

**AMENDED AND RESTATED DECLARATION OF TRUST**

**OF**

**DKAM CAPITAL IDEAS TRUST**

**DATED AS OF**

**March 27, 2015**

**Donville Kent Asset Management Inc.  
Manager-Trustee**

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## DKAM CAPITAL IDEAS TRUST

### AMENDED AND RESTATED DECLARATION OF TRUST

This Amended and Restated Declaration of Trust (the “Declaration of Trust”) is made as of the 27th day of March, 2015.

#### **Declaration:**

Donville Kent Asset Management Inc., a corporation duly incorporated under the laws of Canada (the “**Manager-Trustee**”), having an office at 36 King Street East, Suite 810, Toronto, Ontario M5C 1E5 hereby declares:

- (a) A declaration of trust was executed by the Manager-Trustee effective as of January 2, 2013 (the “**Original Declaration of Trust**”) to facilitate the administration of DKAM Capital Ideas Trust (the “**Fund**”);
- (b) The Manager-Trustee deposited \$10.00 to constitute and settle the Fund concurrent with the execution of the Original Declaration of Trust;
- (c) The Original Declaration of Trust was amended and restated by the Manager-Trustee on January 29, 2015 to cure any ambiguity or clerical error or to correct or supplement any provision contained herein;
- (d) The Declaration of Trust is now being amended and restated by the Manager-Trustee on to create a new class of Units (as defined herein) with such attributes as set forth in Schedule A hereto and to cure any ambiguity or clerical error or to correct or supplement any provision contained herein;
- (e) The Declaration of Trust may be amended in the future to add or delete unit trusts or series of units of unit trusts and for any other purpose permitted by the terms of this Declaration of Trust; and
- (f) The Manager-Trustee is the trustee for the unitholders of the Fund on the terms and conditions herein set out.

### ARTICLE 1 - INTERPRETATION

#### **1.1 Definitions**

In this Declaration of Trust, unless the subject matter or context otherwise requires, the following expressions shall have the meanings set forth below:

- (a) “**business day**” means any day that the Toronto Stock Exchange is open for trading;
- (b) “**Common Expenses**” means those expenses of the Fund other than Series Expenses;

- (c) "**Custodian**" means the person or persons appointed as custodian of the Trust Property of the Fund pursuant to the provisions of this Declaration of Trust;
- (d) "**this Declaration of Trust**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to this instrument in its entirety, as amended from time to time, and not to any particular Article, Section, Subsection or other portion hereof, and include any and every instrument supplemental or ancillary hereto and any and every Schedule hereto; "**Article**", "**Section**" and "**Subsection**" refer to the specified article, section or subsection of this Declaration of Trust;
- (e) "**Disclosure Documents**" means any term sheet, offering memorandum and/or annual and interim financial statements of the Fund, or if any of the Fund's units are offered to the public, any documents which may from time to time be filed as part of the permanent information record of the Fund as required in connection with the distribution of Units of the Fund by Securities Authorities in each of the jurisdictions in which Units of such Fund are qualified for distribution;
- (f) "**General Partner**" means DKAM CI GenPar Inc.
- (g) "**Investment Adviser**" means any investment adviser or advisers appointed by the Manager-Trustee pursuant to Section 12.5 and "**Sub-Adviser**" means any sub-adviser appointed by the Manager-Trustee or any Investment Adviser pursuant to Section 12.5;
- (h) "**Investment Company Act**" means the United States Investment Company Act of 1940, as amended.
- (i) "**Investment Objective**" means the investment objective(s), constraints and restrictions of the Fund as set forth in Schedule "A", as the same may be changed from time to time in accordance with the provisions hereof;
- (j) "**Management Expense Distribution**" means a distribution pursuant to Subsection 6.4(a);
- (k) "**Manager-Trustee**" means Donville Kent Asset Management Inc., or any successor person or corporation from time to time appointed as the manager and/or trustee of the Fund in accordance with this Declaration of Trust;
- (l) "**Net Asset Value**" means the net asset value of the Fund computed in accordance with Section 3.2;
- (m) "**Net Capital Gains**" for any year means the net capital gains of the Fund for such year computed in accordance with Section 6.2;
- (n) "**Net Change in Non Portfolio Assets**" for the Fund on a Valuation Date means:

- (i) the aggregate of all income accrued by the Fund as of that Valuation Date, including cash dividends and distributions, interest and compensation; minus
  - (ii) the Common Expenses accrued by the Fund as of that Valuation Date which have not otherwise been accrued in the calculation of Net Asset Value as of that date; plus or minus
  - (iii) any change in the value of any non portfolio assets or liabilities stated in any foreign currency accrued on that Valuation Date, including, without limitation, cash, accrued dividends or interest and any receivables or payables; plus or minus
  - (iv) any gain or loss resulting from transfers of currencies accrued on that Valuation Date; plus or minus
  - (v) any other item accrued on that Valuation Date determined by the Manager-Trustee to be relevant in determining Net Change in Non-Portfolio Assets;
- (o) “**Net Income**” for any year means the net income of the Fund for such year computed in accordance with Section 6.1;
  - (p) “**Net Portfolio Transactions**” for the Fund on any Valuation Date means the impact of portfolio transactions and the adjustments to the assets as a result of a stock dividend, stock split or other corporate action recorded on that Valuation Date;
  - (q) “**Non-Residents**” means persons who are not "resident in Canada" for the purposes of the Tax Act and partnerships that are not "Canadian partnerships" for the purposes of the Tax Act;
  - (r) “**Partnership**” means DKAM Capital Ideas Fund LP.
  - (s) “**person**” includes an individual, body corporate, corporation, company, partnership, syndicate, trust or any trustee, executor, administrator or other legal representative or any legal entity, including, without limitation, pension and profit share trusts;
  - (t) “**Proportionate Share**”, when used to describe
    - (i) an amount to be allocated to any one series of the Fund, means the total amount to be allocated to all series of Units of the Fund multiplied by a fraction, the numerator of which is the Series Net Asset Value of such series and the denominator of which is the Net Asset Value of the Fund at such time, and
    - (ii) a Unitholder’s interest in or share of any amount, means, after an allocation has been made to each series of the Fund as provided in clause (i), that allocated

amount multiplied by a fraction, the numerator of which is the number of Units of that series registered in the name of that Unitholder and the denominator of which is the total number of Units of that series then outstanding (if such Unitholder holds Units of more than one series, then such calculation is made in respect of each series and aggregated);

