
FIRST SUPPLEMENTAL DECLARATION OF TRUST

Made as of February 15, 2012

FORMULA GROWTH HEDGE FUND

mcmillan

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FIRST SUPPLEMENTAL DECLARATION OF TRUST

This **FIRST SUPPLEMENTAL DECLARATION OF TRUST** is made as of February 15, 2012, by Formula Growth Limited, at its principal office in the City of Montreal, Quebec.

RECITALS

A. Pursuant to an Amended and Restated Master Declaration of Trust made as of January 1, 2009 (the “Declaration of Trust”), Formula Growth Limited is the trustee (in such capacity, the “Trustee”) of the “Formula Growth Hedge Fund” (the “Trust”); and

B. The Trustee wishes to amend the Declaration of Trust in order to reflect the creation of two new classes of Units of the Trust and to bring the Declaration of Trust into conformity with current practice.

NOW THEREFORE THIS FIRST SUPPLEMENTAL DECLARATION OF TRUST WITNESSETH and the Trustee hereby declares as follows:

SECTION 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

Each capitalized term not otherwise defined in this First Supplemental Declaration of Trust has the meaning given to it in the Declaration of Trust.

1.2 Headings and Table of Contents

Section headings and the table of contents have been inserted for convenience only and are not a part of this First Supplemental Declaration of Trust.

1.3 Conflict

If there is a conflict between any provision of this First Supplemental Declaration of Trust and any provision of the Declaration of Trust or any other document contemplated by or delivered under or in connection with this First Supplemental Declaration of Trust, the relevant provisions of this First Supplemental Declaration of Trust are to prevail.

1.4 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

SECTION 2 – AMENDMENTS TO THE DECLARATION OF TRUST

2.1 Amendments

(1) Section 1.1(16) of the Declaration of Trust shall be deleted and replaced with the following:

“(16) *Offering Memorandum* is as defined in the *Securities Act* (Ontario), as amended from time to time and the offering memorandum of the Trust is the offering memorandum dated February 15, 2012, as the same may be amended or replaced from time to time with respect to the Class A, Class A(US\$), Class F, Class F(US\$), Class X and Class Y Units, and the offering memorandum dated May 23, 2008 with respect to the Class I Units, as the same may be amended or replaced from time to time, respectively.”

(2) The first sentence of Section 3.1(1) shall be deleted and replaced with the following:

“All of the beneficial interest in the Trust shall be divided into interests of multiple classes of Units, currently referred to as Class A Units, Class A(US\$) Units, Class F Units, Class F(US\$) Units, Class X Units, Class Y Units and Class I Units, and fractions thereof.”

(3) The references to “three decimal places (rounded down)” in Sections 3.4(2) and 3.4(3) of the Declaration of Trust shall be deleted and replaced with “four decimal places (rounded down).”

(4) All other terms of the Declaration of Trust are hereby confirmed and shall remain in full force and effect.

SECTION 3– GENERAL

3.1 Governing Law

This First Supplemental Declaration of Trust shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3.2 Amendments

No amendment, supplement, restatement or termination of any provision of this First Supplemental Declaration of Trust is binding unless it is in writing and signed by the Trustee.

IN WITNESS WHEREOF the Trustee has caused this First Supplemental Declaration of Trust to be executed by its duly authorized officers effective as of the day and year first above written.

FORMULA GROWTH LIMITED

By: “Randall W. Kelly”

Randall W. Kelly

President

**AMENDED AND RESTATED
DECLARATION OF TRUST**

creating

FORMULA GROWTH HEDGE FUND

Made as of January 1, 2006
As Amended and Restated as of May 23, 2008 and January 1, 2009

McMILLAN LLP

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DECLARATION OF TRUST

AMENDED AND RESTATED DECLARATION made as of January 1, 2009, by Formula Growth Limited, at its principal office in the City of Montreal, Quebec.

WHEREAS Formula Growth Limited established a unit investment trust known as “Formula Growth Hedge Fund” for the purposes of investing the funds of Formula Growth Hedge Fund for the benefit of the Unitholders (defined herein) pursuant to a declaration of trust made as of January 1, 2006;

AND WHEREAS Formula Growth Limited amended and restated the declaration of trust as of May 23, 2008 to reflect the creation of a new class of units;

AND WHEREAS Formula Growth Limited wishes to further amend and restate the declaration of trust to reflect the creation of two new classes of units;

NOW THEREFORE Formula Growth Limited hereby declares that it holds in trust as trustee the sum of \$1 contributed by it and all property of any nature and kind which it may acquire in its capacity as trustee of Formula Growth Hedge Fund, and all income and capital gains therefrom, to hold, manage and dispose of same for the benefit of Unitholders in accordance with and subject to the provisions of this Amended and Restated Declaration.

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Declaration, unless there is something in the subject matter or context inconsistent therewith, the following terms have the meanings ascribed to them below:

- (1) ***Applicable Laws*** means, unless the context otherwise dictates, any applicable statute of Canada or of a province or territory of Canada or any applicable regulations, orders, instruments, policies or other laws made under statutory authority by any governmental or regulatory body or agency having jurisdiction over the Trust.
- (2) ***Auditor*** is as defined in Section 12.3.
- (3) ***Business Day*** means any day on which The Toronto Stock Exchange and the New York Stock Exchange are open for business.
- (4) ***Class*** means a particular class of Units.
- (5) ***Class Net Asset Value*** has the meaning given to it in Section 3.4.
- (6) ***Close of Business*** means the time at which trading ceases on The Toronto Stock Exchange on a particular date, or when used in connection with the valuation of a particular security not listed on The Toronto Stock Exchange, such term shall mean the time at which trading ceases in the relevant market for such security.

- (7) **Custodian** means the custodian of the Trust Property appointed in accordance with Section 12.4.
- (8) **Declaration** means this declaration of trust, including all amendments hereto or restatements hereof.
- (9) **Financial Institution** has the meaning given to it in ss.142.2 of the *Tax Act*.
- (10) **Investment Advisor** means the Trustee in its capacity as investment manager of the Trust and its successors and assigns and such other person or entity appointed by the Trustee to perform such functions.
- (11) **Main Series** means the Series into which Units are consolidated upon payment of a performance fee.
- (12) **Management Agreement** is as defined in Section 9.1.
- (13) **Manager** means such Person as may be appointed under Section 9.1 to assume some or all of the management powers, duties and responsibilities of the Trustee under the terms of this Declaration, or any other Person appointed as a replacement to the Manager.
- (14) **Net Asset Value of the Trust** is as defined in Section 3.4.
- (15) **Offering Jurisdictions** means each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Nunavut and The Northwest Territories and, upon receiving necessary regulatory relief, if then required, Yukon.
- (16) **Offering Memorandum** is as defined in the *Securities Act* (Ontario), as amended from time to time, and the offering memorandum of the Trust is the offering memorandum dated January 1, 2009, as the same may be amended or replaced from time to time with respect to the Class A and Class F Units, and the offering memorandum dated May 23, 2008 with respect to the Class I Units, as the same may be amended or replaced from time to time, respectively.
- (17) **Person** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted.
- (18) **Redemption Date** is as defined in Section 5.1.
- (19) **Registered Dealers** means dealers or brokers registered under applicable securities laws, or such other persons who may be permitted under applicable securities laws, to sell the Units in the Offering Jurisdictions.

- (20) **Securities Act (Ontario)** means the *Securities Act*, R.S.O. 1990, c.S.5 as now or hereafter amended, or successor statutes, and includes regulations promulgated thereunder and the rules promulgated by the Ontario Securities Commission.
- (21) **Series** means a series of a Class.
- (22) **Series Net Asset Value** has the meaning given to it in Section 3.4.
- (23) **Series Net Asset Value Per Unit** has the meaning given to it in Section 3.4.
- (24) **Subscription Agreement** means the subscription application that must be completed by an investor for a purchase of Units of the Trust.
- (25) **Tax Act** means the *Income Tax Act* (Canada), as amended from time to time.
- (26) **Termination Date** is as defined in Section 18.1.
- (27) **Trust** means Formula Growth Hedge Fund, an open-ended trust established under the laws of the Province of Ontario, pursuant to this Declaration, as the same may hereafter be supplemented.
- (28) **Trust Property** at any time, means any and all securities, property and assets, real and personal, tangible and intangible, transferred, conveyed or paid to the Trust including:
- (a) all proceeds realized from the issuance of Units of the Trust;
 - (b) all investments, sums or property of any type or description from time to time delivered to the Trustee or held for its account and accepted by the Trustee in accordance with this Declaration for the purposes of the Trust;
 - (c) any proceeds of disposition of any of the foregoing property and assets; and
 - (d) all income, interest, profit, gains and accretions and additional rights arising from or accruing to such foregoing property or such proceeds of disposition.
- (29) **Trustee** means Formula Growth Limited in its capacity as trustee of the Trust, or any successor trustee of the Trust in accordance with the provisions of this Declaration.
- (30) **Unit** is as defined in Section 3.1.
- (31) **Unitholder** means a holder of Units and fractions thereof.
- (32) **Valuation Date** means the last Business Day of each month and, in any event, December 31 of each calendar year or any such other day or days as agreed from time to time by the Trustee.
- (33) **Valuation Time** means Close of Business or 4:00 p.m. (Montreal time) on a Valuation Date or such other time as the Trustee, or any third party appointed by the Trustee, in their

discretion, deems appropriate to determine the Class Net Asset Value, the Series Net Asset Value, the Series Net Asset Value per Unit and the Net Asset Value of the Trust.

1.2 Article and Section Headings

Article and section headings have been inserted for convenience only and are not a part of this Declaration.

1.3 Business Day

If under this Declaration any payment or calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, that payment or calculation is to be made, and that action is to be taken, as applicable, on or as of the next day that is a Business Day.

