives and Other Investment Strategies.**

5.4.1 The Fund may invest in or use options, futures, forwards, options on futures, swaps or other derivatives to reduce transaction costs, achieve greater liquidity, create effective exposure to financial markets, or increase speed and flexibility in making portfolio changes, provided that such derivative instruments are consistent with the Investment Objective of the Fund and subject to its Investment Restrictions. The Fund may invest in and use derivative instruments for hedging or as a substitute for underlying securities only to the extent, if any, considered appropriate by EquitiLink, taking into account various factors, including transaction costs. In addition, the Fund will invest only in derivatives which are permitted investments for mutual funds offered by prospectus in Canada and will be subject to the investment restrictions and practices with respect thereto pursuant to applicable securities laws governing such funds (as may be amended from time to time).

5.4.2 The term “derivatives” as used in this Section 5.4 means instruments, agreements and securities, the value of which is based upon the market price, value or level of an index, or

the market price or value of a security, commodity, economic indicator or financial instrument, including options, futures, options on futures, forward contracts and synthetic securities which replicate the performance of another underlying security, index, commodity or currency.

## **ARTICLE 6 VALUATION OF UNITS AND DISTRIBUTION TO UNITHOLDERS**

### **6.1 Distributions.**

6.1.1 The Fund intends to make semi-annual distributions to holders of record of Units as of the last Valuation Date of each of June and December in each calendar year, of such amount per Unit as the Trustee, upon consultation with the Investment Manager, may determine. The Fund may also make additional distributions as the Trustee, upon consultation with the Investment Manager, may determine. Notwithstanding any other provision of this Declaration of Trust, a Unitholder of the Fund shall be entitled to enforce payment of the amount of any Distribution declared or otherwise made payable hereunder to and not yet received by the Unitholder not later than the end of the fiscal year in which such amount became payable. For greater certainty, on the last day of each fiscal year of the Fund an amount equal to the Net Income and Net Capital Gains of the Fund for the taxation year of the Fund ending in such fiscal year not previously paid or made payable in such fiscal year, shall first be payable and allocated to Unitholders who redeemed Units during such fiscal year as determined by the Fund in its discretion pursuant to Section 3.14.5 of this Declaration of Trust, except to the extent of Net Capital Gains in respect of which the tax payable by the Fund would be refunded as a “capital gains refund” as defined in the *Income Tax Act* (and in applicable provincial tax legislation) for the taxation year of the Fund ending in such fiscal year. After giving effect to the foregoing, on the last day of each fiscal year of the Fund an amount equal to the Net Income of the Fund and Net Capital Gains of the Fund for the taxation year of the Fund ending in such fiscal year not previously paid or made payable in the fiscal year, shall be payable and allocated to Unitholders of record of the Fund on such day, pro rata in accordance with the number of Units of the Fund then held (before giving effect to any issuances of Units of the Fund to be implemented on such date) except to the extent of Net Capital Gains in respect of which the tax payable by the Fund would be refunded as a “capital gains refund” as defined in the *Income Tax Act* (and in applicable provincial tax legislation) for the taxation year of the Fund ending in such fiscal year.

6.1.2 Distributions shall be denominated in Canadian dollars and shall be payable to Unitholders of record at the close of business on the Distribution Date. Distributions not reinvested pursuant to the Reinvestment Plan shall be paid by cheque to Unitholders proportionately based on their respective holdings of Units and such amounts net of any applicable withholding taxes will be mailed to Unitholders at their addresses listed on the register of Unitholders maintained by the Fund’s registrar and transfer agent or, with the concurrence of the Trustee, as the Unitholder may otherwise direct. In the event that Units are issued in book entry only form, the provisions of Article 4 shall apply.

6.1.3 The Fund may issue to Unitholders of record on the last day of the calendar year Units in satisfaction of all or part of the year end distribution contemplated by Section 6.1.1. The number of Units to be so issued shall be equal to the quotient obtained by dividing (i) the amount of the year end distribution pursuant to Section 6.1.1 to be satisfied through the issuance of Units



by (ii) the Net Asset Value per Unit on such date. Any part of such distribution that is satisfied by the issuance of additional Units will be treated, to the extent possible, as a distribution of Net Capital Gains.

6.1.4 Immediately following payment of such a distribution in Units as contemplated by Section 6.1.3, the number of outstanding Units will be automatically consolidated such that each Unitholder will hold after the consolidation the same number of Units as the Unitholder held before the distribution. In such case, each Unit certificate representing a number of Units prior to the distribution of additional Units shall be deemed to represent the same number of Units after the distribution of additional Units and the consolidation. Notwithstanding the foregoing, where tax is required to be withheld from a Unitholder's share of the distribution, the consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder. Such Unitholder will be required to surrender the Unit certificates, if any, representing such Unitholder's original Units, in exchange for a Unit certificate representing such Unitholder's post-consolidation Units.

6.1.5 The Fund may also, at the discretion of the Investment Manager, make other distribution(s) of Fund Property at any time in addition to the distributions contemplated by Section 6.1.1 and Section 6.1.3, which distributions may be paid in cash and/or Units.

## **6.2 Reinvestment of Distributions.**

6.2.1 The Fund will make available to Unitholders the opportunity to reinvest distributions from the Fund in additional Units by participating in a distribution reinvestment plan (the "**Reinvestment Plan**") subject to the obtaining of any necessary regulatory approvals. The terms and conditions of the Reinvestment Plan will be set out in a contract with an agent (which may be the Trustee) (the "**Reinvestment Plan Agent**") which will administer the Plan. The Trustee shall fulfil the obligations of the Reinvestment Plan Agent set out in any document addressing the obligations of the Reinvestment Plan Agent and signed by the Trustee as such.

All distributions from the Fund, net of any applicable withholding taxes, will automatically be reinvested on each Unitholder's behalf pursuant to the Reinvestment Plan unless such Unitholder requests, by notice in writing to the Reinvestment Plan Agent actually received at least 5 Business Days prior to the applicable Distribution Date that such distributions be paid directly to him or her.

6.2.2 The Reinvestment Plan may also allow Reinvestment Plan participants to make additional cash investments through optional cash payments ("**Optional Cash Payments**") which will be invested in Units by the Reinvestment Plan Agent subject to such limitations or restrictions as may be set out in the Reinvestment Plan or as may be required by law.

6.2.3 Unitholders may terminate their participation in the Reinvestment Plan by written notice to the Reinvestment Plan Agent. Such notice, if actually received at least five Business Days prior to a Distribution Date, will be given effect to on that Distribution Date. Thereafter, distributions to such Unitholders will be by cheque. The Trustee may, upon the recommendation of the Investment Manager, terminate or change the terms and conditions of the Reinvestment Plan upon not less than 30 days' notice to the participants provided that any amendment to the terms of the Reinvestment Plan may be subject to the consent of the Reinvestment Plan Agent, such consent not to be unreasonably withheld.

6.2.4 In order to facilitate the Reinvestment Plan, the Trustee may from time to time establish and implement procedures in respect of the Reinvestment Plan consistent with applicable laws and this Declaration of Trust without prior notice to the participants.

### **6.3 Calculation of Net Asset Value.**

6.3.1 The net asset value per Unit shall be calculated as of the Close of Business on each Valuation Date by the Investment Manager in accordance with the provisions of this Declaration of Trust. The Investment Manager will cause the net asset value per Unit calculated on each Valuation Date to be published in a Canadian national newspaper on or about the second following day. The net asset value per Unit calculated as of the Close of Business on any Valuation Date shall remain in effect until the Close of Business on the next following Valuation Date. The net asset value per Unit shall be calculated by dividing the net assets of the Fund (the value of the Fund's portfolio investments plus any cash and other assets (including accrued interest and dividends) less all liabilities of the Fund (including accrued expenses)) by the number of Units outstanding (before giving effect to any issue of Units issued on that date), the result being adjusted to the nearest whole cent. The net asset value per Unit shall be expressed in Canadian dollars.