- (u) “**Redemption Date**” means a Valuation Date that is the last business day of a calendar month or such other date or dates as the Manager-Trustee may in its discretion determine;
- (v) “**Securities Legislation**” means the laws and regulations in each province and territory of Canada and/or the laws and regulations under any federal and/or state securities law in the United States that are applicable to the Fund and the requirements, rules, policies, instruments and decisions of the local securities authorities that are applicable to the Fund;
- (w) “**Securities Act**” means the United States Securities Act of 1933, as amended.
- (x) “**Series Expenses**” in respect of any particular series of Units means the expenses of the Fund (including management and performance fees) that are charged only to that series (and, for greater certainty, shall include amounts otherwise payable to the Manager-Trustee but for a Management Expense Distribution);
- (y) “**Series Net Asset Value**” in respect of any particular series of Units is the portion of the Net Asset Value of the Fund attributed to such series determined in accordance with Section 3.3;
- (z) “**Series Net Asset Value per Unit**” in respect of any particular series of Units is the portion of the Net Asset Value of the Fund attributed to each Unit of such series determined in accordance with Section 3.3;
- (aa) “**Special Distribution**” means any Management Expense Distribution and the allocation and distribution of Net Capital Gains as contemplated by Section 6.4;
- (bb) “**Tax Act**” means the *Income Tax Act (Canada)* and the regulations thereunder, as the same is presently in force and may hereafter be amended from time to time and includes any statute that may be enacted in substitution therefor;
- (cc) “**Unitholders**” means the person or persons for the time being entered in the register or registers hereinafter mentioned as the holder or holders of any of the Units;
- (dd) “**Units**” means units in the Fund issued or to be issued hereunder and for the time being outstanding, having the attributes set out herein; and
- (ee) “**Valuation Date**” means the last business day of each calendar month and such other day or days as the Manager-Trustee may from time to time determine, in its sole discretion.



## **1.2 Other Trusts**

More than one trust may be established under the terms of this Declaration of Trust and the terms hereof shall apply individually to each such trust, with each such trust referred to as the “**Fund**”. The right and obligations of the beneficiaries as Unitholders of each such trust shall apply only in respect of such trust and to no other trust created hereunder.

## **1.3 Gender and Number**

Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender.

## **1.4 Headings**

The headings of all of the Articles and Sections hereof and the Table of Contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

## **1.5 Governing Law**

This Declaration of Trust, which by common accord has been drawn in the English language, shall be construed in accordance with the laws of the Province of Ontario.

## **1.6 Accounting Terms**

Unless otherwise stated herein, all accounting terms not otherwise defined herein have the meanings ordinarily assigned to them in accordance with, and all computations made pursuant to this Declaration of Trust shall be made in accordance with, Canadian generally accepted accounting principles applicable from time to time applied on a consistent basis.

## **1.7 Rights of Unitholders**

A Unitholder shall have no rights other than those rights afforded to them pursuant to Securities Legislation and as expressly provided for Unitholders herein or added by amendment hereto.

## **1.8 Currency**

All references to currency in this Declaration of Trust are to lawful money of Canada, unless otherwise expressly provided herein.

## **1.9 Conflict**

In the event of a conflict between the terms and conditions of this Declaration of Trust and the Disclosure Documents, the terms and conditions of this Declaration of Trust shall prevail.

## **1.10 Invalidity of Provisions**

Each of the provisions hereof is distinct and severable and a declaration of invalidity or enforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision thereof.

## **ARTICLE 2 - THE TRUST**

### **2.1 Name and Office**

The Fund administered hereunder shall be known by the name set out in **Schedule "A"** or such other name as the Manager-Trustee may from time to time designate and the Fund may at any time adopt a French version of its name at the sole discretion of the Manager-Trustee. The Fund shall have its offices at 36 King Street East, Suite 810, Toronto, Ontario M5C 1E5 or at such place as the Manager-Trustee may from time to time designate.

### **2.2 Trust Property**

The property of the Fund (the "**Trust Property**") includes all moneys, securities, property, assets and investments paid or transferred to the Fund and accepted by or in any manner acquired by the Manager-Trustee and held by the Manager-Trustee for the account of the Fund on the trusts herein declared; all income, interest, profits and gains therefrom which may be accumulated or accrue under the powers herein contained; and all replacements, substitutions and additions to all or any part of the foregoing.

### **2.3 Investment Objective**

The Investment Objective of the Fund is set out in **Schedule "A"**. Subject to compliance with applicable Securities Legislation, the Manager-Trustee may change the Investment Objective of the Fund.

### **2.4 Possession of Fund Assets**

The Manager-Trustee shall stand possessed of the property and assets of the Fund in trust for the Unitholders according and subject to the provisions of this Declaration of Trust and the property and assets comprising the Fund from time to time shall be dealt with by the Manager-Trustee in accordance with the provisions hereof.