1.4 Conflict

If there is a conflict between any provision of this Declaration and any provision of another document contemplated by or delivered under or in connection with this Declaration, the relevant provision of this Declaration is to prevail.

1.5 Number and Gender

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 References

Unless otherwise specified, references in this Declaration to Sections and Schedules are to sections of, and schedules to, this Declaration.

1.7 Currency

All references in this Declaration to currency refer to the lawful money of Canada.

1.8 Statutory References

Unless otherwise specified, each reference to an enactment is deemed to be a reference to that enactment, and to the regulations made under that enactment, as amended, re-enacted or replaced from time to time.

SECTION 2 – ESTABLISHMENT OF TRUST

2.1 Establishment of Trust

The Trust shall be known as “Formula Growth Hedge Fund” and in so far as may be practical and legal, the affairs of the Trust shall be conducted and transacted under such name, it being the intention that such name shall refer to the Trust and shall not refer to the Trustee, the

Manager, if any, the Unitholders or their respective officers, directors or employees. The Trustee may establish a French version of such name under which the Trust may carry on business to the extent that the Trustee determines may be necessary or advisable. Should the Trustee determine that the use of those names is not practicable, legal or convenient, the Trustee may use any other designation or may adopt any other name for the Trust that it deems appropriate and give 30 days' prior written notice to the Unitholders thereof. Following any such notice, the Trustee shall cause to be executed and delivered all instruments and do all things necessary to effect the foregoing.

2.2 Head Office; Situs

The head office and the principal office and situs of the administration of the Trust shall be in Montreal, Quebec, at the address of the Trustee or at such other location as shall be designated by the Trustee from time to time.

2.3 Term

This Declaration shall continue in force indefinitely unless otherwise terminated in accordance with its provisions.

2.4 Fiscal Year End

The fiscal year of the Trust shall end on the last day of December in each year and the first fiscal year of the Trust shall end on December 31, 2006.

2.5 Mutual Fund Trust Election

In respect of the first taxation year of the Trust, the Trust shall elect pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year.

2.6 Election for Capital Property

The Trust shall, in the first taxation year in which it qualifies as a mutual fund trust for purposes of the Tax Act, make the election provided for under subsection 39(4) of the Tax Act such that its Canadian securities will be deemed to be capital properties of the Trust and any dispositions of such securities will be deemed to be dispositions of capital property by the Trust.

SECTION 3 – STRUCTURE OF TRUST

3.1 Division of Trust into Units

(1) All of the beneficial interest in the Trust shall be divided into interests of multiple classes of Units, currently referred to as Class A Units, Class F Units, Class X Units, Class Y Units and Class I Units, and fractions thereof. The Classes may be divided into Series with a unique Series designated each month in which Units of a Class are issued. The Trustee may, in its discretion, determine the designation and attributes of a Class, which may include: the initial closing date and offering price for the first issuance of Units, any minimum initial or subsequent investment

thresholds, minimum aggregate Net Asset Value balances to be maintained by Unitholders, and procedures in connection therewith (including a requirement to redeem Units), the fees payable to the Manager, if any, as management, performance, or other fees, the organization, sales and redemption charges to be paid upon the acquisition, over time or on redemption of Units, the frequency of subscriptions or redemptions, the period of time Units must be held before they may be redeemed, the period of notice required for redemption of Units, minimum redemption amounts and any other limits on redemption, convertibility among Classes and such additional Class specific attributes as the Trustee may in its discretion specify. The Trustee may prescribe in its discretion the maximum number of Units or maximum dollar amount of Units that may be sold in the Trust. No Class attributes may be prescribed by the Trustee except as provided in any current Offering Memorandum or like document of the Trust.

(2) Class attributes may be amended from time to time in accordance with the provisions of this Declaration.

(3) Units and fractions thereof shall be issued only as fully paid and once issued, shall be non-assessable. There shall be no limit to the number of Units that may be issued, subject to any determination to the contrary made by the Trustee in its sole discretion. No Unit or fraction thereof of the same Class or Series shall have any rights, preference or priorities over any other Unit of the same Class or Series and each Unit of the same Class or Series will represent an equal undivided interest in the net assets of the Trust attributable to that Class or Series of Unit.

(4) The Trustee may be a Unitholder of the Trust.

(5) The Trustee may add additional Classes of Units at any time, without the prior approval of Unitholders, as provided in any current Offering Memorandum or like document of the Trust.

(6) At any time and from time to time after providing a Unitholder with thirty (30) days' prior written notice, the Trustee may redesignate Units of a Series issued to the Unitholder as Units of another Series having an aggregate equivalent Series Net Asset Value, provided that such redesignation will not result in an increase in fees payable by the Unitholders. The Trustee shall redesignate Units of a Series in the event that such Units are not automatically consolidated as provided in Section 3.3.

(7) No Class or Series of Units shall be created or issued if after such creation or issuance there exists more than one Class or Series of Units and it can reasonably be considered that one of the reasons for the existence of different Classes or Series of Units (or any conditions, rights or attributes in respect thereof) is to give Unitholders of any Class or Series of Units a percentage interest in the property of the Trust that is greater than their percentage interest in the income of the Trust.

3.2 Voting

Each Unitholder shall be entitled to one vote for each whole Unit held by the Unitholder where all Classes vote together, or to one vote at meetings of Unitholders of a Class where that particular Class of Unitholders votes separately as a Class. No holder of a fraction of a Unit, as such, shall be entitled to notice of, or to attend or to vote at, meetings of Unitholders or of a

Class of Unitholders, except to the extent that such fractional Units may represent in the aggregate one or more whole Units.

3.3 Consolidation and Subdivision

Units of any Class or Series may be consolidated or subdivided by the Trustee upon the Trustee giving at least twenty-one (21) days' prior written notice to each Unitholder of its intention to do so, and shall be automatically consolidated in the circumstances where a performance fee is payable in respect of a Series as provided in any current Offering Memorandum or like document of the Trust.

3.4 Net Asset Value of the Trust, Class Net Asset Value, Series Net Asset Value and Series Net Asset Value per Unit

(1) The Trustee shall calculate, or may appoint a third party to calculate, the Net Asset Value of the Trust, the Net Asset Value of each Class ("Class Net Asset Value"), the Net Asset Value of each Series ("Series Net Asset Value") and the Series Net Asset Value per Unit.

(2) The Net Asset Value of the Trust as of each Valuation Date shall be the then fair market value of the Trust Property at the time the calculation is made less the amount of its liabilities accrued at that time. The Class Net Asset Value as of each Valuation Date shall be the fair market value of the Trust Property attributable to the applicable Class at the time the calculation is made less the amount of the liabilities attributable to the Class at that time. The Series Net Asset Value as of each Valuation Date shall be the fair market value of the Trust Property attributable to the particular Series at the time the calculation is made less the amount of the liabilities attributable to the Series at that time. The Series Net Asset Value per Unit shall be the quotient obtained by dividing the amount equal to the Series Net Asset Value by the total number of outstanding Units of the Series, as applicable, including fractions of Units and adjusting the result to a maximum of three decimal places (rounded down). The Net Asset Value of the Trust, the Class Net Asset Value, the Series Net Asset Value and the Series Net Asset Value per Unit shall be computed by the Trustee as herein provided as at the Valuation Time on every Valuation Date. The number of Units in each Class and Series, the fair market value of the assets and the amount of the liabilities of each of the Classes and Series of the Trust shall be calculated in such manner as the Trustee in its sole discretion shall determine from time to time, subject to the provisions of this Declaration and the following:

- (a) the value of any cash on hand, on deposit or on call, prepaid expenses, cash dividends declared and interest accrued and not yet received, shall be deemed to be the face amount thereof, unless the Trustee determines that any such deposit or call loan is not worth the face amount thereof, in which event the value thereof shall be deemed to be such value as the Trustee determines to be the reasonable value thereof;
- (b) short-term investments including notes and money market instruments shall be valued at cost plus accrued interest;

- (c) the value of any security, or index options thereon, which is listed on any recognized exchange shall be determined by the closing sale price at the Valuation Time or, if there is no closing sale price, the average between the closing bid and the closing asked price on the Valuation Date, all as reported by any report in common use or authorized as official by a recognized stock exchange; provided that if such stock exchange is not open for trading on that date, then on the last previous date on which such stock exchange was open for trading;
- (d) the value of any security or other asset for which a market quotation is not readily available shall be its fair market value as determined by the Trustee ;
- (e) the value of a futures contract, or a forward contract, shall be the gain or loss with respect thereto that would be realized if, on the Valuation Date, the position in the futures contract, or the forward contract, as the case may be, were to be closed out unless daily limits are in effect in which case fair value shall be based on the current market value of the underlying interest;
- (f) all Trust Property valued in a foreign currency and all liabilities and obligations of the Trust payable by the Trust in foreign currency shall be converted into Canadian funds by applying the rate of exchange obtained from the best available sources to the Trustee;
- (g) all expenses or liabilities of the Trust shall be calculated on an accrual basis; and
- (h) the value of any security or property to which, in the opinion of the Trustee, the above valuation 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 such manner as the Trustee from time to time provides.

(3) The Net Asset Value of the Trust, the Class Net Asset Value, the Series Net Asset Value and the Series Net Asset Value per Unit shall be determined as set forth in this Section 3.4, adjusted to a maximum of three decimal places, and any final determination thereof made pursuant to this Section 3.4 shall be binding on all parties concerned.

(4) The Net Asset Value of the Trust, the Class Net Asset Value, the Series Net Asset Value and the Series Net Asset Value per Unit will not be required to be determined during any period in which the right of redemption has been suspended pursuant to Section 5.5.