6.3.2 The assets of the Fund will be valued as follows:

- (a) the value of any cash on hand or on deposit, bills and demand notes and accounts receivable, prepaid expenses, cash received (or declared to holders of record on a date before the Valuation Date as of which the net asset value is being determined and to be received) and interest accrued and not yet received, shall be deemed to be the full amount thereof, provided that (i) the value of any security which is a debt obligation which, at the time of acquisition, had a remaining term to maturity of one year or less shall be the amount paid to acquire the obligation plus the amount of any interest accrued on such obligation since the time of acquisition (for this purpose, interest accrued will include amortization over the remaining term to maturity of any discount or premium from the face value of an obligation at the time of its acquisition); (ii) any interest or other amount due in respect of an obligation in respect of which the issuer has ceased paying interest or has otherwise defaulted shall be excluded from such calculation; and (iii) if the Investment Manager has determined that any such deposit, bill, demand note or account receivable is not otherwise worth the full amount thereof, the value thereof shall be deemed to be such value as the Investment Manager determines to be the fair value thereof;

- (b) the value of any security which is listed or traded upon a stock exchange shall be determined by taking the latest available sale price of recent date, or lacking any recent sales or any record thereof, the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Investment Manager such value does not reflect the value thereof and in which case the latest offer price or bid price should be used), as at the date of valuation on which the net asset value is being determined, all as reported by any means in common use;
- (c) the value of any security which is traded over-the-counter will be priced at the average of the last bid and asked prices quoted by a major dealer in such securities;
- (d) the value of any security which is not listed or traded on a stock exchange or the resale of which is restricted by reason of a representation, undertaking or agreement by the Fund or by the Fund's predecessor in title shall be determined on the basis of such price or yield equivalent quotations (which may be public quotations or may be obtained from major market makers) as the Investment Manager determines best reflects its fair value;
- (e) any market price reported in currency other than Canadian dollars shall be translated into Canadian currency at the prevailing rate of exchange, as determined by the Investment Manager, on a consistent basis, at the time of valuation;
- (f) open positions in clearing corporation options, options on futures, over-the-counter options, debt-like securities and listed warrants shall be valued at the current market value thereof;
- (g) where a clearing corporation option, option on futures or over-the-counter option is written by the Fund, the premium received by the Fund will be reflected as a deferred credit which will be valued at an amount equal to the current market value of the clearing corporation option, option on futures or over-the-counter option which would have the effect of closing the position; any difference resulting from revaluation shall be treated as an unrealized gain or loss on investment; the deferred credit shall be deducted in arriving at the net asset value; the securities, if any, which are the subject of a written clearing corporation option or over-the-counter option will be valued in the manner described above for listed securities;
- (h) the value of a futures contract or a forward contract shall be the gain or loss, if any, that would arise as a result of closing the position in the futures contract or forward contract, as the case may be, on the date of valuation unless daily limits are in effect, in which case fair market value shall be based on the current value of the underlying interest;
- (i) listed securities subject to a hold period will be valued as described above with an appropriate discount as determined by the Investment Manager and investments in

private companies and other assets for which no published market exists will be valued at the lesser of cost and the most recent value at which such securities have been exchanged in an arm's length transaction which approximates a trade effected in a published market, unless a different fair market value is otherwise determined to be appropriate by the Investment Manager; and

- (j) the value of any security or property to which, in the opinion of the Investment Manager, the above principles cannot be applied (whether because no price or yield equivalent quotations are available as above provided, or for any other reason) shall be the fair value thereof determined in good faith in such manner as the Investment Manager from time to time adopts.

Net asset value will be translated into Canadian dollars at the daily closing selling rate of the Canadian dollar quoted by Reuters Information Services (or such other independent internationally recognized financial institution as is designated by the Trustee upon the recommendation of the Investment Manager from time to time) at Close of Business on the Valuation Date against the currencies in which the investments are held. For greater certainty, during the period prior to the Final Instalment Date, the aggregate amount of the Final Instalments will not be included as an account receivable in the calculation of net asset value.

If an investment cannot be valued under the foregoing rules or if the foregoing rules are at any time considered by the Investment Manager to be inappropriate under the circumstances, then notwithstanding such rules, the Investment Manager will make such valuation as it considers fair and reasonable and, if there is an industry practice, in a manner consistent with industry practice for valuing such investment.

## **ARTICLE 7 TRUSTEE**

### **7.1 Appointment.**

Computershare Trust Company of Canada (successor to Montreal Trust Company of Canada) hereby declares itself to be the Trustee of the Fund to hold such office unless and until it resigns or is removed or replaced by Unitholders in accordance with the provisions of Articles 9 and 12 hereof.

### **7.2 Trustee's Duties.**

The Trustee is responsible for the management and administration of the Fund and its assets. In connection therewith, the Trustee shall:

- (a) review and approve the Investment Objectives and Investment Restrictions of the Fund and review the portfolio transactions of the Fund at least monthly;
- (b) upon the recommendation of the Investment Manager (or any investment advisor appointed by the Investment Manager and so authorized) invest and reinvest any monies held as Fund Property in any Debt Security, property, right, asset or thing whatsoever;

- (c) receive cash in payment of Units being issued in, accordance with Section 3.2 on behalf of Unitholders;
- (d) pay with the monies administered under this Declaration of Trust the cash payments required for distributions by the Fund contemplated by Section 6.1 and any purchase price of Units acquired under the Reinvestment Plan established pursuant to Section 6.2;
- (e) pay with the monies administered under this Declaration of Trust, the fees of the Investment Manager provided for in Article 14 and any other expenses of the Fund;
- (f) commence, maintain, defend, adjust and settle suits and legal proceedings and to represent the Fund in any suit or proceeding, in consultation with the Investment Manager;
- (g) execute documents on behalf of the Fund and be the custodian of the Fund's official accounts and records of all transactions of the Unitholders and such other records as may be necessary to the performance of its duties;
- (h) collect, or cause to be collected, income and other accretions earned, paid or realized on securities or investments of the Fund and add the same to the Fund;
- (i) report to Unitholders (including the preparation and distribution of annual and quarterly financial statements) and provide to each Unitholder information regarding the Fund necessary to enable him or her to complete his or her tax return in respect of the year and required by Canadian law to be submitted to him or her for income tax purposes;
- (j) prepare all regulatory filings in consultation with the Investment Manager;
- (k) retain brokers, recommended by the Investment Manager, for trades in the Fund's investments;
- (l) enter into insurance contrails on behalf of the Fund, the Trustee and the Investment Manager; and
- (m) provide administrative services to the Fund.

### **7.3 Tax Designations and Elections.**

The Trustee shall file on behalf of the Fund all tax returns that the Fund is required by law to file. The Trustee shall exercise all discretions and make all designations, elections, determinations and applications under the *Income Tax Act* or under any other applicable legislation which shall permit the Fund to flow through to the Unitholders the Net Income of the Fund, the Net Capital Gains of the Fund and such other amounts as such or which shall be otherwise beneficial to the Fund and the Unitholders.

#### **7.4 Trustee's Agents.**

The Trustee may, after consultation with the Investment Manager, appoint agents including, without limitation, investment advisers, depositories, registrars, transfer agents, agents to administer the Reinvestment Plan established pursuant to Section 6.2, custodians, actuaries, accountants, lawyers, and others to perform or to enable it to perform property the duties imposed upon it by this Declaration of Trust.

#### **7.5 Trustee's Duty of Care.**

The Trustee shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interest of the Fund and the Unitholders, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

### **ARTICLE 8 POWERS OF TRUSTEE**

#### **8.1 General.**

The Trustee is hereby vested with and shall have, without other or further authorization, continuing, full, absolute and exclusive power, control, and authority over, and management of, the Fund Property and the affairs and undertaking of the Fund, to the same extent as if the Trustee was the sole and absolute owner of such property and may exercise the same without the necessity of applying to any court for leave to do so. Subject to the provisions of Article 13 the Trustee shall not be liable, answerable or accountable for any loss or damage resulting from the exercise by the Trustee of a discretion or its failure to exercise a discretion. Without restricting or limiting the generality of the foregoing, such powers of the Trustee shall include the powers enumerated in the ensuing sections of this Article 8 and elsewhere in this Declaration of Trust.

#### **8.2 Investments.**

8.2.1 The Trustee shall have the power, subject to the Investment Objective and Investment Restrictions of the Fund as contained herein and for such consideration as it may deem proper, to invest in, issue commitments with respect to, purchase or otherwise acquire, for cash or other property, and hold for investment and reinvestment Debt Securities and other property, whether real, personal or mixed, whether moveable or immovable, whether tangible or intangible and wheresoever situate.