### **2.5 Title to Fund Assets**

Subject to the express terms, conditions and limitations hereof, and the provisions of any agreement between the Manager-Trustee and the Custodian, the Manager-Trustee on behalf of the Unitholders of the Fund shall have legal title to the Trust Property of such Fund upon trust for the Unitholders of such Fund but the Manager-Trustee shall have power to cause legal title to any asset of such Fund to be held by or in the name of such Fund, or in the name of any other person, including a Custodian of such Fund or its nominee, on such terms, in such manner, and with such powers as the Manager-Trustee may determine or as may be specified in any agreement entered into with a Custodian, and the Trust Property of the Fund shall at all times be

considered as property held in trust by the Manager-Trustee as trustee of such Fund in accordance with the terms and conditions hereof and the Manager-Trustee shall be entitled to exercise, in its discretion, all rights and powers of an owner of the Trust Property, including the power to enter into all agreements which it deems necessary on behalf of such Fund. No Unitholder of the Fund shall have or be construed to have individual ownership of any asset of such Fund. No Unitholder of the Fund shall have the right to call for any partition, division or distribution of any portion of the Trust Property of such Fund or for a distribution of any particular asset of such Fund, nor shall any Unitholder of the Fund be required to or be called upon to pay for, contribute toward or assume any losses of such Fund, except to the extent that such Unitholder shall bear a diminution of the Net Asset Value as a result of a loss in value of the Trust Property of such Fund, and no Unitholder of the Fund shall be required to suffer an assignment or further payment to such Fund or Manager-Trustee of any kind by virtue of its ownership of Units of such Fund. None of the Manager-Trustee or the Unitholders of the Fund shall, for any purpose, be, or be deemed to be, or be treated in any way whatsoever to be, liable or responsible hereunder as a general partnership, limited partnership, corporation, joint stock company or as partners or joint venturers.

## **2.6 Officers of the Fund**

The Manager-Trustee may, if considered appropriate, appoint or designate a Chief Executive Officer and a Chief Financial Officer of the Fund and such other officers as it deems necessary or as may be required by applicable Securities Legislation.

## **2.7 Declaration of Trust Binding on Unitholders**

The terms and conditions of this Declaration of Trust and any deed supplemental hereto shall be binding upon each Unitholder and all persons claiming through the Unitholder as if such Unitholder had been a party to this Declaration of Trust.

## **2.8 Legal Character of the Fund**

The Fund is not intended to be and shall not be treated as anything other than a trust of which the Unitholders are beneficiaries with the rights ascribed to them hereunder and with no other rights. Without limitation, the Fund does not constitute a partnership, joint venture, corporation or joint stock company. The Manager-Trustee shall not be, or deemed to be, the agent of the Unitholders. The relationship of the Unitholders to the Manager-Trustee shall be solely that of beneficiaries of the Fund and the rights of the Unitholders shall be limited to those conferred upon them hereunder.

## **2.9 Indemnification of Unitholders**

The Fund shall indemnify and hold each of its Unitholders harmless from and against all claims and liabilities to which any such Unitholder may become subject by reason of being or having been a Unitholder and shall reimburse such Unitholder for all legal and other expenses reasonably incurred in connection with any such claim or liability. The rights accruing to a Unitholder under this Section 2.9 shall not exclude any other right to which such Unitholder may be lawfully entitled nor shall anything herein contained restrict the right of the Fund to indemnify or reimburse a Unitholder in any appropriate situation even though not specifically

provided for herein; provided, however, that the Fund shall not have liability to reimburse Unitholders for taxes assessed against them by reason of their ownership of Units nor for any losses suffered by reason of changes in the value of Units.

## **2.10 Liability under Contracts**

Any written instrument creating an obligation of the Fund shall be conclusively taken to have been executed or done by the Manager-Trustee or an agent of the Fund only in their capacity as Manager-Trustee under this Declaration of Trust or agent, as the case may be. The Manager-Trustee shall use its commercially reasonable efforts to ensure that any written instrument creating a material obligation of the Fund refers to the Declaration of Trust and contains a term or other provision to the effect that the obligations created thereunder are not personally binding upon, nor shall resort be had to, nor recourse or satisfaction sought from the private property of any of the Unitholders. The omission of such recital, term or other provision shall not impose or have the effect of imposing personal liability on the Manager-Trustee, or its directors, officers or employees or on any of the Unitholders or agents of the Fund, whether in contract, tort or otherwise.

## **ARTICLE 3 - DESCRIPTION AND ISSUE OF UNITS**

### **3.1 Attributes of Units**

The Manager-Trustee shall have sole discretion in determining whether the capital of the Fund is divided into one or more classes or series of Units, the attributes that shall attach to each class or series of Units and whether any class or series of Units may or will be redesignated or renamed as a different class or series of Units from time to time. The classes or series of Units created and authorized for the Fund, including any redesignation of any class or series, shall be as shown from time to time in in Schedule "A" attached hereto and/or in the Disclosure Documents. Until changed by the Manager-Trustee, there shall be three classes of Units, designated as "Class A", "Class B" and "Class F" respectively, that shall be issued in one or more series and each Unit of each series of Units of the Fund shall have the following attributes:

- (a) each Unit shall be without nominal or par value;
- (b) each holder of Units of a particular series shall be entitled to one vote for each \$1.00 of Net Asset Value attributable to the Units of such series held by such Unitholder at all meetings of Unitholders where all series vote together and to one vote for each \$1.00 of Net Asset Value attributable to the Units of a particular series held by such Unitholder at all meetings of Unitholders where that particular series votes separately as a series (for this purpose the Net Asset Value of all Units then held by each such Unitholder and entitled to be voted on a matter shall be aggregated);
- (c) each Unit of a particular series shall entitle the holder thereof to participate *pro rata*, in accordance with the provisions hereof, with respect to all distributions of the same series (except with respect to any Special Distribution) and, upon liquidation of the Fund, to participate *pro rata* with the other Unitholders of that same series in the Series Net Asset Value of the Fund remaining after the

satisfaction of outstanding liabilities of the Fund and the series as provided in Article 11 hereof;

- (d) distributions shall be allocated among the series of Units in such manner as the Manager-Trustee considers appropriate and equitable;
- (e) there shall be no pre-emptive rights attaching to the Units;
- (f) there shall be no cancellation or surrender provisions attaching to the Units except as set out herein;
- (g) once the Series Net Asset Value per Unit thereof, determined in accordance with Section 3.6, has been paid, Units shall be issued as fully paid and non-assessable so that there shall be no liability for future calls or assessments with respect to the Units;
- (h) all Units shall be transferable, but only as contemplated herein;
- (i) subject to any limitations and requirements determined from time to time by the Manager-Trustee and stated in the Disclosure Documents and/or Schedule "A" hereto, each Unit of a particular class or series of the Fund may be automatically redesignated by the Manager-Trustee as a Unit of another class or series based on the respective Series Net Asset Value per Unit for each of the three class or series of Units on the date of the redesignation, as applicable;
- (j) the number of Units and series of Units that may be issued is unlimited; and
- (k) fractional Units of a series may be issued and shall be proportionately entitled to all the same rights as whole Units of that same series, except that fractional Units shall not, except to the extent that they may represent in the aggregate one or more whole Units held by a Unitholder, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders.