SECTION 4 – SALE OF UNITS

4.1 Subscription for Units

Subscribers may purchase Units by delivering to the Trustee a completed and executed Subscription Agreement in a form acceptable to the Trustee together with funds provided via an electronic order system such as FundSERV or a cheque, bank draft or, in the discretion of the

Trustee, a wire fund transfer for the aggregate amount which the investor wishes to invest in Units. All subscriptions will be irrevocable by the subscriber and subject to acceptance by the Trustee within ten (10) Business Days of receipt; provided however, that the Trustee may accept or reject any Subscription Agreement. The Trustee, in its discretion, may prescribe any acquisition charges, redemption charges, minimum initial subscription amounts, minimum subsequent subscription amounts and minimum aggregate Net Asset Value balances to be maintained by Unitholders, and may, in its discretion, prescribe any procedures in connection therewith (including a procedure whereby a Unitholder is required to redeem his Units in the Trust) and the Trustee may prescribe in its discretion the maximum number of Units or maximum dollar amount of Units that may be sold in the Trust; provided no such amounts or balances may be prescribed by the Trustee and no procedures in connection therewith may be prescribed by the Trustee except as provided in any current Offering Memorandum, or like document of the Trust.

4.2 Price of Units

Upon the establishment of the Trust and its division into Classes and Units, the Trustee will determine the price of the original Units of each Class and Series. Thereafter, the subscription price per Unit of Units purchased pursuant to a subscription will be the applicable Series Net Asset Value per Unit determined at the Valuation Time on the Valuation Date on which the Trustee accepts the subscription as set forth in the current Offering Memorandum of the Trust.

4.3 Confirmation of Sale

In the case of acceptance of a subscription, the subscriber shall be provided with a confirmation of trade indicating the number of Units, including fractions, purchased. The Trustee will, in the case of rejection, forthwith return to the potential subscriber any funds in respect of the subscription, without interest or deduction.

4.4 Record of Transaction

The Trustee shall arrange for the transaction to be reflected in the records of the record keeper.

4.5 Issuance of Certificate

No certificates evidencing ownership of Units will be issued to a Unitholder.

4.6 Constraints on Unitholders

- (1) The Trustee will not accept a Subscription Agreement from or register as the owner of any Unit an entity that is or would be:
 - (a) a non-resident of Canada or a partnership that is not a Canadian partnership within the meaning of the Tax Act if it would cause the Trust to lose its status as a mutual fund trust under the Tax Act or if it would cause the Trustee or the

Manager to be required to register as an investment adviser with the U.S. Securities and Exchange Commission;

- (b) a Financial Institution if it would cause the Trust to be subject to the mark-to-market rules in section 142.5 of the Tax Act; or
- (c) a “designated beneficiary” of the Trust within the meaning of Part XII.2 of the Tax Act if, as a consequence thereof, the Trust may become liable for tax under Part XII.2 of the Tax Act.

(2) If at any time the Trustee becomes aware that Units are or may become beneficially owned by one or more entities in the circumstances described in Section 4.6(1), the Trustee, or any third party on the direction of the Trustee, may cause the Trust to redeem all or such portion of the Units at the Class Net Asset Value per Unit on the date of redemption, or on such other terms as the Trustee in its sole discretion deems equitable in the circumstances.

SECTION 5 – REDEMPTION AND TRANSFER OF UNITS

5.1 Right to Redeem

Subject to the terms and conditions set out below, a Unitholder shall be entitled to require payment of the Series Net Asset Value per Unit of all or any of his Units on the last Business Day of any month, or on such other additional Business Days as set forth in any current Offering Memorandum or like document of the Trust (the “Redemption Date”), by giving written notice to the Trustee in such form as the Trustee, from time to time, may prescribe. Such notice shall be irrevocable and shall contain a clear request by the Unitholder that a specified number of Units be redeemed or stipulate the dollar amount which the Unitholder requires to be paid and the Unitholder’s signatures thereon shall be guaranteed by a Canadian chartered bank, a trust company or a registered broker or securities dealer acceptable to the Trustee. The Trustee may from time to time fix the date and/or time on or prior to each Redemption Date by which a redeeming Unitholder must provide to the Trustee a redemption request and all necessary documents relating thereto which the Trustee determines are necessary in order for the redeeming Unitholder to receive the applicable Series Net Asset Value per Unit calculated as at that Redemption Date. All Units which the Trust is required to redeem shall be deemed to be outstanding until the Close of Business on the Redemption Date in respect of which payment therefor is made in accordance with this Section 5.1. The Trustee shall notify a Unitholder of any deficiencies in the notice of redemption.

5.2 Mandatory Redemption

The Trustee may, in its discretion, redeem all or a portion of a Unitholder’s Units for any reason, including if a Unitholder holds, or following a redemption pursuant to Section 5.1 would hold, Units having an aggregate Net Asset Value of less than some amount as may be specified by the Trustee from time to time, after giving the Unitholder thirty (30) days’ prior written notice specifying the number of Units to be redeemed. A Unitholder who receives such notice as a result of holding Units less than the amount specified shall be entitled to increase the aggregate Net Asset Value of the Units in his account by subscribing for additional Units prior to

the proposed date of the redemption. Any redemption which occurs pursuant to this Section 5.2 shall occur no earlier than the Valuation Date immediately following the date of expiration of the foregoing notice period, and shall be processed at the applicable Series Net Asset Value per Unit at the Close of Business on such Valuation Date.

5.3 Redemption Price and Payment

(1) The Trustee shall pay to each Unitholder who has requested redemption pursuant to Section 5.1 out of the Trust Property, an amount equal to the Series Net Asset Value per Unit on the Redemption Date on which the redemption occurs, multiplied by the number of Units to be redeemed, together with the proportionate share attributable to such Units of any distribution of net income and net realized capital gains of the Trust which has been declared and not paid prior to the relevant Close of Business and less any fees and taxes payable by the Unitholder or required to be deducted.

(2) Payment for Units which are redeemed will be made by cheque or such other manner of payment permitted by the Trustee. The redemption proceeds will be paid within the time period as set forth in the current Offering Memorandum or like document of the Trust. Following a redemption, the Unitholder shall cease to have any further rights with respect to such Units unless the redemption proceeds are not paid within the time period as set forth in the current Offering Memorandum or like document of the Trust.

5.4 Manner of Payment

(1) Payment of redemption proceeds, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears on the register unless the cheque is not paid on presentation. The Trustee may issue a replacement cheque if it is satisfied that the original cheque has not been received or has been lost or destroyed, upon being furnished with such evidence of loss, indemnity or other document in connection therewith that the Trustee in its discretion may consider necessary.

(2) If during any calendar quarter the Trustee has received requests to redeem 25% or more of the outstanding Units of a given Class of Units of the Trust, the Trustee may, in its sole discretion, reduce the number of Units to be redeemed on such Redemption Date, pro rata, so that the aggregate number of Units of each Class of Units redeemed on such Redemption Date will not exceed 25% of the outstanding Units of a given Class of Units. In case of any such delayed redemption, redemption requests for Units of a given Class of Units of the Trust not redeemed on any particular Redemption Date will be automatically carried forward and carried out on the next subsequent Redemption Date based on the Series Net Asset Value Per Unit on such Redemption Date.

(3) Any payment, unless not honoured, shall discharge the Trust, the Trustee, the Manager, the Investment Advisor, the Custodian and their delegates from all liability to such Unitholder in respect of the amount thereof and in respect of the Units redeemed.

5.5 Suspension of Redemption Right

(1) Notwithstanding the provisions of Section 5.1, the Trustee may suspend the redemption of Units, or payments in respect thereof (i) for any period during which the Trustee is closed for business; (ii) for the whole or any part of a period during which normal trading is substantially restricted or suspended on any stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and traded, if those securities represent more than 50% by value of the total assets of the Trust, without allowance for liabilities; or (iii) during any other period in which the Trustee determines that conditions exist which impair the ability to determine the value of the assets or the liabilities of the Trust.

(2) The suspension may, at the discretion of the Trustee, apply to all requests for redemption received prior to the suspension and as to which payment has not been made, as well as to all requests received while the suspension is in effect. All Unitholders making such requests shall (unless the suspension lasts for less than 48 hours) be advised by the Trustee of the suspension and that redemption requests previously received will be effected on the basis of the Series Net Asset Value per Unit determined on the first Redemption Date following the termination of the suspension. All such Unitholders shall have and shall (unless the suspension lasts for less than 48 hours) be advised that they have the right to withdraw their requests for redemption.

(3) The suspension shall terminate on the first day on which the condition giving rise to the suspension has ceased to exist, provided that no other condition under which a suspension is authorized to be imposed then exists. To the extent that it is not inconsistent with official rules and regulations promulgated by any government body having jurisdiction over the Trust, any declaration of suspension made by the Manager shall be conclusive.

5.6 Transfer of Units

A Unitholder shall be entitled, if permitted to do so under the terms of any current Offering Memorandum, or like document of the Trust or if otherwise permitted by the Trustee, to transfer all or, subject to any minimum investment requirements prescribed by the Trustee, any part of the Units registered in his name at any time by giving written notice to the Trustee, which notice shall (a) contain a clear request that a specified number of Units (or fractions thereof) be transferred, (b) provide the full name and address of the transferee, (c) be irrevocable, (d) state the amount of the consideration paid for the transfer of each Unit and (e) contain a guarantee by a Canadian chartered bank, a trust company or a registered broker or securities dealer acceptable to the Trustee of the signature of the transferor thereon; provided however that a Unitholder may not transfer any Unit to any entity described in Section 4.6 of this Declaration. The Trustee in its discretion may prescribe the minimum dollar value of Units which may be transferred, provided any such amount shall be disclosed in any current Offering Memorandum or like document of the Trust.