8.2.2 In the exercise of its powers, the Trustee shall not be limited by any law now or hereafter in effect limiting the investments which may be held or retained by trustees or other fiduciaries, but it shall have, subject to the provisions of Section 8.1, full authority and power to make any and all investments that the Trustee, in its absolute discretion, but subject to the Investment Objective and Investment Restrictions, shall determine, and without liability for loss, even though such investments or any of them shall be of a character or in an amount not considered proper for the investment of trust funds or which do not or may not produce income.

### **8.3 Power to Borrow.**

8.3.1 Subject to the Investment Restrictions, the Trustee shall have the power upon the recommendation of the Investment Manager to:

- (a) borrow money (which for these purposes includes borrowing on margin) and, in that connection, issue drafts to be accepted by the bank; and
- (b) charge, mortgage, hypothecate and/or pledge, free and clear from any and all trusts, all or any of the currently owned or subsequently acquired Fund Property, to secure any money borrowed.

8.3.2 The Trustee shall not borrow money unless the loan agreement, promissory note or other documents to be signed by the Trustee in connection with such borrowing clearly states that the lender acknowledges that the Unitholders shall have no liability or contingent obligations whatsoever, save and except for an obligation to pay any outstanding instalment of the issue price therefor and any pledge of Unit(s) in connection therewith in respect of such borrowings and that the lender shall look solely to the Fund Property for satisfaction of any claims of any nature arising in connection with such borrowing and that the Fund Property only shall be subject to levy or execution.

### **8.4 Power to Deal with Fund Property.**

Subject to the Investment Restrictions, the Trustee shall have the power:

- (a) to sell, exchange or otherwise dispose of, or grant options with respect to, any of the Fund Property or any interest therein, at any time held hereunder, free and clear from any and all trusts, at public or private sale, for cash or on terms, without advertisement, and subject to such restrictions, stipulations, agreements and reservations as it shall deem proper, including the power to take back security or other things of value for the whole or any part of the purchase price of any of the Fund Property sold or transferred by it, and to execute and deliver any deed or other instrument in connection with the foregoing; and
- (b) otherwise deal with any property comprising part of the Fund Property or any interests therein resulting from enforcement of any rights relating to any of the Fund Property, and to own, manage, use and hold such Fund Property and such interests.

### **8.5 Power to Contract.**

Subject to the provisions of Article 10, the Trustee may appoint, employ, contract with, or retain on behalf of the Fund any Person to:

- (a) provide administrative and clerical services necessary for the management of the Fund including the provision of reports to the Trustee with respect to compliance by the Investment Manager and others of their respective obligations to and in respect of the Fund; and

- (b) act as a consultant, accountant, correspondent, lender, technical advisor, lawyer, broker, underwriter, agent, fiduciary, escrow agent, depository, custodian, registrar, transfer agent, paying agent, or in any other capacity deemed by the Trustee necessary or desirable.

**8.6 Power to Deliver Security.**

Subject to the Investment Restrictions and the provisions of Section 8.3, the Trustee shall have the power upon the recommendation of the Investment Manager to execute and deliver any mortgage, pledge or other instrument giving or creating a lien or charge upon all or any part of the Fund Property, to secure the payment of any indebtedness of the Fund, or the performance of any obligation of the Fund under any contract or agreement of the Fund.

**8.7 Power to Deal with Banks and Trust Companies.**

The Trustee shall have the power to open and operate one or more bank accounts and to deposit or lodge for safekeeping, any of the Fund Property with any one or more banks, trust companies or other banking institutions including the Trustee or any affiliate of the Trustee. Such deposits of money may but need not earn interest and may be subject to withdrawal on notice or upon demand, all as the Trustee may determine.

**8.8 Power to Pay Taxes and Assessments.**

The Trustee shall have the power to pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustee in connection with the Fund Property, undertaking or income of the Fund, or imposed upon or against the Fund Property, undertaking or income of the Fund, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Net Income, Net Loss or Net Capital Gains distributed to Unitholders in the year and any other matter as shall be permitted under the *Income Tax Act*, (provided that to the extent necessary the Trustee will seek the advice of the Fund's counsel or the Auditors) and do all such other acts and things as may be deemed by the Trustee in its sole discretion to be necessary, desirable or convenient.

**8.9 Power to Satisfy Debts and Claims.**

The Trustee shall have the power to pay or satisfy out of the Fund Property any debts of or claims against the Fund or the Fund Property, and to incur and to pay any charges or expenses (including those incurred by others prior to the creation of the Fund) which, in the opinion of the Trustee are or were necessary or desirable for the creation or the affairs of the Fund and which are for the account of the Fund.

**8.10 Power to Exercise Rights of Ownership.**

The Trustee shall have the power to exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the Fund Property to the same extent that any Person might, and, without limiting the generality of the foregoing, to vote or give any consent,



request or notice, or waiver of notice, either in person or by proxy or power of attorney (with or without power of substitution) to one or more individuals, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action.

**8.11 Power to Collect.**

The Trustee shall have the power to collect and sue for all sums of money or other property or claims that are believed due to the Fund; to give receipts for all sums of money or property received; to adjust the rate of interest at any time on any sums that may be due or become due to the Fund; to receive and release, in whole or in part, the collateral or security for all or any part of the Fund Property; to consent to the extension of the time for payment, or to the renewal of all or any part of the Fund Property; to engage or intervene in, prosecute, defend, compromise, abandon or adjust by arbitration or otherwise any action, suit, proceeding, dispute, claim, demand or thing relating to all or any part of the Fund Property; to foreclose any mortgage or other security interest forming all or any part of the Fund Property; to exercise any power of sale, and to convey good title thereunder free of any and all trusts, and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property (whether or not such property meets the requirements of Article 5 or any policy of the Trustee from time to time in effect with respect to investments); to acquire, accept or receive title to property in lieu of foreclosure or sale (whether or not such property meets the requirements of Article 5 or any policy of the Trustee from time to time in effect with respect to investments); to participate in any arrangement with creditors (including a reorganization or composition) for enforcing or protecting the interests of the Fund as the owner or holder of all or any part of the Fund Property and to that end to transfer to and deposit with any Person any such Fund Property; to appoint or join with others to appoint a receiver or receiver and manager in respect of the enforcement of any rights relating to any of the Fund Property or to act in either of such capacities either alone or jointly with others and to pay any assessment levied in connection with any such arrangement; to extend the time, with or without security, for the payment or delivery of any debt or property; and to execute and enter into any release, agreement, contract or other instrument and, in connection with any of the foregoing, to vote or otherwise act in exercise of any rights relating to any of the Fund Property.

**8.12 Power to Determine Accounting Methods.**

Subject to Section 1.6, and Article 11, the Trustee shall have the power to determine the method or form in which the books of account of the Fund shall be kept and from time to time to change the method or form of keeping the accounts, in consultation with the Auditors and the Investment Manager.

**8.13 Power to Determine Fiscal Year.**

The Trustee shall have the power to, from time to time, change the fiscal year of the Fund.

**8.14 Power to Value Fund Property.**

The Trustee shall have the power to determine, or to delegate to the Investment Manager the right to determine, conclusively, the value of any or all Fund Property in

accordance with the principles set out in Section 6.3 hereof. In determining such value, the Trustee or the Investment Manager, as the case may be, may consider such information and advice as the Trustee or the Investment Manager, as the case may be, in its sole judgment, may deem material and reliable. The Trustee or the Investment Manager, as the case may be, shall also have the power to revalue any Fund Property from time to time, and to keep the books of the Fund and render reports to the Unitholders of the Fund and other Persons on the basis of the values so determined.

**8.15 Power to Appoint Custodian.**

The Trustee shall have the power upon the recommendation of the Investment Manager to appoint a custodian for any or all of the Fund Property or instruments forming part of the Fund's records.

**8.16 Power to Appoint Auditor.**

If the position of Auditor becomes vacant at any time, the Trustee may fill such vacancy by appointing a firm of chartered accountants which meets the requirements of Section 11.3 hereof as Auditor to hold office until a meeting of Unitholders is held to confirm the appointment of the new Auditor. The Trustee shall have the power to determine and pay the remuneration of the Auditor from time to time in office, such payments to be made out of the Fund Property.