Each series of Units shall also have the features and characteristics disclosed from time to time in the Disclosure Documents and/or Schedule "A" hereto.

### **3.2 Computation of Net Asset Value**

- (a) The Net Asset Value of the Fund as at any particular time on a Valuation Date is the value as at such time of all assets of the Fund minus all of the liabilities of the Fund as at such time. In calculating the Net Asset Value of the Fund as at any particular time, the valuation principles set out in the Disclosure Documents and/or Schedule "B" hereto from time to time shall apply. The Manager-Trustee may engage a third party to calculate the Net Asset Value of the Fund in accordance with the terms hereof.
- (b) The assets of the Fund shall be deemed to include:

- (i) all cash or its equivalent on hand, on deposit or on call, including any interest accrued thereon;
  - (ii) all bills, demand notes and accounts receivable;
  - (iii) all shares, debt obligations, subscription rights and other securities owned or contracted for by the Fund;
  - (iv) all stock and cash dividends and cash distributions to be received by the Fund and not yet received by it but declared to securityholders of record on a date on or before that time;
  - (v) all interest accrued on any fixed interest-bearing securities owned by the Fund that is included in the quoted price; and
  - (vi) all other property of every kind and nature, including prepaid expenses and derivatives, as permitted from time to time by Securities Legislation.
- (c) The liabilities of the Fund shall be deemed to include:
- (i) all bills, notes and accounts payable;
  - (ii) all fees and expenses incurred or payable by the Fund (for the purpose of determining Series Net Asset Values, however, such fees and expenses shall not include Series Expenses, which are deducted only from each respective Series Net Asset Value);
  - (iii) all contractual obligations for the payment of money or property, including the amount of any unpaid distribution declared upon Units and payable to Unitholders of record prior to the time as of which the Net Asset Value of the Fund is being determined;
  - (iv) all allowances authorized or approved by the Manager-Trustee for taxes (if any) or contingencies; and
  - (v) all other liabilities of the Fund of whatsoever kind and nature, except liabilities represented by outstanding Units and the balance of any undistributed income or capital gains.
- (d) Each transaction of purchase or sale of a portfolio asset effected by the Fund shall be reflected in the next calculation of the Net Asset Value of the Fund made after the date on which such transaction becomes binding.

### **3.3 Calculation of Series Net Asset Value and Series Net Asset Value per Unit**

- (a) The Series Net Asset Value for a series of Units as at any particular time on a Valuation Date is determined in accordance with the following calculation:

- (i) the Series Net Asset Value last calculated for that series, if any; plus
  - (ii) the increase in the assets attributable to that series as a result of the issue of Units of that series (including Units issued pursuant to a Management Expense Distribution) or the redesignation of Units into that series since the last calculation; minus
  - (iii) the decrease in the assets attributable to that series as a result of the redemption of Units of that series or the redesignation of Units out of that series since the last calculation; plus or minus
  - (iv) the Proportionate Share of the Net Change in Non Portfolio Assets attributable to that series since the last calculation; plus or minus
  - (v) the Proportionate Share of the Net Portfolio Transactions attributable to that series since the last calculation; plus or minus
  - (vi) the Proportionate Share of market appreciation or depreciation of the portfolio assets attributable to that series since the last calculation; minus
  - (vii) the Proportionate Share of the Common Expenses allocated to that series since the last calculation; minus
  - (viii) any Series Expenses allocated to that series since the last calculation.
- (b) A Unit of a series of the Fund being issued or a Unit that has been redesignated as a part of that series shall be deemed to become outstanding as of the next calculation of the applicable Series Net Asset Value immediately following the time at which the applicable Series Net Asset Value per Unit that is the issue price or redesignation basis of such Unit is determined and the issue price received or receivable for the issuance of the Unit shall then be deemed to be an asset of the Fund attributable to the applicable series.
- (c) A Unit of a series of the Fund being redeemed or a Unit that has been redesignated as no longer being a part of that series shall be deemed to remain outstanding as part of that series until immediately following the date as of which the applicable Series Net Asset Value per Unit, that is the redemption price or redesignation basis of such Unit, is calculated; thereafter, the redemption price of the Unit being redeemed, until paid, shall be deemed to be a liability of the Fund attributable to the applicable series and the Unit which has been redesignated will be deemed to be outstanding as a part of the series into which it has been redesignated.
- (d) On any Valuation Date that a distribution is paid to Unitholders of a series of Units, a second Series Net Asset Value shall be calculated for that series, which shall be equal to the first Series Net Asset Value calculated on that Valuation Date minus the amount of the distribution. For greater certainty, the second Series Net Asset Value shall be used for determining Series Net Asset Value per Unit on

such Valuation Date for purposes of determining the purchase price and redemption price for Units on such date, as well as the redesignation basis for Units being redesignated into or out of such series, and Units redeemed or redesignated out of that series as at such date shall participate in such distribution while Units subscribed for or redesignated into such series as at such date shall not.

- (e) The Series Net Asset Value per Unit of a series of Units of the Fund as at any particular time is the quotient obtained by dividing the applicable Series Net Asset Value as at such time by the total number of Units of that series outstanding at such time. This calculation shall be made without taking into account any issuance, redesignation or redemption of Units of that series to be processed by the Fund immediately after the time of such calculation on that Valuation Date.
- (f) The Series Net Asset Value per Unit for each series of Units of the Fund for the purpose of the issue of Units or the redemption of Units shall be calculated on each Valuation Date by or under the authority of the Manager-Trustee as at such time on every Valuation Date as shall be fixed from time to time by the Manager-Trustee and the Series Net Asset Value per Unit so determined for each series shall remain in effect until the time as of which the Series Net Asset Value per Unit for that series is next determined.