5.7 Bankruptcy or Insolvency of Unitholder

None of the Trust, the Trustee nor the Manager, if any, shall be affected by any notice of bankruptcy, insolvency or other event affecting a Unitholder but they may nonetheless, upon becoming aware of any such event, take such action as they may deem appropriate to ensure

compliance with Applicable Laws to the extent each is obliged hereunder to ensure such compliance and they shall not become liable to a Unitholder for so doing. Any person becoming entitled to any Units in consequence of the bankruptcy or insolvency of any Unitholder, the transfer of Units, or otherwise by operation of law, shall be recorded as the holder of such Units upon production to the record keeper of the proper evidence thereof provided that such person is not an entity described in Section 4.6 of this Declaration. Until such production is made, the Unitholder of record shall be deemed to be the holder of such Units for all purposes hereof and the Trustee shall not be affected by any notice of such bankruptcy, insolvency or other event, and in particular shall not be affected by reason that the Series Net Asset Value per Unit of the Units for the purposes of redemption is calculated on the day when actual redemption occurs and not on the day when notice of bankruptcy, insolvency or other event is received by the Trustee. Notwithstanding the foregoing, upon receipt from a Unitholder of notice that his Units have been pledged or otherwise encumbered, the Trustee may, but need not place such restrictions on transfer of the affected Units as are deemed appropriate by the Trustee in its discretion.

5.8 Death of Unitholder

Notwithstanding Section 5.1, in the event of the death of a Unitholder, the Units of such deceased Unitholder shall, upon the Trustee being advised in writing of the death of such Unitholder, not be dealt with until directions to redeem satisfactory in form to the Trustee and in accordance with instructions received from time to time from the Trustee as to payment of any applicable taxes (or a release therefrom), are received from the executor, administrator, survivor, successor or personal representative, as the case may be, of such Unitholder, whereupon the Units will be processed. The Trustee shall not redeem the Units of such deceased Unitholder until it has received such documentation as it deems necessary to make the payment. Notwithstanding the foregoing, until such directions are received, the Unitholder of record shall be deemed to be the holder of such Units for all purposes hereof and the Trustee shall incur no liability to any person of any nature whatsoever by reason only that such Units shall not be redeemed until such directions are so received, and in particular, by reason that the Series Net Asset Value per Unit of the Units for purposes of redemption is calculated on the day when actual redemption occurs and not on the day when notice of death was received by the Trustee. The death of a Unitholder during the continuance of the Trust shall not terminate this Declaration nor give any such deceased Unitholders' legal representatives any right to an accounting or to take any action in the courts or otherwise against other Unitholders or to the Trust Property, but shall simply entitle the legal representatives of any such deceased Unitholder to succeed to all rights of the deceased Unitholder under this Declaration. Upon the death of a Unitholder, prior to any transmission of the Units to an heir or beneficiary of the deceased Unitholder, the Trustee shall require an affidavit or declaration of transmission ("Affidavit") from the personal representative of the deceased Unitholder ("Personal Representative"). Such Affidavit shall state whether or not the carrying out of the terms of the Unitholder's will or the application of the applicable laws of intestacy, if the Unitholder died without a will, ("Transmission"), will result in an entity described in Section 4.6 obtaining a beneficial interest in Units. If the Transmission will result in an entity described in Section 4.6 obtaining a beneficial interest in Units, then the Trustee shall cause the Trust to redeem all or such portion of the Units at the Series Net Asset Value per Unit on the date of redemption, or on such other terms as the Trustee in its sole discretion deems equitable in the circumstances with the proceeds of such redemption being payable to the estate of the deceased Unitholder, subject to any applicable law relating to the

collection of taxes. If the Transmission will not result in an entity described in Section 4.6 obtaining a beneficial interest in Units, then the Personal Representative is entitled to become registered as the owner of the Units or to designate a person to be registered as the owner, upon delivery to the Trustee of reasonable proof of governing laws of the deceased Unitholder's interest in the Unit, and of the right of the Personal Representative or the designated person to become the registered Unitholder, with the form and content of such required documentation being in the sole discretion of the Trustee.

SECTION 6 – POWERS AND DUTIES OF TRUSTEE

6.1 General Powers

The Trustee, subject only to the specific limitations contained in this Declaration and to the powers of the Manager pursuant to Section 9.1, shall have full, absolute, and exclusive power, control and authority over the Trust Property and over the business and affairs of the Trust to the same extent as if the Trustee were the sole owner thereof in its own right, to do all such acts and things as it, in its sole judgment and discretion deems necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or conducting the business of the Trust. In construing the provisions of this Declaration, presumption shall be in favour of the granted powers and authority to the Trustee.

6.2 Specific Powers

(1) The enumeration of specific powers and authorities herein are in addition to the general powers granted in Section 6.1 or by statute and shall not be construed as limiting the general powers or authority or any other specific power or authority conferred herein on the Trustee.

(2) The Trustee without any action or consent by the Unitholders shall have and may exercise, at any time and from time to time, the following powers and authorities which may or may not be exercised by it in its sole judgment and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) to hold legal title to the Trust Property exercising the same degree of care which it gives to its own property of a similar kind under its own custody;
- (b) with any cash at any time held by it to purchase, or otherwise acquire, any securities, currencies or other property of a kind permitted as aforesaid and to purchase, hold and retain the same in trust hereunder;
- (c) to enter into and settle foreign exchange transactions on behalf of the Trust for purposes of facilitating settlement of trades of Trust Property and any such transactions may be entered into with such counterparties as the Trustee may choose in its sole discretion including its affiliates;
- (d) to sell, convey, exchange for other securities or other property, convert, transfer, assign, pledge, encumber or otherwise dispose of any Trust Property held by it at

any time, by any means considered reasonable by the Trustee and to receive the consideration and grant discharges therefor;

- (e) to commence, defend, adjust or settle suits or legal proceedings in connection with the Trust and to represent the Trust in any such suits or legal proceedings and to keep the Trustee informed; provided, however, that the Trustee shall not be obliged or required to do so unless it has been indemnified to its satisfaction against all expenses and liabilities sustained or anticipated by the Trustee by reason thereof;
- (f) subject to applicable securities legislation, to lend money whether secured or unsecured;
- (g) to exercise any conversion privileges, subscription rights, warrants and/or other rights or options available in connection with any Trust Property at any time held by the Trustee, and to make any payments incidental thereto; to consent to, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation or merger of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association, or of any of the securities of which may at any time be held by it, and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may deem necessary or advisable in connection therewith; to hold any Trust Property which it may so acquire and generally to exercise any of the powers of any owner with respect to Trust Property;
- (h) to vote personally, or by general or by limited proxy, any Trust Property which may be held by it at any time, and similarly to exercise personally or by general or by limited power of attorney any right appurtenant to any Trust Property held by it at any time;
- (i) to incur and pay out of the Trust Property any charges or expenses and disburse any assets of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustee, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust including, without limitation, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustee in connection with the Trust or the Trust Property or upon or against the Trust Property or any part thereof and for any of the purposes herein;
- (j) to renew or extend or participate in the renewal or extension of any Trust Property, upon such terms as it may deem advisable, and to agree to a reduction in the rate of interest on any Trust Property or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; to waive any default whether in the performance of any covenant or condition of any Trust Property, or in the performance of any guarantee, or to enforce rights in respect of any such

default in such manner and to such extent as it may deem advisable; to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure with or without paying a consideration therefor and in connection therewith to release the obligation on the covenant secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect of any such security or guarantee pertaining thereto;

- (k) to make, execute, acknowledge and deliver any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases of other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted, whether for a term extending beyond the office of the Trustee or beyond the possible termination of the Trust or for a lesser term;
- (l) in its sole discretion, advance monies to the Trust for the purposes of settlement of transactions and overdrafts against the Trust Property or as a temporary measure to accommodate requests for the redemption of Units, on such terms and conditions as the Trustee may in its sole discretion determine, provided that, in order to secure the obligations of the Trust to repay such borrowings, the principal of and interest charged on such borrowing shall be paid out of the Trust Property and shall constitute a charge against the Trust Property until paid. Such borrowings of the Trust shall not exceed such amount as shall be disclosed in the current Offering Memorandum or like document of the Trust;
- (m) to purchase, hold, sell or exercise call or put options on securities, indices of shares or other securities, financial and stock index futures contracts, securities or currency futures or forward contracts or other financial or derivative instruments, all whether or not any such options, indices, contracts or instruments are traded on a regular exchange;
- (n) to purchase, hold and sell gold, silver and other precious metals;
- (o) to deposit any Trust Property, including securities and documents of title held by it hereunder, with any bank or other depository;
- (p) to employ such counsel, auditors, record keepers, registrars, transfer agents, Custodians, advisors, agents or other person as the Trustee may deem necessary from time to time for the purpose of discharging its duties hereunder and to pay out of the Trust their reasonable expenses and compensation;
- (q) to delegate any of the powers and duties of the Trustee to any one or more agents, representatives, officers, employees, independent contractors or other persons without liability to the Trustee except as specifically provided in this Declaration;
- (r) to participate on behalf of the Trust in a securities lending program, in any jurisdiction in which securities are held hereunder, administered by the Trustee and in connection therewith to release and deliver securities and return collateral

received as security for the return of securities on loan in accordance with the provisions of such program;

- (s) to borrow funds and/or securities on behalf of the Trust pursuant to an agreement with a financial institution or securities broker or dealer, and in connection therewith to accept securities, provide a security interest in some or all of the Trust Property and deliver collateral in accordance with such agreement; and
- (t) to do all such acts, take all such proceedings and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee, may deem necessary to administer the Trust, and to carry out the purposes of this trust.