**8.17 Power to Purchase Insurance.**

The Trustee shall have the power to purchase and pay for, out of the Fund Property, and to maintain for the life of the Fund insurance for the protection of the Fund Property, the Unitholders, the Trustee, consultants or agents of the Fund, the Investment Manager or any Person with whom the Fund has dealings, in such amounts as the Trustee shall, after consultation with the Investment Manager, deem adequate to cover all claims and liabilities of every nature arising by reason of holding or having held Units or of holding, being or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such Person in such capacity, including any action taken or omitted that may be determined to constitute negligence, provided that the Fund would have the power under Article 13 hereof to indemnify such Person against such liability and further provided that such insurance shall not insure the Trustee against a liability, cost, charge or expense incurred as a result of a contravention of the standard of care applicable to the Trustee set out in Section 7.5 or in respect of any other Person against a liability, cost, charge or expense incurred as a result of a contravention of the standard of care owed by such Person to the Fund or the Unitholders. The Fund shall bond and insure the Trustee for the protection of the Fund, if available at reasonable rates, to the same extent as a trust company administering comparable assets in Ontario would be required to bond and insure its officers and employees. The Fund shall pay all premiums and other sums of money payable for such purpose out of the Fund Property with such contribution, if any, by those insured as may be determined by the Trustee.

**8.18 Power to use Nominees.**

The Trustee shall have the power to cause legal title to any Fund Property to be held by or in the name of the Fund, the Trustee, or any other Person, including any Custodian or sub custodian or the Investment Manager, as nominee, on such terms, in such manner, and with such powers as the Trustee may determine, provided that in the opinion of the Trustee, after consultation with the Investment Manager, the interest of the Fund therein is appropriately protected. The Trustee or any such Person shall have the power to hold any Fund Property or evidences thereof in bearer form.

**8.19 Power to Indemnify.**

In addition to the mandatory indemnification provided for in Article 13, the Trustee on behalf of the Fund shall have the power to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any Person with whom the Fund has dealings including, without limitation, the Investment Manager, the Trustee, any warrant trustee, depository, registrar and transfer agent, escrow agent, or reinvestment plan agent (subject to the limitations in Section 13.4 hereof), to such extent as the Trustee shall determine.

**8.20 Power to File Prospectus and to Apply for Listing.**

The Trustee shall have the power from time to time, upon the recommendation of the Investment Manager, to prepare, sign and file or cause to be prepared, signed and filed a prospectus, registration statement, offering memorandum, or similar document and any amendment thereto, relating to or resulting from an offering of the Units or other securities issued or held by the Fund and to pay the costs thereof and related thereto out of the Fund Property whether or not such offering is or was of direct benefit to the Fund or those Persons (if any) who were Unitholders immediately prior to such offering. The Trustee shall have the power, upon the recommendation of the Investment Manager, to make or cause to be made application for the listing on any stock exchange of the Units or other securities of the Fund, and to do all things which in the opinion of the Trustee may be necessary or desirable to effect or maintain such listing or listings.

**8.21 Power to Adopt and use Seal.**

The Trustee may adopt a seal for the Fund, but if adopted it shall not be necessary to place such seal on, and its absence shall not impair the validity of, any document, instrument or other paper otherwise validly executed and delivered by or on behalf of the Fund.

**8.22 Power to Enact By-laws.**

The Trustee may, without the approval or confirmation of Unitholders, after consultation with the Investment Manager enact and from time to time amend or repeal by-laws not inconsistent with this Declaration of Trust, containing provisions relating to the Fund, the Fund Property and the conduct of the affairs of the Fund, but not in conflict with any provision of this Declaration of Trust.

**8.23 Validity of Elections, Appointments, Resolutions and Actions.**

Notwithstanding anything to the contrary contained in this Declaration of Trust, the failure to comply with any of the provisions hereof relating to the election, appointment or qualifications of the Trustee, the Investment Manager, the Auditor or the Custodian shall not affect the validity or enforceability of any such election or appointment or of any action taken by the Trustee, the Investment Manager, the Auditor or the Custodian.

**8.24 Power to Delegate.**

The Trustee shall have the power to delegate from time to time to its officers, employees, consultants, agents and other Persons, including the Investment Manager, the doing of such things and the exercise of such powers hereunder as the Trustee may from time to time deem expedient, so long as any such delegation is not inconsistent with any of the provisions of this Declaration of Trust and subject at all times to the general control and supervision of the Trustee.

**8.25 Presumption in Favour of Grant of Power.**

Notwithstanding the foregoing, the Trustee shall have the capacity and the rights, powers and privileges of a natural person. In addition, the Trustee shall have the power to do all such things and execute all such agreements and other instruments as it deems necessary, proper or desirable in order to exercise any of its powers, and to promote or advance the purposes, objective and provisions of this Declaration of Trust whether or not herein specifically mentioned. Any determination made in good faith from time to time by the Trustee of the extent and effect of the powers set out in this Declaration of Trust shall be, conclusive and binding; upon the Unitholders. In construing the provisions of this Declaration of Trust, the presumption shall be in favour of the grant to the Trustee of any power in question.

**ARTICLE 9  
REMOVAL OF TRUSTEE**

**9.1 Resignation or Removal.**

The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving 60 days' prior written notice to Unitholders and the Investment Manager or such shorter notice as the Investment Manager may accept as sufficient. The Unitholders may remove the Trustee at a meeting duly called for the purpose in accordance with Article 12.

**9.2 Obligations on Resignation or Removal.**

The Unitholders may elect, a successor trustee at the same meeting at which the Trustee was removed. If within 60 days of receipt of notice of the Trustee's resignation or of the removal of the Trustee under Section 9.1, the Unitholders fail to elect a successor to the Trustee, the Trustee, the Investment Manager or any Unitholder may apply to a court of competent jurisdiction to appoint a successor to the Trustee. Any successor Trustee so appointed must be a trust company registered in Ontario or another company permitted to so not under applicable

law. Upon the election or appointment of a successor to the Trustee, the Trustee shall promptly transfer all the assets of the Fund together with all accounts and records that the Trustee is required to maintain to the successor to the Trustee. The Trustee, for a period of six years following the date of notice given or removal under Section 9.1 shall provide the Investment Manager or the successor to the Trustee with any information from its records that the Investment Manager or the successor to the Trustee may reasonably require for the purposes of this Declaration of Trust and the, Trustee shall be reimbursed for the reasonable costs and expenses thereof.

### **9.3 Effective Time of Removal.**

Notwithstanding any other provision of this Declaration of Trust, the resignation or removal of the Trustee shall not become effective until the election or appointment of a successor to the Trustee has been made and accepted.

### **9.4 Successor to the Trustee's Business.**

Any corporation into or with which the Trustee may be merged or consolidated or amalgamated, or any corporation resulting therefrom to which the Trustee shall be a party, or any corporation succeeding to the trust business of the Trustee shall be the successor to the Trustee hereunder without any further act on its part or any of the parties hereto, provided that, such corporation would be eligible for appointment as a successor trustee under Section 9.2.

## **ARTICLE 10 MANAGEMENT AND ADMINISTRATION**

### **10.1 Appointment of Investment Manager to assist with the Management of the Fund.**

10.1.1 Subject to retaining general control and direction of the Fund, the Trustee shall enter into a portfolio management agreement (the "**Portfolio Management Agreement**") and an administration agreement (the "**Administration Agreement**") for the appointment of an investment manager to provide portfolio management services to the Fund and to assist the Trustee with certain administrative matters. The Trustee shall appoint EquitiLink International Management Limited (the "**Investment Manager**") as the initial investment manager of the Fund.

10.1.2 In the event that the Portfolio Management Agreement and the Administration Agreement are terminated in accordance with their terms, the Trustee shall promptly appoint a successor portfolio manager to carry out the activities of the Investment Manager until a meeting of Unitholders is held to confirm such appointment by Ordinary Resolution and may also appoint a Person (who need not be the Investment Manager) to assume the responsibilities set out in the Administration Agreement.

10.1.3 The Trustee shall have no liability or responsibility for any actions of the Investment Manager hereunder or under the Portfolio Management Agreement or the Administration Agreement, and the Trustee, in relying upon the Investment Manager, shall be deemed to have complied with its obligations under Section 7.5.

## **10.2 Appointment of Investment Advisors.**

The Investment Manager may retain investment advisors to assist the Investment Manager in making, or to make and implement itself, investment decisions with respect to the investment portfolio of the Fund, in accordance with the Investment Objective and Investment Restrictions and the confines of the overall investment policy of the Fund. The Investment Manager shall appoint EquitiLink Australia Limited as the initial investment advisor.