### **3.4 Suspension of Calculation of Series Net Asset Value per Unit and Redemption of Units**

- (a) The Manager-Trustee shall suspend the calculation of the Series Net Asset Value per Unit, and the right to redeem Units, for each series of Units when required to do so under Securities Legislation or under any exemptive relief granted by the local securities authorities from Securities Legislation.
- (b) The Manager Trustee may also suspend the calculation of the Series Net Asset Value per Unit of the Fund, and the right to redeem Units of the Fund or series of Units of the Fund, at such other times it deems appropriate, provided that such suspension is not prohibited under Securities Legislation.
- (c) During any period of suspension there shall be no calculation of the Series Net Asset Value per Unit of any series of Units and the Fund shall not be permitted to issue, redesignate or redeem any Units and the Manager-Trustee may postpone the payment of any redemption proceeds. The right to redeem Units and to receive redemption payments and the calculation of the Series Net Asset Value per Unit for each series of Units shall resume as soon as possible and in compliance with any applicable Securities Legislation or any exemptive relief granted therefrom.
- (d) In the event of such a suspension:
  - (i) a Unitholder who has delivered a redemption request for which the redemption price has not yet been calculated may either withdraw such



Unitholder's redemption request prior to the end of the suspension period or receive payment based on the Series Net Asset Value per Unit of the applicable series of Units next calculated after the termination of the suspension; and

- (ii) an investor who has submitted a purchase order for which the issue price has not yet been calculated may either withdraw such investor's purchase order prior to the end of such suspension period or receive Units based on the Series Net Asset Value per Unit of the applicable series of Units next calculated after the termination of the suspension.

### **3.5 Minimum Investment**

The minimum initial investment and each minimum subsequent investment in the Fund shall be determined from time to time by the Manager-Trustee and shall be set forth in the Disclosure Documents and/or Schedule "A" hereto. The Manager-Trustee shall be entitled in its discretion to reject subscriptions in whole or in part for purchases of Units, but any decision to reject a subscription must be made no later than two business days after receipt of the subscription and all necessary documents are received by the Manager-Trustee or the Fund's administrator and any moneys received must be refunded to the investor promptly.

### **3.6 Issue Price of Units**

The issue price for each Unit of a series of Units of the Fund shall be the Series Net Asset Value per Unit of the applicable series next determined on a Valuation Date by the Manager-Trustee after the receipt by the Fund of the purchase order. The Series Net Asset Value per Unit for the purpose of the initial subscription for Units of each series of the Fund shall be determined by the Manager Trustee in its sole discretion.

### **3.7 Distribution of Units**

Subject to Section 3.6, the Manager-Trustee may from time to time, at its discretion, determine the terms upon which Units will be offered for sale to the public and the nature and amount of any fees or charges to be paid by investors in the Fund, whether at the time of purchase or on such other basis as the Manager-Trustee shall determine. Such terms, fees or charges as may be so determined shall be described in the relevant Disclosure Documents and/or Schedule "A" hereto or in a notice that is given to Unitholders in accordance with the provisions of Article 9 hereof in order for them to be binding upon the investors in the Fund. The person to whom any such fee or charge shall be payable shall be determined by or under the authority of the Manager-Trustee from time to time.

### **3.8 Unit Certificates**

Unless and until otherwise determined by the Manager-Trustee, no certificates in respect of the Units held by a Unitholder shall be issued, provided that every subscriber (including each Unitholder who reinvests distributions in additional Units) and every redeeming (or redesignating) Unitholder is advised as soon as is practicable, following such subscription, redemption or redesignation, of the number and series of Units held by them. In the event that

the Manager-Trustee should authorize the issue of certificates as aforesaid, the Manager-Trustee shall be entitled to determine all procedures relating to the issue or surrender of certificates, including, without limitation, the form thereof, the persons authorized to sign the same, any fees charged in connection therewith and the procedures to be followed in the event of the loss or destruction of a certificate.

### **3.9 Registrar and Transfer Agent**

The Manager-Trustee shall from time to time appoint a transfer agent and/or a registrar for the Fund (who may, but need not, be the same individual or company and who may, but need not, be the Manager-Trustee) and may appoint or remove one or more branch transfer agents and/or registrars (who may, but need not, be the same individual or company and who may, but need not, be the Manager-Trustee). The transfer agent and/or registrar shall maintain a register for the registration of Units, which shall include the names and latest known addresses of each Unitholder of each series, the number of Units of each series held by each Unitholder, the date and details of each issue and redemption of Units of each series and each distribution of the Fund with regard to such Units. The transfer agent and/or registrar may provide for the transfer and the registration of transfers of Units in one or more places and may provide that Units will be interchangeably transferable or otherwise and such transfer agents and/or branch transfer agents and/or registrars and/or branch registrars shall keep all necessary books and registers of the Fund required by this Declaration of Trust and by Securities Legislation. The register of the Fund referred to in this Section shall be made available for inspection, upon reasonable prior request, at all reasonable times by any Unitholder for any proper purpose.

### **3.10 Manager-Trustee not Affected by Notice of Trust**

Except as required by law, no person shall be recognized by the Fund or the Manager-Trustee as holding any Unit in trust, and neither the Fund, the Manager-Trustee, nor any transfer agent or registrar shall be charged with notice of or be bound or compelled in any way to recognize (even when having actual notice) any legal, equitable, contingent, future or partial interest in any Unit or in any fractional part of a Unit or any other rights in respect of any Unit except an absolute right to the entirety of the Unit of the Unitholder registered as holder of such Unit.

### **3.11 Transfer of Units**

Units of a series of Units of the Fund are not transferable by a Unitholder except by operation of law, or if the Manager-Trustee has otherwise determined. Units shall be transferable only on the register of transfers or on one of the branch registers of transfers (if any) kept pursuant to this Declaration of Trust and only by the registered holder of such Units or by the owner's legal representative or representatives or the owner's attorney duly appointed by an instrument in writing in form and execution satisfactory to the Manager-Trustee or the transfer agent upon compliance with such reasonable requirements as the Manager-Trustee or the transfer agent may prescribe.