(3) The exercise of any one or more of the foregoing powers or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

(4) The Trustee shall have exclusive authority to manage the operations and affairs of the Trust, including the management and investment of the Trust Property, to make all decisions regarding the undertaking of the Trust and has the authority to bind the Trust. Without limiting the generality of the foregoing, in addition to the duties of the Trustee set forth elsewhere herein, the Trustee shall have the following duties and obligations:

- (a) to determine the investment policies, practices, fundamental objectives and investment strategies applicable to the Trust including any restrictions on investments which it deems advisable and to implement such policies, practices and objectives, provided that the investment policies, practices and objectives and investment restrictions applicable to the Trust shall concur with those set forth in any current Offering Memorandum or like document of the Trust or in any amendment thereto and such investment policies, practices and objectives and investment restrictions shall be incorporated herein by reference and provided further that any material change in the investment objectives shall be subject to the consent or approval of Unitholders in the manner provided for in Section 17;
- (b) to offer Units of the Trust for sale to prospective purchasers, including the power and authority to enter into arrangements regarding the distribution and sale of Units, including arrangements relating to the right to charge fees of any nature or kind (including, without limitation, sales commissions, redemption fees, distribution fees and transfer fees) in connection with the distribution or sale of Units. Any such fees may be deducted from the amount of a subscription, redemption proceeds or a distribution if not paid separately;
- (c) to receive all subscriptions for Units in the Trust, approve or reject subscriptions, and complete all necessary forms required under the relevant Canadian securities legislation and regulations;

- (d) to establish the Class attributes, including any minimum initial and/or subsequent subscription amounts and minimum aggregate Net Asset Value balances of the Trust, and to prescribe any procedures forthwith;
- (e) to perform, or appoint any third party to perform, all accounting, valuation, distribution, record keeping, tax reporting and Unitholder statement preparation and issuance functions necessary or desirable in connection with the business and affairs of the Trust, including without limitation the calculation of the Net Asset Value of the Trust, Class Net Asset Value, Series Net Asset Value and Series Net Asset Value per Unit;
- (f) to prepare, certify, execute and file with the appropriate authorities, all such documents as may be necessary or desirable in connection with the continued issue, sale and distribution of Units, including any applicable disclosure documents;
- (g) to keep proper records relating to the performance of its duties as Trustee hereunder, which records shall be accessible for inspection by the Auditor, at any time, upon reasonable notice, during ordinary business hours; and
- (h) to do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration.

6.3 Dealing with Others and Self

Subject to the foregoing, the Trustee may, and is hereby expressly authorized from time to time in its discretion to, appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate with which it may be directly or indirectly affiliated or in which it may be directly or indirectly interested, whether on its own account or for the account of another (in a fiduciary capacity or otherwise) and, without limiting the generality of the foregoing, the Trustee may:

- (a) purchase, hold, sell, invest in or otherwise deal with securities or other property of the same class and nature as may be held by the Trust, whether on the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise);
- (b) use in other capacities, knowledge gained in its capacity as trustee hereunder; provided that such use does not adversely affect the interests of the Trust and provided further that the Trustee may not make use of any specific confidential information for its own benefit or advantage that, if generally known, might be expected to affect materially the value of the Trust Property;
- (c) invest in the securities or other property of any Person with which the Trustee may be directly or indirectly associated, affiliated or interested,

without being liable to account therefor and without being in breach of the trust established hereunder.

6.4 Trustee May Sell Assets to Meet Trust Obligations

Notwithstanding any other provision of this Declaration, the Trustee may dispose of any Trust Property on such terms as the Trustee may in its sole discretion determine for the purpose of paying any obligations imposed on the Trust or for repaying any loan hereby authorized.

6.5 Confidentiality

No information obtained by the Trustee with respect to the Trust and its investments shall be disclosed to any person except to the extent that such disclosure is necessary or expedient for the purposes of the proper administration of the Trust, is otherwise authorized under this Declaration or required by Applicable Law.

6.6 Bond Not Required

Unless otherwise required by law, the Trustee shall not be required to give any bond, surety or other security in any jurisdiction for the performance of its obligations under this Declaration.

6.7 Apparent Authority

No purchaser, lender, transfer agent or other person dealing with the Trustee or with any officer, employee or agent of the Trustee shall be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustee or by such officer, employee or agent or make enquiry concerning, or be liable for, the application of money or property paid, lent or delivered to or on the order of the Trustee or of such officer, employee or agent. Any person dealing with the Trustee in respect of any matter pertaining to the Trust and any right, title or interest therein shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified on behalf of the Trustee as to the capacity, power and authority of any officer, employee or any other person to act for or on behalf and in the name of the Trust.

6.8 Reliance

The Trustee shall be entitled to rely on statements, reports, advice or opinions (including financial statements and Auditor's reports) of consultants, the Manager if any, the Auditor, counsel and consultants 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. The Trustee may rely and act upon any instrument or other document believed by it to be genuine and in force and shall have no liability to any Person as a result of such reliance, except in the case of negligence or wilful misconduct.

SECTION 7 – FEES AND EXPENSES

7.1 Trustee’s Fees

For its services hereunder, the Trustee shall receive such annual fee and reimbursement of expenses as agreed upon between the Trustee and the Manager from time to time, which fees and expenses shall be paid by the Trust. Unless other arrangements are agreed upon by the Manager, the Trustee shall receive no 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 for the Trust in a capacity other than in its capacity as trustee.

7.2 Manager’s Fees and Investment Adviser’s Fees

For services that may be performed by the Manager, the Manager shall receive from the Trust a management fee and a performance fee with respect to each Class as shall be set forth in the current Offering Memorandum or like document of the Trust and in any Management Agreement that may be entered into pursuant to this Declaration.

Any investment advisory fees shall be payable by the Manager out of the management fee and/or the performance fee unless otherwise provided and set forth in the current Offering Memorandum or like document of the Trust.

7.3 Reimbursement of Manager’s and Investment Adviser’s Expenses

The Manager and Investment Advisor shall be entitled to receive from the Trust with respect to each Class the reimbursement of expenses incurred on behalf of the Class. Such expenses shall, to the extent applicable, be allocated among the Classes as the Trustee in its sole discretion deems fair and reasonable in the circumstances.

7.4 Waiver

The Manager may from time to time waive all or any portion of the fees and reimbursement of expenses otherwise payable to it, but no such waiver shall affect its rights to receive payment of fees and reimbursement of expenses subsequently accruing to it.

The Trust may issue additional Units to Unitholders receiving the benefits of such waivers or reductions as a means of reflecting the same.

7.5 Expenses

Except as otherwise provided herein the Trustee shall be responsible for paying all expenses of the Trust other than those expenses expressly payable by the Trust as shall be specifically enumerated and set forth in the current Offering Memorandum or like document of the Trust.

The expenses payable by the Trust shall be allocated among the Classes and Series as the Trustee in its sole discretion deems fair and reasonable in the circumstances, provided that

expenses incurred solely in respect of one Class or Series shall be allocated only to that Class or Series.

SECTION 8 – LIMITATIONS OF LIABILITY AND INDEMNIFICATION

8.1 Standard of Care

The Trustee shall exercise the powers and discharge its duties honestly, in good faith and in the best interests of the Trust and shall exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances. The Trustee in its capacity as trustee will not be required to devote its full time and attention to the affairs of the Trust but need only devote such time as it may deem appropriate or necessary to discharge its duties hereunder in a responsible manner.

8.2 General Limitation of Liability and Indemnification

- (1) The Trustee, the Manager, if any, and consultants and agents of the Trust, in incurring any debts, liabilities or obligations, or in taking or omitting to take any other actions for or in connection with the affairs of the Trust in accordance with this Declaration or any applicable contract between the Trustee as trustee of the Trust or Manager, if any, and any agent or consultant of the Trust are, and shall be deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities.
- (2) No Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with Trust Property or the obligations or the affairs of the Trust and all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising out of or in connection therewith and the Trust Property only shall be subject to levy or execution. The Trustee hereby waives to the maximum extent possible any right to indemnification which it may have against any Unitholder under any Applicable Laws.
- (3) Subject to the provisions of Section 8.1, neither the Trustee nor the Manager, if any, shall be held to any personal liability, nor shall resort be had to its property or assets for satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust but the Trust Property only shall be liable and subject to levy or execution.
- (4) Subject to its own wilful misconduct, bad faith or negligence, as modified by any contract between the Trustee as trustee of the Trust or Manager, if any, and any agent or consultant of the Trust, no consultant or agent of the Trust shall be held to any personal liability, nor shall resort be had to the property or assets of any of them for satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Trust but the Trust Property only shall be liable and subject to levy or execution.
- (5) If, notwithstanding the provisions of this Declaration, the Trustee, the Manager, if any, any Unitholder, or any consultant or agent of the Trust shall be held personally liable to any other Person in respect of any debt, liability or obligation incurred by or on behalf of the Trust, or, subject to the provisions of Section 8.1 or any applicable contract between the Trustee as trustee of the Trust or Manager, if any, and any agent or consultant of the Trust, for any action

taken or omitted to be taken or in connection with the affairs of the Trust, such Trustee, Manager, Unitholder, consultant or agent shall be entitled to indemnity and reimbursement out of the Trust 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 all in accordance with Section 8.3.

8.3 Indemnification and Reimbursement

(1) Subject to Applicable Laws, each Person who is, or shall have been the Trustee, a Manager, a Unitholder, or a consultant or agent of the Trust shall be indemnified by the Trust out of the Trust 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 Person may be made a party by reason of being or having been such Trustee, Manager, Unitholder, consultant or agent. For greater certainty, the Trustee shall not be liable to the Trust for any default, failure or defect in any of the securities comprising the Trust's investment portfolio unless such default, failure or defect is attributable to the Trustee's failure to satisfy the standard of care and duty prescribed by Section 8.1. For the purposes of this Section 8.3, references to the Trustee, the Manager and any consultant or agent of the Trust shall be deemed to include the directors, officers and employees of such Persons.