## **10.3 Conflict of Interest.**

The Trustee and the Investment Manager are, and any investment advisor and sub-advisors may be, engaged in the management of other trusts and funds and the provision of services to other entities. Provided that the Trustee, the Investment Manager and any investment advisors or sub-advisors, as the case may be, do not contravene the Investment Objective and Investment Restrictions of the Fund, and provided that each fulfils its duty of care as set forth in the Declaration of Trust, the Portfolio Management Agreement, the Administration Agreement and any investment advisory agreements respectively, the activities of the Trustee, the Investment Manager or any investment advisors or sub-advisors, as the case may be, outlined above will not be considered to be a conflict of interest or breach of any fiduciary duty with respect to the management of the Fund.

## **10.4 Waiver of Conflict of Interest.**

It is hereby acknowledged that Computershare Trust Company of Canada (successor to Montreal Trust Company of Canada) or its affiliates will be acting as Trustee, Reinvestment Plan Agent registrar and transfer agent for the Fund, and in connection with the initial public offering by the Fund, will also be acting as escrow agent, warrant trustee, security agent and depository. Any conflict of interest or potential conflict of interest which may arise as a result of Computershare Trust Company of Canada acting in such capacities is hereby waived.

## **10.5 Retention of Benefits.**

The Trustee, the Investment Manager, any investment advisors and any sub-advisors are expressly permitted (notwithstanding any liability which might otherwise be imposed by law or in equity upon them) to derive direct or indirect benefit, profit or advantage from time to time as a result of the relationships, matters, contracts, transactions, affiliations or other activities and interests permitted under Section 10.3 hereof, and the Trustee, the Investment Manager and any investment advisors or sub-advisors shall not be liable in law or in equity to pay or account to the Fund or to any Unitholder for any such direct or indirect benefit, profit or advantage.

## **10.6 Investments under Investment Manager's Direction.**

10.6.1 Subject to the provisions of Article 5, Section 10.1, and the general control and supervision of the Trustee, the Investment Manager shall be authorized to invest and reinvest the Fund Property.

10.6.2 The Investment Manager shall provide to the Trustee and the Trustee shall review monthly statements of all investment transactions performed, together with a certificate of the managing director of the Investment Manager that such transactions have complied in all material respects with the Investment Objective and Investment Restrictions.

**10.7 Investment Manager's Power.**

Subject to the general direction and control of the Trustee, the Investment Manager is entitled, for and on behalf of the Fund to act and to execute such deeds and documents as the Trustee may direct or as may be necessary or desirable to facilitate the investment activities of the Fund as contemplated by this Declaration of Trust.

**10.8 Investment Manager's Agents.**

The Investment Manager may employ or engage or appoint as agent and rely and act upon information or advice received from investment counsellors, distributors, brokers, electronic data processors, advisors, accountants, accounting and pricing services, lawyers and others.

**ARTICLE 11  
AUDITS, REPORTS AND RECORDS**

**11.1 Financial Statements.**

The Fund shall prepare, file and deliver to Unitholders such financial statements and continuous disclosure documents as are from time to time required by applicable laws.

**11.2 Other Unitholder Information.**

11.2.1 In addition to the above, the Trustee will cause to be maintained with respect to the Fund the same records, where applicable, as are required to be maintained by Section 20(1) of the CBCA. Unitholders will be entitled to have access to such records and to take extracts therefrom, including obtaining a list of Unitholders, to the same extent and subject to the same conditions as provided in Section 21 of the CBCA.

11.2.2 In addition to the financial statements referred to in Section 11.1, the Investment Manager will furnish to Unitholders within the first 90 days of each year (or such earlier time as may be required by applicable law) such other reports as are from time to time required by applicable law, including prescribed forms needed for completion of the Unitholders' tax returns under the *Income Tax Act* and equivalent provincial legislation.

**11.3 Appointment of Auditor.**

An Auditor shall be appointed by the Trustee, provided that such Auditor is a nationally recognized firm of chartered accountants which has an office in the Province of Ontario for such term as may be determined by the Trustee and upon the expiry of such term the Trustee may reappoint such Auditor or appoint a successor Auditor. The Unitholders may at a meeting of the Unitholders duly called and held for that purpose, remove the Auditor before the

expiration of his term of office and appoint another Auditor to hold office (provided that the only Persons whose names may be put into nomination shall be Persons who meet the requirements of this Section 11.3).

#### **11.4 Confidentiality.**

Except as required by applicable law or provided herein, the accounts and records of the Fund shall be kept confidential.

### **ARTICLE 12 MEETINGS OF UNITHOLDERS**

#### **12.1 Meetings of Unitholders.**

A meeting of the Unitholders may be called at any time by the Trustee and shall be called by the Trustee upon written request of Unitholders holding in the aggregate not less than 10% of the Units then outstanding, which request must specify the purpose or purposes for which such meeting is to be called. Meetings of Unitholders shall be held at the head office of the Fund, or such other place within the Province of Ontario as the Trustee shall determine and designate. The Fund shall take all necessary steps to obtain regulatory relief from the requirement under certain provincial securities statutes for the Fund to hold annual meetings of Unitholders. If such regulatory relief is obtained, no annual meetings of Unitholders will be held unless requisitioned by Unitholders in accordance with this Section 12.1.

#### **12.2 Notice of Meeting and Quorum.**

12.2.1 Notice of all meetings of Unitholders shall be given by mail to each Unitholder at his address of record, mailed at least 21 days before the meeting. Such notice shall set the time when and the place where the meeting is to be held and shall specify, in general terms, the nature of the business to be transacted thereat, but it shall not be necessary to specify in the notice the text of any resolution to be approved, confirmed or passed. Any adjourned meeting may be held as adjourned, without further notice. The accidental omission to give notice to or the non-receipt of notice by a Unitholder shall not invalidate any meeting of Unitholders or any action taken by Unitholders at such meeting. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 12.2, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

12.2.2 At any meeting of Unitholders, subject as hereinafter provided, a quorum shall consist of two or more persons present in person or by proxy representing not less than 15% of the Units then outstanding. In the event of such quorum not being present on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of Unitholders, shall be dissolved, but in any other case, the meeting shall stand adjourned to such day being not more than 30 days later and to such place and time as may be appointed by the chairman of the meeting and if at such adjourned meeting a quorum as defined above is not present, the Unitholders present either personally or by



proxy shall be deemed to constitute a quorum. Notice need not be given in respect of any such adjournment, provided that the aggregate of all adjournments in respect of that meeting is not more than 30 days. In the case of a meeting called to consider a matter which is the proper subject of an Extraordinary Resolution (including those matters described in Section 12.3.1(b), (c), (d), (e), and (f)), a quorum shall consist of two or more individuals present in person or by proxy representing not less than 25% of the Units then outstanding. In the event of such quorum not being present on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of Unitholders, shall be dissolved, but in any other case, the meeting shall stand adjourned to such day being not more than 30 days later and to such place and time as may be appointed by the chairman of the meeting and if at such adjourned meeting a quorum as defined above is not present, the Unitholders present either personally or by proxy shall be deemed to constitute a quorum.

### **12.3 Voting Rights of Unitholders.**

12.3.1 The following matters relating to the Fund require authorization by the Unitholders given at a meeting duly called for that purpose:

- (a) the amendment of this Declaration of Trust (other than amendments made by the Investment Manager or Trustee, without Unitholder authorization, in accordance with Section 15.1);
- (b) the termination by the Fund of the Portfolio Management Agreement or the Administration Agreement entered into by the Fund;
- (c) the termination of the Trustee of the Fund;
- (d) any change in the Investment Objectives or Investment Restrictions of the Fund, other than such changes as are required under applicable law;
- (e) the liquidation, dissolution or termination of the Fund; and
- (f) any amendment to the Declaration of Trust which would materially adversely affect the Investment Manager that has not been approved by the investment Manager.

12.3.2 Any approval or authorization in respect of the matters specified in clauses 12.3.1 (b), (c), (d), (e), and (f) shall be given by Extraordinary Resolution. Any approval or authorization in respect of the matter specified in clause (a) (other than as contemplated in clauses (d), (e), and (f)) may be given by Ordinary Resolution.

12.3.3 A declaration by the chairman of a duly constituted meeting of Unitholders as to the results of any vote of Unitholders, by ballot or otherwise, shall be deemed to be the decision of the Unitholders.