### **3.12 Transfer by Representative of Unitholder**

The written authorization of an executor, administrator, committee of a mentally incompetent person, guardian, trustee or other fiduciary who is registered on the books of the Fund as holding

Units in any such capacity is sufficient justification for the Manager-Trustee or the registrar and/or transfer agent to register a transfer of such Units, including a transfer into the name of such executor, administrator, committee of a mentally incompetent person, guardian, trustee or other fiduciary absolutely.

### **3.13 Subdivision of Units**

The Manager-Trustee may, at any time or times, subdivide Units of any series in a manner that is different to the treatment of Units of another series only if the Net Asset Value per Unit of such series is amended such that the aggregate Net Asset Value of all Units of such series prior to such subdivision is equal to the aggregate Net Asset Value of all Units of such series following such subdivision. The Manager-Trustee shall take such steps as may be necessary to notify the registrar and/or transfer agent of the basis of the subdivision so that applicable notification can be made in the register of Unitholders of the applicable series of the Fund. If there is only one series (or no series designated) for a class, the same rules shall apply (with necessary modifications) in respect of the subdivision of Units of that class.

### **3.14 Consolidation of Units**

The Manager-Trustee may, at any time or times and, subject to Section 6.3, consolidate Units of any series in a manner that is different to the treatment of Units of another series only if the Net Asset Value per Unit of such series is amended such that the aggregate Net Asset Value of all Units of such series prior to such consolidation is equal to the aggregate Net Asset Value of all Units of such series following such consolidation. The Manager shall take such steps as may be necessary to notify the registrar and/or transfer agent of the basis of the consolidation so that appropriate notification can be made in the register of Unitholders of the applicable series of the Fund. If there is only one series (or no series designated) for a class, the same rules shall apply (with necessary modifications) in respect of the consolidation of Units of that class.

### **3.15 Closing of Registers**

The Manager-Trustee may close the register of transfers and the branch register or registers of transfers, if any, of the Fund or of a series of Units of the Fund for a period of time not exceeding 48 hours, exclusive of Saturdays and holidays as defined in the *Interpretation Act* (Canada) for the time being in force, immediately preceding any meeting of the Unitholders or of that series, and notice of every such closing shall be given as set out in Article 9.

### **3.16 Receipts and Payments**

The receipt by a Unitholder in whose name a Unit is registered shall be a valid and binding discharge to the Fund and to the Manager-Trustee for any payment in respect of such Unit and if two or more persons are registered as joint holders, any one of them may give an effectual receipt on behalf of all of them. Unless otherwise directed in writing by Unitholders, all cheques in payment of amounts owing to Unitholders shall be sent by ordinary post addressed to the last address appearing on the register of Unitholders. In the case of joint registered Unitholders, cheques shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders and if more than one address appears on the books of the Fund in respect of such joint unitholding, the cheque shall be mailed to the first

address so appearing. The mailing of cheques as aforesaid shall satisfy and discharge all liability of the Fund and the Manager-Trustee for the payment represented thereby unless the cheque is not paid at par on presentation to the payor at Toronto, Ontario, or at any other place where it is by its terms payable. In the event of non-receipt of any cheque by the person to whom it was mailed, the Manager-Trustee, on proof of the non-receipt and upon satisfactory indemnity being given to it and to the Fund, shall issue to the person a replacement cheque for a like amount.

### **3.17 Limitation on and Provisions Regarding Non-Resident Ownership**

- (a) Until such time as the Fund qualifies as a “mutual fund trust” within the meaning of the Tax Act throughout a particular taxation year of the Fund, and if such Fund earns “designated income” within the meaning of Part XII.2 of the Tax Act in that year, then no Unitholder of such Fund may be a “non-resident” of Canada or otherwise a “designated beneficiary” within the meaning of the Tax Act, and no Unitholder of such Fund shall change its status or transfer or purport to transfer its Units to any Person if such change or transfer would have the effect of making the Unitholder, or the transferee, a “designated beneficiary” within the meaning of the Tax Act.
- (b) The Manager shall have the power from time to time to request from each Unitholder evidence as to its status, in order to determine whether the Unitholder is a “designated beneficiary” under the Tax Act and has the power to require the Unitholder to redeem its Units in accordance with the provisions of this Section 3.17.
- (c) At no time may Non-Residents be the beneficial owners of more than 50% of the Units (on a number of Units or a fair market value basis). The Manager-Trustee shall inform the registrar and transfer agent of this restriction. The Manager-Trustee may require declarations as to the jurisdictions in which beneficial owners of Units are resident, and, if a partnership, as to its status as a "Canadian partnership".
- (d) If the Manager-Trustee becomes aware, as a result of requiring such declarations as to beneficial ownership or otherwise, that the beneficial owners of 40% or more of the Units then outstanding (on a number of Units or a fair market value basis) are, or may be, Non-Residents, or that such a situation is imminent, the Manager-Trustee may send a notice to such Non-Resident Unitholders, chosen in inverse order to the order of acquisition or in such manner as the Manager-Trustee may consider equitable and practicable, requiring them to dispose of their Units or a portion thereof to residents of Canada within a specified period of not less than 30 days.
- (e) If the Unitholder receiving such notice have not disposed of the specified number of Units or provided the Manager-Trustee with satisfactory evidence that they are not Non-Residents within such period, the Manager-Trustee may redeem or, on behalf of such Unitholders, dispose of such Units. Upon such redemption or sale, the affected Unitholders shall cease to be beneficial Unitholders of Units and

their rights shall be limited to receiving the redemption price or the net proceeds of sale of such Units