(2) For purposes of Section 8.3(1): (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, and (iii) the right of indemnification conferred thereby shall not be exclusive of any other rights to which the Trustee, Manager, any Unitholder or any consultant or agent of the Trust may be entitled as a matter of law or which may be lawfully granted to such Person. The provisions of this Section 8.3 are severable, and if any provisions hereof shall for any reason be determined invalid or ineffective, the remaining provisions of this Declaration relating to indemnification and reimbursement shall not be affected thereby. This indemnity shall survive the resignation or replacement of the Trustee.

(3) Notwithstanding the foregoing provisions of this Section 8.3, no Person shall be indemnified by the Trust in respect of any liability, costs, charges or expenses that it sustained or incurred in or about any action, suit or other proceeding described in this Section 8.3 as a result of wilful misconduct, bad faith, negligence, breach of its standard of care hereunder or under any contract relating to such Person's duties with respect to the Trust or material breach or default of any duty or responsibility imposed upon it hereunder or under any contract relating to such Person's duties with respect to the Trust.

8.4 Further Limitation on Indemnification

Notwithstanding any other provisions of this Declaration, the Trust shall have no liability to reimburse any Person for transfer or other taxes or fees payable on the transfer of Units 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 Class Net Asset Value per Unit.

8.5 No Liability for Tax Obligations

None of the Trust, the Manager, if any, or the Trustee shall be accountable or liable to any Unitholder by reason of any act or acts of any such Person consistent with the carrying out of any obligations or responsibilities imposed upon any such Person under the Tax Act.

8.6 Availability of Funds

The obligation of the Trustee to commence or continue any act, action, suit or proceeding or to represent the Trust in any action, suit or proceeding shall be conditional upon sufficient funds being available to the Trustee from the Trust Property to commence or continue such act, action, suit or proceeding or to represent the Trust 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 shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance 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.

SECTION 9 – THE MANAGER

9.1 Management of Trust

The Trustee may, pursuant to a management agreement (“Management Agreement”) and in exchange for such fees payable by the Trustee as the parties thereto determine, appoint a Person from time to time to act as the Manager of the Trust and delegate such Person those duties of the Trustee hereunder that the Trustee deems appropriate. The Trustee may act as the Manager of the Fund in the absence of any Management Agreement, and exercise all powers and perform all duties as Manager that the Trustee shall or may exercise or perform pursuant to this Declaration and receive the benefit of the provisions of this Declaration. Without limiting the generality of the foregoing, the Trustee may grant discretion to the Manager to administer and manage the day-to-day operations of the Trust, act as agent for the Trust, execute documents on behalf of the Trust and to make decision which conform to general policies and general principles set forth herein or established by the Trustee. The Manager shall have the powers and duties expressly provided for herein and in any Management Agreement, and the Manager may be given the power to further delegate administration of the Trust where in the discretion of the Manager it is in the best interests of Unitholders to do so, provided that the Manager shall not be relieved of its obligations in respect of the matters so delegated.

SECTION 10 – CHANGE OF TRUSTEE

10.1 Resignation or Replacement of Trustee

The Trustee may resign as Trustee or be required to resign as Trustee by the Manager upon 90 days’ written notice given by the Trustee or the Manager as the case may be to the other. Such resignation shall take effect on the date specified in such notice, unless prior to such date a successor Trustee shall be appointed by the Manager, in which case such resignation shall take

effect immediately upon the appointment of such successor Trustee. The Manager shall appoint a new Trustee to assume the office of the Trustee hereunder upon the effective date of the resignation or removal of the Trustee who is resigning. From and after the effective date of its appointment, any successor trustee (including any trust company referred to in Section 10.3) shall be vested with the same powers, rights and duties and responsibilities as if it originally had been named herein as Trustee. For greater certainty, the removal or resignation of the Trustee shall become effective only on the appointment of a successor trustee.

10.2 Qualifications of Trustee

A Trustee need not be a Unitholder. A Trustee shall at all times be a resident of Canada for purposes of the Tax Act.

10.3 Appointment of Trust Company as Trustee

The Trustee shall, upon the request of the Manager, resign hereunder so that a trust company may be appointed to act as Trustee in place of the Trustee. Upon the appointment of a trust company as Trustee, the Manager and such trust company may make such amendments, without notice to or prior approval of the Unitholders, to this Declaration as they in their discretion deem necessary or desirable to properly effect the appointment of such trust company upon such terms as such trust company may agree.

10.4 Obligations on Resignation or Removal

Upon the election or appointment of a successor Trustee, the Trustee shall promptly transfer all the assets of the Trust together with all accounts and records that the Trustee is required to maintain to the successor Trustee provided that the Trustee may retain notarial or other copies of such accounts and records.

SECTION 11 – CONCERNING THE UNITHOLDERS

11.1 Status of Unitholders

(1) The ownership of all Trust Property of every description and the right to conduct the affairs of the Trust are vested exclusively in the Trustee and the Unitholders shall have no interest other than the beneficial interest provided for in this Declaration, and Unitholders shall have no right to call for any partition or division of any portion of the Trust Property nor shall they be called upon to share or assume any losses of the Trust or suffer any assessment or further payments to the Trust or the Trustee of any kind by virtue of their ownership of Units. The Units shall be personal property and shall confer upon their holders only the interest and rights specifically set out in this Declaration. No Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust. Unitholders of record shall be deemed to be the sole and beneficial Unitholders of the Trust and neither the Trustee or any third party appointed by the Trustee shall recognize any person being or claiming to be a beneficial holder of Units as a Unitholder for any purpose unless such person is also a Unitholder of record.

(2) The Trust is an open-ended unincorporated trust. The Trust is not and is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall the Trustee, the Manager, the Investment Advisor or the Unitholders or any of them for any purpose be deemed in any way whatsoever to be liable or responsible hereunder as partners or joint venturers. Neither the Trustee, the Manager nor the Investment Advisor shall be or be deemed to be an agent of the Unitholders or of any Unitholder. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration.

11.2 Liability of Unitholders

No Unitholder shall be held to have any personal liability as such and no resort shall be had to the Unitholder's private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust, the Manager or the Trustee or any obligation which a Unitholder would otherwise have to indemnify the Trustee for any personal liability incurred by the Trustee as such, but rather, only the Trust Property is intended to be liable and subject to levy or execution for such satisfaction. If the Trust acquires any investments subject to existing contractual obligations, the Trustee shall use its best efforts to have any obligations modified so as to achieve disavowal of contractual liability contemplated by this Section 11.2. Further, the Trustee shall cause the operations of the Trust to be conducted, with the advice of counsel, in such a way and in such jurisdictions as to avoid, as far as possible, any material risk of liability on the Unitholders for claims against the Trust.

11.3 Unitholder Meetings

The Trustee shall upon the written request of the Unitholders holding not less than 50% of the outstanding Units of the Trust (or Units of a Class with respect to a Class meeting), call a meeting of Unitholders of the Trust generally or of any particular Class or Classes; provided that in the event of a request to call a meeting of Unitholders made by such Unitholders, the Trustee shall not be obliged to call any such meeting until it has been satisfactorily indemnified by such Unitholders against all costs of calling and holding such meeting. Unitholders of a Class shall vote separately as a Class if the notice calling the meeting so provides. Meetings shall be held at such place within Canada, at such time and on such day as the Trustee may from time to time determine. Meetings of Unitholders may be held at any time, on not fewer than twenty-one (21) days' notice before the date of the meeting. The Trustee may establish a record date for voting at a meeting. A Unitholder shall be entitled to attend any meeting of Unitholders whether in person or by a proxy in such form as the Trustee may prescribe from time to time. The Trustee may solicit such proxies from the Unitholders or any of them in any matter requiring or permitting the Unitholders' approval or consent.

11.4 Consent of Unitholders

Any consent or approval of Unitholders under this Declaration must be given by either the affirmative vote or by proxy of the holders of not less than 50% of the outstanding Units or Units of a Class, as applicable, represented and voted at a meeting of Unitholders called for such purpose. At any such meeting, two or more Unitholders, represented in person or by proxy,

holding not less than 10% of the outstanding Units, or Units of the Class in respect of which the meeting has been called, shall constitute a quorum. If there is not a quorum present at the meeting when called, the Trustee will adjourn the meeting to a date and time determined by the Trustee in its sole discretion, and at such adjourned meeting the Unitholders then present in person or by proxy will constitute a quorum. A resolution in writing forwarded to all Unitholders entitled to vote on such resolution at a meeting of Unitholders and signed by the holders of not less than 50% of the Units of the Trust (or Units of a Class with respect to a resolution to be approved by Unitholders of a particular Class) to obtain approval is as valid as if it had been passed at a meeting of Unitholders.

11.5 Proxies

Every Unitholder entitled to vote at a meeting may, by means of a proxy, appoint a person as his nominee, who need not be a Unitholder, to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy. A proxy shall be executed by the Unitholder or his attorney authorized in writing, or if the Unitholder is a body corporate, under its corporate seal or by an officer or attorney thereof duly authorized and ceases to be valid one year from its date. Proxies must be deposited with the person calling the meeting prior to the meeting. A proxy may be revoked by an instrument in writing executed in the same manner as required for the execution of a proxy.

11.6 Procedure

Meetings of Unitholders shall be chaired by a person appointed by the Trustee, or failing such appointment by a Unitholder elected by those present at such meeting. Subject to this Declaration the Trustee may set procedures relating to the notice, holding and conduct of meetings of Unitholders and matters incidental thereto.

SECTION 12 – SPECIAL FUNCTIONS

12.1 Record Keeper

The Trustee shall function as record keeper or may appoint any other third party as the record keeper of the Trust. The Trustee may remove the record keeper of the Trust and appoint another record keeper of the Trust upon such terms and conditions as the Trustee shall determine. The duties of the record keeper shall include maintaining a record of Unitholders as provided for in Section 12.2.