12.3.4 At all meetings of Unitholders, each holder of Units entitled hereunder to vote thereat shall have one vote for each whole Unit held.

#### **12.4 Record Dates.**

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustee may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 30 days, as the Trustee may determine; or without closing the transfer books the Trustee may fix a date not more than 50 days prior to the date of any meeting of Unitholders or other action as a record date for the determination of Unitholders entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as Unitholders of record for purposes of such other action, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive, notice of and vote at such meeting or any adjournment thereof, even though he has since that date disposed of his Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to be treated as a Unitholder of record for purposes of such other action.

#### **12.5 Proxies.**

At any meeting of Unitholders, any holder of Units entitled to vote thereat may vote by proxy and a proxy need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Trustee, or with such other agent of the Fund as the Trustee may direct, prior to the commencement of such meeting. If approved by the Trustee, proxies may be solicited by the Fund, in accordance with applicable law, naming the Trustee as proxy and the cost thereof paid out of the Fund Property. When any Unit is held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Unit. The instrument appointing any proxy shall be in such form and executed in such manner as the Trustee may from time to time determine.

#### **12.6 Chairman.**

An individual nominated in writing by the Trustee shall be chairman of the meeting and if no individual is so nominated, or if the individual so nominated is not present within fifteen minutes from the time fixed for the holding of the meeting, the Unitholders present in person or represented by proxy shall choose some individual present to be chairman.

#### **12.7 Regulations.**

The Trustee may from time to time make and from time to time vary such regulations as it shall think fit for:

- (a) the issue of instruments appointing proxies to represent Unitholders at any meeting of Unitholders;

- (b) the deposit of instruments appointing proxies at such place and time as the Trustee or Unitholders convening the meeting, as the case may be, may in the notice convening the meeting direct;
- (c) the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, cabled, telegraphed or sent by facsimile transmission before the meeting to the Trustee and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting;
- (d) the form of proxy; and
- (e) generally for the calling of meetings and the conduct of business thereat.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only persons who shall be recognized at any meeting as a Unitholder, or be entitled to vote thereat, shall be Unitholders or proxies of Unitholders.

### **ARTICLE 13 LIABILITY OF TRUSTEE, INVESTMENT MANAGER, AND UNITHOLDERS AND OTHER MATTERS**

#### **13.1 Liability of Trustee and Investment Manager.**

None of the Trustee, the Investment Manager, their directors, officers, employees and their agents shall be liable to the Fund or to any Unitholder for any default, failure or defect in any of the securities comprising the portfolio of the Fund, for relying in good faith on any documents that purport to be properly executed, for any depreciation of, or loss to, the value of the assets of the Fund, for any loss that may occur by reason of the failure of any bank or Custodian or of the Trustee with which monies of the Fund have been deposited or for any other action or failure to act (including without limitation the failure to compel in any way any former or acting trustee to redress any breach of trust) except in cases of wilful misconduct, bad faith, negligence or reckless disregard of its obligations and duties or in cases where the Trustee, or Investment Manager, as applicable fails to act honestly and in good faith with a view to the best interests of the Unitholders of the Fund or to exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.

#### **13.2 General Limitation of Liability and Indemnification.**

13.2.1 The Trustee, the Investment Manager, any investment advisor and consultants and agents of the Fund, in incurring any debts, liabilities or obligations, or in taking or omitting any other actions for or in connection with the affairs of the Fund are, and shall be conclusively deemed to be, acting for and on behalf of the Fund, and not in their own personal capacities.

13.2.2 Save and except in respect of any obligation to pay an instalment in respect of the purchase price of Units sold on an instalment basis or the payment of the exercise price in

respect of any warrants or options issued by the Fund, no Unitholder as such shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with Fund Property or the obligations or the affair, of the Fund or the acts or omissions of the Trustee, the Investment Manager, an investment advisor or any other person in the performance or exercise of any obligations, power, discretion or authority conferred hereunder and all such Persons shall look solely to the Fund Property for satisfaction of claims of any nature arising out of or in connection therewith and the Fund Property only shall be subject to levy or execution.

13.2.3 Subject to Sections 13.1 and 13.4 hereof; and subject to any general standard of care in any investment advisory agreement, Portfolio Management Agreement, the Administration Agreement or any agreement that the Custodian has with the Fund, none of the Trustee, the Investment Manager, any investment advisor, the Custodian, and any director, officer, employee or agent thereof (collectively the “**Responsible Parties**”) shall be subject to any liability whatsoever, in tort, contract or otherwise, in connection with Fund Property or the affairs of the Fund, including, without limitation, in respect of any loss or diminution in value of any Fund Property, to the Fund or to any Responsible Party or to Unitholders, or any of them, or to any other Person for anything done or permitted to be done by any of them including, without limitation, the failure to sell or purchase any investment, the failure to compel in any way any former or acting Trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the affairs of the Fund. Except to the extent provided in this Section 13.2.3, no Responsible Party shall be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses (including legal costs) against or with respect to the Fund arising out of anything done or permitted or omitted by any of them to be done in respect of the execution of the duties of their office or for or in respect of the affairs of the Fund. The Fund shall be solely liable therefor and resort shall be had solely to the Fund Property for the payment or performance thereof.

13.2.4 If, notwithstanding the provisions of this Declaration of Trust, the Trustee, the Investment Manager, any investment advisor or any Unitholder or consultant or agent of the Fund shall be held personally liable as such to any other Person in respect of any debt, liability or obligation incurred by or on behalf of the Fund, of, subject to Sections 13.1 and 13.4 hereof, any action taken or omitted or in connection with the affair, of the Fund, such Trustee, Investment Manager, investment advisor, Unitholder, consultant or agent shall be entitled to indemnity and reimbursement out of the Fund Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including without limitation, the fees and disbursements of counsel.

13.2.5 For greater certainty, in this Article 13, the terms Trustee, investment advisor, Investment Manager and Custodian shall include, where the context so permits, the directors, officers, employees and agents thereof.

### **13.3 Exculpatory Clauses in Instruments.**

The Trustee shall use reasonable means to inform all Persons having dealings with the Fund of the limitation of liability set forth in Section 13.2 and shall cause to be inserted in any written agreement, undertaking or obligation made or issued on behalf of the Fund an appropriate statement of the disavowal and limitation of liability as set forth in Section 13.2, but

the omission of such statement from any such instrument, shall not render the Trustee, the Investment Manager, any investment advisor or any Unitholder or consultant or agent of the Fund liable to any Person, nor shall the Trustee, the Investment Manager, any investment advisor or any Unitholder or any consultant or agent of the Fund be liable to any Person for such omission. If, notwithstanding this provision, the Trustee, the Investment Manager, any investment advisor or any Unitholder or any consultant or agent of the Fund shall be held liable to any other Person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, Investment Manager, investment advisor, Unitholder, consultant or agent shall be entitled to indemnity and reimbursement out of the Fund Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including without limitation, the fees and disbursements of counsel. Notwithstanding the foregoing, the Trustee shall not execute on behalf of the Fund a loan agreement, promissory note or other document evidencing or related to the borrowing of money by the Fund unless such document contains an appropriate statement of disavowal and limitation of liability as set forth in Section 13.2.

#### **13.4 Indemnification and Reimbursement.**

13.4.1 Each Person who is, or shall have been the Trustee, the Investment Manager, an investment advisor to the Fund or any Unitholder or any consultant or agent of the Fund shall be indemnified by the Fund out of the Fund Property against all liabilities and expenses (including judgments, fines, penalties, amounts paid in settlement and counsel fees), reasonably incurred in connection with any action, suit or proceeding to which any such Trustee, Investment Manager, investment advisor, Unitholder, consultant or agent may hereafter be made a party by reason of being or having been such Trustee, Investment Manager, investment advisor, Unitholder, consultant or agent, provided such Person shall not be finally adjudged in said action, suit or proceeding liable for or guilty of wilful misconduct, bad faith, negligence or reckless disregard of duty to the Fund as Trustee, Investment Manager, investment advisor, Unitholder, consultant or agent, as the case may be, in relation to the matter or matters in respect of which indemnification is claimed.