- (f) Notwithstanding this Section 3.17, the Manager-Trustee may determine not to take any of the actions described in Section 3.17 if the Manager-Trustee has been advised by counsel to the Fund that the failure to take any such actions would not adversely impact the status of the Fund as a mutual fund trust for purposes of the Tax Act or, alternatively, may take such other action or actions as may be necessary to maintain the status of the Fund as a mutual fund trust for purposes of the Tax Act.
- (g) U.S. Persons.
  - a. Any Non-Resident whose principal residence is in the United States shall at the time of investment and at all times while such Non-Resident owns Units, be an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act and a "qualified purchaser" as that term is defined in Section 2(a)(51)(A) promulgated under the Investment Company Act.
  - b. Each Unitholder who is a United States resident shall provide or cause to be provided to the Manager-Trustee, promptly upon request by the Manager-Trustee, information with respect to such Unitholder and its affiliates as the Manager-Trustee reasonably deems necessary or appropriate to complete any tax returns or any reports, schedules, notices and other statements required to be filed by the Company under applicable Securities Legislation, or for any other reasonable purpose.
  - c. Notwithstanding anything else contained herein, no Unitholder may transfer its Units unless any transferee shall be an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act and a "qualified purchaser" as that term is defined in Section 2(a)(51)(A) under the Investment Company Act and agree in writing to be bound by, and the Interests so transferred shall remain subject to, the terms and conditions of this Agreement.
  - d. No Person shall be admitted as a Unitholder if such admission will (i) cause any Unitholder who is a resident of the United States to cease to be a "qualified purchaser" under Section 2(a)(51)(A) of the Investment Company Act; (ii) constitute a violation of any applicable registration provisions of the Securities Act, the Investment Company Act or any other applicable Securities Legislation, or (v) cause 25% or more of the equity interests in the Fund to be held by investors which are Individual Retirement Accounts, Keogh Plans, other plans described in Section 4975(e)(1) of the Internal Revenue Code, or employee benefit plans subject to Title I of Employee Retirement Income Security Act of 1974, as amended.
  - e. Within 90 days after the end of each taxable year, or as soon thereafter as reasonably practical, the Manager-Trustee shall provide each Unitholder who is

a United States resident with all information regarding the Fund and/or the Partnership necessary for the preparation of such Unitholder's tax returns and such other tax related information as may be reasonably requested by the Unitholder except that any such requested information can be reasonably obtained by the Manager-Trustee from the administrator of the Fund and the Partnership and shall not cause the Manager-Trustee to incur further expenses than they would in providing similar information to Canadian resident Unitholders

- (h) Reports to Non-Residents. The Manager-Trustee shall send each Non-Resident Unitholder a quarterly report, which shall set forth the percentage of the Fund's Units (on a number and fair market value basis) held by the Non-Resident Unitholder receiving the report and the aggregate percentage of Units (then outstanding) beneficially owned by all Non-Resident Unitholders.

#### **ARTICLE 4 - REDEMPTION OF UNITS**

##### **4.1 Right to Redeem Units**

- (a) Subject to Section 3.4, each Unitholder shall be entitled, at any time and from time to time, upon giving at least thirty (30) days prior written notice to the Manager-Trustee, require the Fund to redeem all or any part of that Unitholder's Units on a Redemption Date at the Series Net Asset Value per Unit for the applicable series of Units calculated in the manner herein provided, less, in the discretion of the Manager-Trustee, any redemption charge or other fee determined pursuant to Section 4.2 hereof. Upon payment to the redeeming Unitholder of the Series Net Asset Value per Unit of the Units redeemed, less any applicable redemption charge or fee, the Fund and the Manager-Trustee shall be discharged from all liability to the Unitholder in respect of the Units redeemed.
- (b) The Manager-Trustee may specify any change to the minimum notice periods or other conditions of redemption it may impose before it will consider a redemption request.
- (c) For Unitholders holding more than one class or series of Units, the Manager-Trustee may adopt and amend a policy from time to time, on a basis which it determines to be fair and reasonable under the circumstances, to determine the order in which such Unitholder's outstanding Units are redeemed, which policy shall be binding on the redeeming Unitholder.
- (d) Subject to Section 3.4, the Manager-Trustee shall be entitled, at any time and from time to time, at its discretion, upon giving at least thirty (30) days prior written notice to a Unitholder, to compulsorily redeem or cause to be redeemed all or any part of the Units held by such Unitholder on a Redemption Date, on such terms and conditions as the Manager-Trustee may, from time to time, determine, at its discretion, at the applicable Series Net Asset Value per Unit calculated in the manner provided herein.

- (e) The Manager-Trustee may from time to time impose such further conditions on the redemption of Units, or one or more series of Units within the Fund, provided that such conditions are set out in the Disclosure Documents and/or in Schedule “A” hereto.

#### **4.2 Deductions on Redemption**

The Manager-Trustee may from time to time provide that there will be deducted from redemption proceeds otherwise payable to a Unitholder the costs incurred by the Fund in connection with the redemption of Units, including the costs of liquidation of portfolio assets. The Manager-Trustee may fix an absolute amount or a maximum amount which may be deducted for such costs incurred (which in either event shall not exceed 5% of the Net Asset Value of the Units redeemed), and the terms of the application thereof, including minimum hold periods, and may amend or waive the applicable maximum amounts or other terms for new investors from time to time, provided that notice of any such deduction that is so fixed and the terms of its application shall be given to Unitholders either as provided in Article 9 hereof or by stating the same in any Disclosure Documents prior to the purchase of the affected Units by the Unitholder or by stating the same in Schedule “A” hereto. Until otherwise changed by the Trustee, there will be deducted from redemption proceeds otherwise payable to a Unitholder an amount equal to 3% of the Net Asset Value of the Units redeemed if those Units are tendered for redemption within 3 months of purchase.

All fees payable by the Fund to its service providers as a result of the redemption including performance fees (to the extent not already reflected in the Net Asset Value of the Units being redeemed) shall also be deducted from redemption proceeds.