12.2 Unit Register

(1) The Trustee or the record keeper appointed pursuant to Section 12.1 shall maintain records of the name and the latest known address of each Unitholder and the number of Units from time to time held by him and such records shall be available at the offices of the record keeper in the City of Montreal, Quebec or in such other office in Canada as the record keeper deems appropriate and to which the Trustee consents.

(2) The record keeper shall maintain participation records for the Trust, showing with respect to each Unitholder:

- (a) the date of each issue of Units of the Trust to such Unitholder, the number of Units issued, the Class and Series of Unit issued and the amount for which each Unit is issued;
- (b) the date of each redemption of Units of the Trust, the number of Units redeemed and the Series Net Asset Value per Unit at which each Unit is redeemed;
- (c) the number of Units of each Class and Series of the Trust held immediately after any subdivision, consolidation, or redesignation of Units of the Trust;
- (d) the number of Units of each Class and Series of the Trust currently held; and
- (e) the date and details of each distribution of the Trust to the Unitholder.

(3) The Trust and the Trustee (in its capacity as such, regardless of the fact that the Trustee may be or may not have been such record keeper) shall at all times be entitled to rely entirely upon the records maintained by the record keeper as a record of ownership and the registered owners of Units shall be deemed to be the true owners thereof for all purposes hereof.

12.3 Auditor

The Trustee shall from time to time appoint a firm of qualified chartered accountants as the auditor of the Trust (the "Auditor"). The Auditor shall be qualified to practice in the Province of Ontario to act as auditors of the Trust. The Auditor shall make a report to the Trustee and the Unitholders on the annual financial statements of the Trust and fulfil such other responsibilities as they may properly be called upon to assume. The Auditor shall have access to all records relating to the affairs of the Trust including the relevant records of the Trustee and any custodian and record keeper.

12.4 Custodian of Assets

The Trustee shall from time to time appoint a company within or outside Canada to act as Custodian of the Trust Property for the purposes of performing custodial and related responsibilities. Except where the Trustee acts as Custodian, the Trustee will be under no obligation to supervise, and will have no responsibility or liability for acts of omission or commission by any Custodian. The Trustee may also appoint one or more sub-custodians.

SECTION 13 – INVESTMENT

13.1 Investment by Trust

Subject to the provisions of this Declaration, any Offering Memorandum and/or investment advisory agreement, the money or other assets at any time held in the Trust for investments shall be invested from time to time by the Trustee or the Investment Advisor. The Trustee shall from time to time sell any or all of such investments and reinvest the proceeds

thereof or exchange any or all of such investments for other investments. The Trustee shall not, in carrying out investment activities be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees but shall be limited by any investment restrictions contained herein and the Applicable Laws to which the Trust is subject. It shall be the responsibility of the Trustee to ensure that all investments of the Trust Property are made in such a way as to comply with any statement made in any current Offering Memorandum or like document of the Trust as to the investment policies, practices and objectives and investment restrictions applicable to the Trust and so as to comply with this Declaration and Applicable Laws.

SECTION 14 – DISTRIBUTIONS OF INCOME AND CAPITAL GAINS

14.1 Computation of Income and Gains

The net income of the Trust for each taxation year shall be determined pursuant to the provisions of the Tax Act (other than paragraph 82(1)(b) and subsection 104(6) thereof) regarding the calculation of income for the purposes of determining the “taxable income” of the Trust thereunder, provided, however, that capital gains and capital losses (other than business investment losses) shall be excluded. The net realized capital gains of the Trust for each taxation year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the taxation year exceeds the aggregate of the capital losses of the Trust in the year (other than business investment losses).

14.2 Annual Distributions of Income and Capital Gains

(1) On the last Valuation Date of each fiscal year, an amount equal to the net income of the Trust (except to the extent that the net income of the Trust would not be subject to tax in the Trust by reason of the carryforward of “non-capital losses” as defined in the Tax Act) for such fiscal year not previously made payable in the fiscal year, shall be automatically payable to Unitholders of record on such date (determined before giving effect to any subscriptions or redemptions on such Valuation Date). In addition, on the last Valuation Date of each fiscal year, an amount equal to the net realized capital gains of the Trust for such fiscal year not previously made payable in the fiscal year shall, except to the extent that net realized capital gains of the Trust would not be subject to tax in the Trust by reason of deductions claimed for non-capital losses and/or the carryforward of “net capital losses” as defined in the *Tax Act* and to the extent that any tax payable on net realized capital gains retained by the Trust would be recoverable by it, be automatically payable on the last Valuation Date of the fiscal year to Unitholders of record on such date (determined before giving effect to any subscriptions or redemptions on such Valuation Date). Unitholders shall be entitled as of the last Valuation Date of the Trust’s fiscal year to enforce payment of all amounts payable pursuant to this provision in accordance with Section 14.6.

(2) For greater certainty, the total amount due and payable pursuant to this Section 14.2 shall not be less than that amount necessary to ensure that, to the extent possible, the Trust will not be liable for income tax under Part I of the Tax Act for the taxation year of the Trust, after taking into account any entitlement to a capital gains refund, and such payment shall be considered to have been declared and to have been payable (as of the last Valuation Date of the calendar year

or such other day selected by the Trustee or any third party appointed by the Trustee) to Unitholders of record at the Close of Business on the distribution date.

(3) Each amount due and payable by the Trust to Unitholders pursuant to this Section 14.2 shall be allocated among the Units and among Unitholders of the Trust in accordance with Section 14.3.

14.3 Allocation of Distributions of Income and Gains of the Trust per Class

(1) If distributions are payable by the Trust pursuant to Section 14.2 or Section 14.5, holders of Units of any particular Class that are outstanding at the Close of Business on the date established for the payment of any such distributions shall be entitled to receive and the Trust shall pay thereon such portion of the amount computed in accordance with Section 14.2 or Section 14.5, as the case may be, as is determined by the Trustee, or any third party appointed by the Trustee.

(2) Where it is intended to make distributions of net income, net capital gains or capital of the Trust to the Unitholders, the Trustee, or any third party appointed by the Trustee, shall allocate the distributions among the Classes of Units in a manner considered by the Trustee, or any third party appointed by the Trustee, to be appropriate and equitable to all Unitholders, in its sole discretion. All distributions in respect of a Class of Units shall be credited to Unitholders of that Class pro rata in accordance with the number of Units of the Class held by them on the distribution dates on a basis as if all the Units of all Series of a Class had then been consolidated into the Main Series, whether or not such Units in fact have been so consolidated.

14.4 Payment of Annual Distributions

For greater certainty, it is hereby expressly declared that a Unitholder of the Trust shall have the legal right to enforce payment of any amount that is due and payable pursuant to this Section 14 in respect of Units of the Trust held by him or her.

14.5 Other Distributions

In addition to the distributions made to Unitholders pursuant to Section 14.2, the Trustee, or any third party appointed by the Trustee, may declare and make distributions from time to time out of the net income, net realized capital gains or capital of the Trust for any taxation year or otherwise in such amounts per Unit, payable at such time or times in the calendar year in which such taxation year ends and to Unitholders at the Close of Business on the distribution date, as the Trustee, or any third party appointed by the Trustee, from time to time may determine.

14.6 Manner of Payment/Automatic Reinvestment

All amounts payable at any particular time to a Unitholder pursuant to, or as contemplated by, this Section 14 (less any tax required by law to be deducted therefrom) shall, except to the extent that the Unitholder, or his authorized agent, is redeeming Units, and in that event only in respect of a number of Units equal to the number of Units being redeemed, or otherwise notifies the Trustee, or any third party appointed by the Trustee, in writing and

complies with any other conditions prescribed by the Trustee, or any third party appointed by the Trustee, for cash distributions, be reinvested in the Trust by way of the acquisition of additional Units, including fractional Units of the same Class, at the Series Net Asset Value per Unit next determined after declaration of the distribution. The Trustee, or any third party appointed by the Trustee, shall credit each Unitholder with the additional Units of the same Class so acquired in lieu of making a cash distribution. The acquisition of Units as a result of reinvestment shall not be subject to Sections 4.1 and 4.3. The amounts so credited to each Unitholder (including any tax required by law to be deducted therefrom) shall not be included in the assets of the Trust for the purpose of determining the Series Net Asset Value per Unit at any time after the declaration of the distribution. Notwithstanding the foregoing, the Trustee, or any third party appointed by the Trustee, may apply any amounts payable hereunder to a Unitholder towards the amount of any fees or charges owing by the Unitholder (including, without limitation, redemption fees or deferred sales charges, if any) and deduct such amounts from the amount otherwise to be credited to each Unitholder. Distributions may be paid in any currency at the discretion of the Trustee, or any third party appointed by the Trustee, from time to time.

14.7 Designation of Taxable Dividends, Taxable Capital Gains and Foreign Source Income

The Trustee may, on such date or dates it deems appropriate, make such designations, determinations and allocations for tax purposes of amounts or portions of amounts which the Trust has received, paid, declared payable or allocated to Unitholders as distributions or redemption proceeds. Such designations are intended to provide for an equitable distribution of the Trust's taxable income for a taxation year among Unitholders.

14.8 Entitlement Default

Where the Trustee, or any third party appointed by the Trustee, has been unable, because of default on the part of any third party to make payment of any dividends declared or interest accrued or any other amounts owing in respect of the securities of the Trust, to collect any amount which has been included in determining any amount paid or payable to any Unitholder, the Trustee, or any third party appointed by the Trustee, shall have the right, where such amount has been paid to such Unitholder, to recover such amount from such Unitholder. Notwithstanding the foregoing, the Trustee, or any third party appointed by the Trustee, shall not be required to exercise such right with respect to any particular amount or class of amounts where, in the judgment of the Trustee, or any third party appointed by the Trustee, the anticipated costs and likelihood of recovery outweigh the anticipated benefit of such recovery.