13.4.2 For purposes of the preceding paragraph, (i) "action, suit or proceeding" shall include every action, suit or proceeding, civil, criminal or other, (ii) the right of indemnification conferred thereby shall extend to any threatened action, suit or proceeding and the failure to institute it shall be deemed its final determination, (iii) advances may be made by the Fund against costs, expenses and fees incurred in respect of the matter or matters as to which indemnification is claimed, provided that any advance shall be made only if the Fund receives an opinion of legal counsel to the effect that, on the basis of the facts known, to such counsel, the Person seeking such advance will achieve substantial success and on the condition that such Person receiving such advance agrees to repay to the Fund any amounts so advanced if the Fund does not receive, substantially concurrently with the termination of the matter or matters as to which such advances were made, an opinion of legal counsel to the effect that such Person is entitled to indemnification under this Declaration of Trust or another document or instrument binding the Fund. The foregoing right of indemnification shall not be exclusive of any other rights to which the Trustee, Investment Manager, any investment advisor, any Unitholder or any consultant, or agent of the Fund may be entitled as a matter of law or which may be lawfully granted to such Person. The indemnity of the Trustee shall have first priority over each and

every other payment made from the assets of the Fund, including without limitation, any indemnity made in favour of the Investment Manager, or any other Person. The indemnities provided in Section 13.4, in favour of the Trustee shall survive the Trustee ceasing to act as Trustee hereunder and the termination of the Trust.

**13.5 Further Limitation on Indemnification.**

The Fund shall have no liability to reimburse any Person for transfer or other taxes or fees payable on the transfer of Units, fees relating to any distribution reinvestment plan or any income or other taxes assessed against any Person by reason of ownership or disposition of Units, or for any losses suffered by reason of changes in the market value or net asset value of Units.

**13.6 Trustee to Declare Interest.**

If the Trustee has, directly or indirectly, any interest in any contract or transaction to which the Fund is or is to be a party, it shall declare such interest in such contract or transaction to the Investment Manager and shall at that time disclose the nature and extent of such interest. It is hereby acknowledged that the parent company of the Trustee, a Canadian chartered bank, has agreed to provide a loan facility to the Fund.

**13.7 Trustee May Have Other Interests.**

Without affecting or limiting the duties and responsibilities or the limitations, exculpations and indemnities provided in this Declaration of Trust, the Trustee is hereby expressly permitted:

- (a) to be an affiliate of a Person from whom any Fund Property has been or is to be purchased or to whom any Fund Property has been or is to be sold by the Fund;
- (b) to use, in other capacities, knowledge gained in its capacity as the Trustee, provided that it may not make use of any specific confidential information for its own benefit or advantage or for the benefit or advantage of any other Person that, if generally known, might reasonably be expected to affect materially the value of any of the Units;
- (c) to be, or to be an affiliate of, any Person with whom the Fund contracts or deals, or which supplies services to the Fund, including without limitation underwriters and bankers;
- (d) to acquire, hold and sell Units as an affiliate of or fiduciary for any other Person, or as an affiliate of any Person who acquires, holds or sells Units, and to exercise all rights of a holder thereof as if it were not the Trustee;
- (e) to acquire, hold and dispose of, for its own account, any property, real or personal, even if such property is of a character which could be held by the Fund and to exercise all rights of an owner of such property as if it were not the Trustee; and

- (f) to have business interests of any nature and to continue such business interests while the Trustee, including the rendering of professional or other services and advice to other Persons for gain.

### **13.8 Retention of Benefits by Trustee.**

Provided the Trustee discloses the nature and extent of its interest in any contract or transaction as required by Section 13.6, the Trustee is hereby expressly permitted (notwithstanding any liability which might otherwise be imposed by law or in equity upon such Trustee as a trustee) to derive direct or indirect benefit, profit or advantage from time to time as a result of the relationships, matters, contracts, transactions, affiliations or other interests permitted under Section 13.7 and such Trustee shall not be liable in law or in equity to pay or account to the Fund, or to any Unitholder, whether acting individually or on behalf of itself and other Unitholders as a class, for any such direct or indirect benefit, profit or advantage nor shall any contract or transaction be void or voidable at the instance of the Fund or any Unitholder.

### **13.9 Interests of Consultants and Agents.**

13.9.1 Any consultant or agent of the Fund may, while so engaged and so long as it complies with this Declaration of Trust and any other applicable agreements:

- (a) acquire, hold and dispose of any property, real or personal, for its account even if such property is of a character which could be held by the Fund, and may exercise all rights of an owner of such property as if it were not a consultant or agent, as the case may be;
- (b) have business interests of any nature and may continue such business interests for its own account including the rendering of professional or other services and advice to other persons for gain; and
- (c) acquire, hold and sell Units in its own capacity or as an affiliate of or fiduciary for any other Person, or as an affiliate of any Person who acquires, holds or sells Units, and may exercise all rights of a holder thereof as if it were not a consultant or agent of the Fund, provided that it may not make use of any specific confidential information for its own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of any of the Units;

and such activities shall be deemed not to conflict with its duties as a consultant or agent of or to the Fund. Except as otherwise specifically agreed with the Fund, no consultant or agent of the Fund shall have any duty to present to the Fund any investment opportunity which it may receive in any capacity other than as consultant or agent of the Fund, and its failure to present to the Fund any such investment opportunity shall not make such consultant or agent liable in law or in equity, to pay, or account to the Fund, or to any Unitholder whether acting individually or on behalf of himself and other Unitholders as a class, for any benefit, profit or advantage derived therefrom.

13.9.2 For greater certainty, the services of the Investment Manager under the Portfolio Management Agreement shall not be exclusive, and nothing in the Portfolio Management

Agreement shall prevent the Investment Manager or any affiliate thereof, from providing similar services to other investment funds and other clients (whether or not their investment objectives and policies are similar to those of the Fund) or from engaging in other activities.

### **13.10 Execution of Instruments and Apparent Authority.**

13.10.1 Any instrument executed in the name of the Fund or on behalf of the Fund by the Trustee, the Investment Manager or their duly authorized agents shall constitute and shall be deemed to constitute a valid obligation of the Fund enforceable in accordance with its terms as if executed by the Trustee.

13.10.2 Any Person dealing with the Fund in respect of any matters pertaining to the Fund Property and any right, title or interest therein, or to the Fund or to the Units shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustee as to the capacity, power and authority of the Trustee, Investment Manager, an investment advisor, consultant or agent or any other Person to act for and on behalf of and in the name of the Fund. No Person dealing with the Trustee, Investment Manager, an investment advisor or any consultant or agent of the Fund, shall be bound to see to the application of any funds or property passing into the hands or control of such Trustee, Investment Manager, investment advisor, consultant or agent of the Fund. The receipt of the Trustee, Investment Manager, an investment advisor, or of authorized consultants or agents of the Fund, for moneys or other consideration, shall be binding upon the Fund.

### **13.11 Reliance.**

13.11.1 The Trustee shall be entitled to rely on statements, recommendations, advice or opinions (including financial statements and Auditor's reports) of the Investment Manager, an investment advisor, consultants, the Auditor, counsel or agents whose profession gives authority to a statement made by them on the subject in question and who are considered by the Trustee to be competent, but the Trustee is not bound to act upon any such opinion, advice, recommendation, consultation or other information.

13.11.2 Subject to Section 7.5 hereof, the Trustee shall be fully protected in relying upon any instruments, advice, recommendations or directions given by an officer, director, employee or agent of an investment advisor or the Investment Manager or by a broker, a custodian or any Unitholder, or by such other parties as may be authorized to give instructions or directions to the Trustee. If required by the Trustee, each investment advisor and the Investment Manager shall file with the Trustee a certificate of incumbency setting forth the names of parties authorized to give instructions or directions to the Trustee together with specimen signatures of such persons and the Trustee shall be entitled to rely on the latest such certificate of incumbency filed with it. The Trustee and the Investment Manager shall each be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and signed or presented by the proper person or persons and they shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.



13.11.3 Any advice or recommendations provided to the Trustee where required hereunder shall be given by the Investment Manager in writing and such writing shall be signed by an authorized signing officer.

**13.12 Conditions Precedent.**

The obligation of the Trustee to commence or, continue any act, action, suit or proceeding or to represent the Fund in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustee from the Fund to commence or continue such act, action, suit or proceeding or to represent the Fund in any action, suit or proceeding and an indemnity reasonably satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage it may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless it is given an indemnity and funding satisfactory to the Trustee, acting reasonably.