14.9 Definitions

Unless the context otherwise requires, any term in this Section 14 which is defined for the purposes of the Tax Act shall have for the purposes of this Section 14 the meaning that it has for the purposes of the Tax Act, as amended from time to time.

14.10 Income Tax Statements

Unitholders will be provided with the tax forms required to be provided to Unitholders by the Trustee, or any third party appointed by the Trustee, or the record keeper, as applicable, pursuant to the Tax Act, within 90 days of the end of the year to which such forms relate.

SECTION 15 – REPORTS AND EXECUTION OF DOCUMENTS

15.1 Investment Statement to Unitholders

After an investment in Units, a statement shall be issued by the record keeper, in such form and on such terms and conditions as the Trustee, or any third party appointed by the Trustee, may in its sole discretion determine, and such statement will be forwarded to each Unitholder by the record keeper, which statement will indicate the number of Units held by the Unitholder and such other information as may be required by Applicable Laws; provided, however, that the information disclosed on such statements shall always be in accordance with the number of the Unitholder's Units reflected on the records maintained by the record keeper pursuant to Section 12.2. Additionally statements of such holdings may be issued by the record keeper on the direction of the Trustee, or any third party appointed by the Trustee, from time to time.

15.2 Audited Financial Reports to Unitholders

The Trustee will arrange for the preparation of annual audited comparative financial statements for the Trust made up and certified as required by Applicable Law and a copy of such statements will be filed with the appropriate securities regulatory authorities and delivered to Unitholders.

15.3 Execution of Documents

The Trustee shall have authority to sign on behalf of the Trust all documents and any documents so signed shall be binding upon the Trust without any further authorization or formality. The Trustee have power from time to time to appoint any person or persons on behalf of the Trust either to sign documents generally or to sign specific documents.

15.4 Execution of Documents by Trustee

Any approval, consent, direction, or order, including but not limited to the signing of any Offering Memorandum or like document of the Trust or request required or permitted by this Declaration to be given or made by the Trustee, shall (except where otherwise expressly provided herein) be sufficiently given or made if expressed in writing signed in the name of the Trustee by its duly authorized representative designated from time to time in writing. If at any time, the Trustee shall fail to give or make any such approval, consent, direction, order or request as required by this Declaration and no express provision is made for the action to be taken by the Trustee the Trustee may act herein without any such approval, consent, direction, order or request, in its own discretion.

SECTION 16 – NOTICE

16.1 Notice to Unitholders

Any notice to be given or any document or instrument in writing to be sent to a Unitholder may be effectively given or sent by mailing it to him by ordinary post addressed to him at his address appearing on the record of Unitholders referred to in Section 12.2 and shall be conclusively deemed to have been received by the Unitholder on the fifth day after it was so mailed; provided that the accidental failure to give notice to any Unitholder shall not affect any action taken pursuant to such notice.

16.2 Methods of Communication

All communications hereunder must be given through one of the following methods of communication:

- personal or courier delivery
- prepaid ordinary mail
- authenticated telex
- facsimile
- S.W.I.F.T.
- one of the Trustee's secured client access channels
- directly between electromechanical or electronic terminals (other than the internet or unsecured lines of communication)

16.3 Deemed Delivery

Any communication delivered personally shall be deemed to have been given and received on the day it is so delivered (or if that day is not a Business Day, on the next succeeding Business Day). Subject to disruptions in the postal service, any communication mailed shall be deemed to have been given and received on the fifth Business Day following the date of mailing. Any communication given by authenticated telex, facsimile, S.W.I.F.T., secured client access channels or directly between electromechanical or electronic terminals (other than the internet or unsecured lines of communication) shall be deemed to have been given and received on the business day it is transmitted provided that it was received before 3:00 p.m. (Montreal time), and, if received after 3:00 p.m. (Montreal time), it shall be deemed to have been given and received on the business day following the day of transmission provided in each case that confirmation of transmission is available from the party giving the communication.

SECTION 17 – AMENDMENT

17.1 Amendments Without Unitholder Approval

(1) Subject to Section 17.1(2) and Section 17.2, any provision of this Declaration may be amended, deleted, expanded or varied by the Trustee, upon notice to Unitholders in accordance

with Section 17.3, if the amendment does not constitute a material change and does not relate to any of the matters specified in Section 17.2.

(2) Subject to Section 17.2, any provision of this Declaration may be amended, deleted, expanded or varied by the Trustee, without any prior notice to, or approval of, Unitholders if the amendment is:

- (a) necessary or desirable to bring this Declaration into conformity with current practice or to comply with Applicable Laws or regulatory authorities;
- (b) to correct any ambiguity, defective or inconsistent provision, omission, mistake or manifest error contained in this Declaration;
- (c) to protect the interests of the Unitholders or enhance the rights of the Unitholders;
- (d) to enhance the rights of redemption;
- (e) to adopt more stringent investment restrictions;
- (f) to make any change required such that the Trust may be a qualified investment under any applicable legislative or regulatory requirements, if the Trustee deems such qualification to be desirable; and
- (g) to add new Classes of Units and make provisions in relation thereto.

(3) The Class attributes of a Class may be amended, deleted, expanded or varied by the Trustee in its sole discretion without any prior notice to, or approval of, Unitholders of the applicable Class.

17.2 Amendments Requiring Approval

(1) Notwithstanding the foregoing, any provision of this Declaration may be amended, deleted, expanded or varied with the consent of the Unitholders if the purpose or the effect of the amendment, deletion or expansion is to:

- (a) change materially this Section 17;
- (b) change materially the investment objectives of the Trust;
- (c) increase the fees payable to the Manager; or
- (d) decrease the frequency of calculating the Net Asset Value, the Class Net Asset Value or the Series Net Asset Value.

(2) The consent of the Unitholders is required for any amendment if the amendment adversely affects the pecuniary value of the interest of any Unitholder in the Trust. The consent of the Trustee is required for any amendment if the amendment restricts any protection provided to the Trustee or impacts the responsibilities of the Trustee hereunder.

(3) No change or amendment to the redemption rights attaching to a Class of Units as set out in any document under which any Unitholder has subscribed for Units of such Class and/or under this Declaration may be made without the prior written consent of a majority of Unitholders of such Class, including changes to the frequency of redemptions, any minimum holding period before which Units may be redeemed, minimum redemption amounts, the amount of redemption charges, deferral of payment of redemption proceeds, suspension of redemptions, or any other matter that could limit, penalize or impair the redemption of such Units, where any such change would result in the Trust ceasing to qualify as a “mutual fund trust” for purposes of the *Tax Act*.

17.3 Notice to Unitholders

Notice of any amendment under Section 17.1 shall be given in writing to Unitholders and any such amendment shall take effect on a date to be specified therein, which date shall be not less than sixty (60) days after notice of the amendment is given to Unitholders, or earlier with the consent of Unitholders, except that the Trustee may agree that any amendment shall become effective at an earlier time if that seems desirable and the amendment is not detrimental to the interest of any Unitholder.

SECTION 18 – TERMINATION OF TRUST

18.1 Notice of Termination Date

The Trustee may at any time terminate and dissolve the Trust by giving each then Unitholder written notice of its intention to terminate at least sixty (60) days before the date on which the Trust is to be terminated (the “Termination Date”).

18.2 Effect of Termination

During the period after the giving of such notice, if any, the right of Unitholders to require payment for all or any of their Units shall be suspended and the Trustee shall make appropriate arrangements for converting the Trust Property into cash. After payment of the liabilities of the Trust, each Unitholder registered as such at the Close of Business on the date fixed as the Termination Date shall be entitled to receive from the Trustee his proportionate share of the value of the Trust attributable to the Class of Units held in accordance with the number of Units which he then holds. In the event that liquidation of certain assets is not possible, or in the opinion of the Trustee, is not advisable, prior to the Termination Date, such assets will be distributed to the Unitholders in specie, subject to compliance with Applicable Laws. If, ninety (90) days after the date of termination of the Trust, the Trustee is unable to locate any Unitholder as shown on the register of the Trust, the Trustee or any third party appointed by the Trustee shall comply with any requirements dealing with unclaimed property as the Trustee or such third party, in its discretion, shall determine or as required by Applicable Laws. The Trustee shall only make payments to the Unitholders to the extent that monies have been deposited with the Trustee.

18.3 Termination of Agreement

Should the Trust be terminated and dissolved pursuant to Section 18.1, then this Declaration shall terminate and all the assets of the Trust distributed in accordance with Section 18.2.

SECTION 19 – GENERAL

19.1 Compliance with Law and Policy

It shall be the responsibility of the Trustee to ensure that this Declaration, any Offering Memorandum or like document or regulatory filing of the Trust and any distribution of Units complies with all Applicable Laws. To this end, the Trustee on behalf of the Trust shall take such action and execute such deeds and documents as may be necessary or desirable to be filed with appropriate regulatory authorities on behalf of the Trust.

19.2 Governing Law

This Declaration and the trust hereby created shall be governed by and construed in accordance with the laws of the Province of Ontario and the responsibilities of the Trustee shall be principally performed from its office at Montreal, Quebec.

19.3 Severability

If any provision of this Declaration is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Declaration; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

19.4 Choice of Language

The Trustee confirms that it is its wish that this Declaration, as well as any other documents relating to this Declaration, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Le fiduciaire confirme qu'il souhaite que la présente déclaration, de même que tous les autres documents qui y ont trait, y compris les avis, les annexes et les autorisations, soient produits uniquement en anglais.*

IN WITNESS WHEREOF the Trustee has caused this Declaration to be executed by its duly authorized officer effective as of the day and year first above written.

FORMULA GROWTH LIMITED

By: *“Randall W. Kelly”*

Name: (Signed) Randall W. Kelly

Title: President