**13.13 Cessation of Trustee's and Others Liability in Certain Circumstances.**

Notwithstanding anything herein contained, upon the expiration of 90 days from the sending of financial statements pursuant to Section 11.1, the Trustee shall be forever released and discharged from liability or accountability to the Fund and Unitholders with respect to the propriety of any of its acts and transactions shown in any such account except with respect to acts or transactions as to which a written statement objecting thereto has been delivered to the Trustee within that 90 day period.

**ARTICLE 14  
FEES AND EXPENSES**

**14.1 Trustee's Fees and Expenses.**

For its services hereunder, the Trustee shall receive an annual fee which shall be paid from the Fund Property. The amount of this annual fee shall be settled by agreement between the Trustee and the Investment Manager. The Trustee shall receive no other compensation for its services as trustee hereunder but nothing herein shall prevent the Trustee from receiving additional compensation in connection with the services that may be performed by the Trustee, including services performed for and dealings with the Fund by the Trustee other than in the capacity of Trustee. The Trustee shall also be entitled to be promptly reimbursed for all reasonable costs and expenses incurred by it in the performance of its duties hereunder. The Trustee's fees and expenses shall be charged to the Fund and payable out of the assets of the Fund. The Trustee shall have a lien on the Fund (which shall have priority over the interests of Unitholders) to enforce the payment of fees, costs, expenses and other amounts payable or reimbursable by the Fund to the Trustee.

**14.2 Investment Manager's Fees.**

The Investment Manager shall be entitled to be paid from the Fund Property the fees provided for in the Portfolio Management Agreement and the Administration Agreement

referred to in Section 10.1. Such fees may be paid in cash or Units of the Fund, or any combination thereof, at the option of the Investment Manager. To the extent that Units of the Fund are issued from treasury for this purpose, Units of the Fund will be issued at the Net Asset Value per Unit of the Fund. Units of the Fund that are issued in this respect will be issued to the Investment Manager in accordance with exemptions from the registration and prospectus requirements of applicable securities laws and the rules and regulations of the Toronto Stock Exchange in a manner determined by the Investment Manager. Subject to applicable law, the Investment Manager shall have a lien on the Fund Property (which shall have priority over the interests of Unitholders) to enforce payment of fees, costs, expenses and other amounts payable or reimbursable to the Investment Manager by the Fund.

### **14.3 Other Expenses of Fund.**

Except as otherwise provided herein, all expenses relating to the operation of the Fund, including, without limitation, the following: initial costs incurred in connection with the creation and organization of the Fund; interest expenses; debt service costs; taxes and governmental fees; brokerage commissions and other expenses incurred in acquiring or disposing of the Fund's portfolio securities; expenses of preparing Unit or warrant certificates (if any); expenses in connection with the issuance, offering, distribution, sale or underwriting of securities offered by the Fund; expenses of registering and qualifying securities issued by the Fund for sale in various jurisdictions; auditing; accounting, insurance and legal costs; custodian and registrar and transfer agent expenses; warrant Trustee expenses; expenses of obtaining and maintaining stock exchange listings of the securities of the Fund; the expenses of meetings; and costs of preparing, distributing and soliciting proxies and reports to holders of securities issued by the Fund will be paid or caused to be paid by the Fund.

## **ARTICLE 15 AMENDMENT OR TERMINATION OF FUND**

### **15.1 Amendment of Declaration of Trust.**

The Trustee may, from time to time, subject to approval or confirmation by Unitholders as provided in Section 12.3, amend or alter the provisions of this Declaration of Trust. The Trustee may from time to time after consultation with the Investment Manager modify, alter or add to the provisions of this Declaration of Trust without the approval of Unitholders to: (a) remove any conflicts or other inconsistencies which may exist between any terms of the Declaration of Trust and any provisions of any law or regulation applicable to or affecting the Fund; (b) make any change or correction in the Declaration of Trust which is of a typographical nature or is required to cure or correct any ambiguity or defective or inconsistent provision, clerical omission, mistake or manifest error contained therein; (c) bring the Declaration of Trust into conformity with (i) applicable laws, rules and policies of Canadian securities regulators or (ii) current practice within the securities or income fund industries, provided that any amendment contemplated by (ii) does not adversely affect the pecuniary value of the interests of the Unitholders; (d) maintain the status of the Fund as a "unit trust" and a "mutual fund trust" for the purposes of the *Income Tax Act* or to respond to amendments (including proposed amendments) to the *Income Tax Act* or to the interpretation thereof; (e) change the name of the Fund; or (f) provide added protection or benefit to Unitholders.

15.1.1 Except for changes to the Declaration of Trust which require the approval of Unitholders or changes described in Section 15.1 which require neither approval of nor notice to Unitholders, the Declaration of Trust may be amended from time to time by the Trustee, at the request of the Investment Manager, upon not less than 30 days prior written notice to Unitholders. Such written notice may be given by the Fund issuing a press release or publishing an advertisement containing a summary description of the amendment in at least one major daily newspaper of general and regular paid circulation in Canada, or in any other manner the Investment Manager determines appropriate.

15.1.2 Notwithstanding any other provision hereof, until completion of the sale by the Fund of Units in connection with the initial offering to the public of Units, the Fund may be terminated or this Declaration of Trust may be amended in any respect by an instrument executed by the Trustee and the Settlor.

## **15.2 Liquidation on Termination.**

15.2.1 In the event that the Unitholders by Extraordinary Resolution approve the liquidation or termination of the Fund, the Investment Manager will, to the extent advisable, convert assets of the Fund to cash or liquid securities. The Trustee may, in its discretion and upon not less than 30 days' prior notice to Unitholders, extend a date fixed for termination of the Fund for a period not to exceed one year from such notice, if the Investment Manager advises the Trustee that the Investment Manager would be unable to convert sufficient portfolio assets to cash and/or liquid securities and the Trustee and the Investment Manager believe it would be in the best interests of Unitholders to extend such date. Upon termination of the Fund, the Trustee may, subject to compliance with applicable laws, distribute assets to Unitholders in specie.

## **ARTICLE 16 MISCELLANEOUS**

### **16.1 Governing Law.**

This Declaration of Trust is executed by the Trustee and delivered in the Province of Ontario and with reference to the laws thereof and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the said Province. The parties hereto irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

### **16.2 Counterparts.**

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

### **16.3 Severability.**

If any provisions of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or

unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

**16.4 Execution and Effect of Restated Declaration of Trust.**

A restated Declaration of Trust, setting forth the terms of this Declaration of Trust, as amended to the time of execution, may be executed at any time or from time to time by the Trustee and such restated Declaration of Trust as so executed shall thereafter be effective and may thereafter be referred to in lieu of the original Declaration of Trust as so amended; provided, however, that no such execution of a restated Declaration of Trust shall be deemed to constitute a termination and/or resettlement of the Fund or this Declaration of Trust.

**16.5 Inspection of Documents.**

The Declaration of Trust shall be open to inspection by Unitholders, the Investment Manager, any investment advisor and any agent, consultant or creditor of the Fund and upon written request from any Unitholder, the Trustee shall as quickly as reasonably possible furnish him with a copy hereof at the expense of the Fund.

**16.6 Notice to Unitholders.**

Any and all notices to which any Unitholder hereunder may be entitled and any and all other communications to Unitholders shall be deemed to have been duly given if mailed, postage prepaid, addressed to any Unitholder of record at his address of record on the register of Unitholders of the Fund, or at such other address as shall be furnished in writing by him to the Fund for such purpose or published in a newspaper of national circulation in Canada.

**ARTICLE 17  
EXECUTION OF DECLARATION OF TRUST**

**17.1 Execution of Declaration of Trust.**

The Trustee executing this Declaration of Trust hereby accepts the trusts herein provided and declared and agrees to perform the same upon the terms and conditions herein set forth.

**IN WITNESS WHEREOF** the undersigned Trustee of the Trust, having been duly authorized to execute and deliver this Declaration of Trust, has executed these presents as of the 3<sup>rd</sup> day of July, 2015.

**COMPUTERSHARE TRUST COMPANY OF CANADA (successor to Montreal Trust Company of Canada), as Trustee**

By: (signed) "Morag Abraham"  
Name: Morag Abraham  
Title: Corporate Trust Officer

By: (signed) "Ann Samuel"  
Name: Ann Samuel  
Title: Associate Trust Officer