#### **4.3 Method of Redemption**

- (a) Redemption requests must be given not less than 30 days prior to a Redemption Date (or such shorter period as the Manager-Trustee in its absolute discretion may permit, which can be no later than 4:00 pm (Toronto time) on the applicable Redemption Date). A completed redemption request received after such date will receive the Series Net Asset Value per Unit calculated on the next Redemption Date. The Manager-Trustee may specify any other conditions of redemption it may impose before it will consider a redemption request.
- (b) The Manager-Trustee may from time to time prescribe redemption procedures which are not inconsistent herewith or with any Securities Legislation. Notice of such redemption procedures shall be given to Unitholders either as provided in Article 9 or by stating the same in the relevant Disclosure Documents and/or Schedule “A” hereto. Such procedures may include, but are not limited to, the establishment of:
  - (i) any change to the applicable notice period as determined in accordance with Subsection 4.1(b);
  - (ii) any required method of transmission of a redemption request, including any required forms for redemption requests;

- (iii) any procedures to be followed and documents to be delivered by the time of delivery of a redemption request to an order receipt office of the Fund or by the time of payment of the redemption proceeds;
  - (iv) any required documentation or evidence relating to the authority of any person to submit a redemption request; and
  - (v) the requirements for the surrender of certificates, if any, representing the Units to be redeemed.
- (c) Redemption requests will be processed in respect of each Redemption Date, and any partial redemption proceeds shall be allocated *pro rata* (based on respective numbers of Units to be redeemed on such date) amongst all Unitholders requesting redemption on such date; provided however that no redemption requests received after the cut-off time for redemptions on such Redemption Date shall be fulfilled in whole or in part until all redemption requests received prior to such cut-off time (and not withdrawn) have been fulfilled in whole. If not fulfilled, any redemption request will be held over until the next Redemption Date.
- (d) Redemption requests specifying the receipt of the price on a forward date or specific price will not be processed and redemption requests will not be processed before payment has been received for the Units that are the subject of the redemption request.

#### **4.4 Payment for Units Redeemed**

Redemption proceeds shall be paid in cash, by cheque or by such other means as the Manager-Trustee may determine. Payment for Units that are redeemed shall be made as soon as practicable and in any event within 30 days following the later of the Redemption Date (60 days if such Redemption Date is the last Valuation Date of the year) specified for such redemption and the receipt by the Manager-Trustee of properly completed redemption documents or the waiver by the Manager-Trustee of all such properly completed documents.

#### **4.5 Redemption to Pay Elected Fees**

Units held by a Unitholder may be redeemed by or under the authority of the Manager-Trustee to satisfy the payment of fees or charges to which such Unitholder has agreed to be subject, such agreement by the Unitholder to be conclusively evidenced by the purchase of any Unit that gives rise to such fee or charge being levied, provided the nature and amount of such fee or charge was disclosed in the relevant Disclosure Documents and/or in Schedule "A" hereto.

#### **4.6 Special Distribution on Redemptions**

When a Unitholder redeems all or any of his, her or its Units, there shall be a distribution in cash out of the total amount payable under Section 4.1 of any Special Distribution accrued to such Unitholder to the time immediately prior to redemption as determined by the Manager-Trustee in its absolute discretion or allocated to such Unitholder pursuant to Subsection 6.4(b). The balance



of the amount paid to such Unitholder at the time of redemption shall be paid as proceeds of redemption.

#### **4.7 Notice of Key Man Event**

In the event that both Jason Donville and Jordan Zinberg, die, are incapacitated or are otherwise not devoting substantially all of their business time and efforts to the affairs of the Fund, the Partnership and the Manager-Trustee, the Manager-Trustee shall promptly notify the Unitholder and all deductions on redemption applicable to the Unitholder shall be waived.

### **ARTICLE 5 - INVESTMENT OF TRUST PROPERTY**

#### **5.1 General Investment Powers**

In pursuit of the Investment Objective of the Fund, the Manager-Trustee or any Investment Adviser may from time to time, in its sole discretion but subject to the investment restrictions adopted from time to time by the Manager-Trustee, invest and reinvest any money at any time held in or for the Fund in securities of any kind or other assets (including without limitation other pooled investment vehicles, whether managed by the Manager-Trustee, an associate or affiliate of the Manager-Trustee or otherwise, and derivatives and other financial instruments), pursue all such other investment strategies (including without limitation the use of leverage, securities lending and short sales) and retain any money at any time held in or for the Fund in cash or cash equivalents as shall be determined by the Manager-Trustee or any Investment Adviser. The Fund may deposit moneys and other Fund assets, including for purposes of posting margin or for investment, with banks, investment dealers, trust companies and other depositories, whether or not the deposits are interest-bearing, the same to be subject to withdrawal on such terms and in such manner and by such persons as the Manager-Trustee may determine. Notwithstanding the Investment Objective of the Fund, the Manager-Trustee or the Investment Adviser may from time to time, in light of prevailing economic conditions, temporarily invest in any securities or other assets as the Manager-Trustee deems appropriate to protect the capital of the Fund.

#### **5.2 Investment Restrictions and Policies**

Subject to Section 5.1, 10.1 and 10.2 and any applicable Securities Legislation, the Manager-Trustee may adopt and amend from time to time, in its sole discretion (and without Unitholder approval or sending formal prior notice), investment strategies, restrictions and policies that the Manager-Trustee intends to apply to the investment and reinvestment of the moneys or assets of the Fund. All such investment strategies, restrictions and policies shall be set out in or incorporated by reference in the Disclosure Documents and/or Schedule "A" hereto or shall be included in a notice given to Unitholders.

#### **5.3 Not Restricted to Trustee Investments**

Subject only to the express provisions contained herein and the requirements of any regulatory body having jurisdiction over the sale of Units of the Fund, the Manager-Trustee may invest and reinvest assets and change and vary investments in the Fund's portfolio without being in any way restricted by the provisions of the laws of any jurisdiction purporting to limit investments that may be made by trustees and the Manager-Trustee shall have, without the necessity of

authorization by, and free from any power of control on the part of, the Unitholders, all of the powers of a natural person, including full, absolute, and exclusive power, control and authority over the assets of each Fund and over the business and affairs of each Fund, to the same extent as if the Manager-Trustee were the sole, beneficial owner thereof in its own right, to do all such acts and things as in its judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the terms hereof or the conduct of the business of each Fund.

#### **5.4 Borrowing**

The Manager-Trustee may borrow any money to the extent that the Manager-Trustee in its discretion deems necessary and to evidence the borrowing may execute and deliver negotiable or non-negotiable instruments to guarantee, indemnify or act as surety with respect to the payment or performance of the obligations of any person, to enter into other obligations on behalf of the Fund and to assign, convey, transfer, subordinate, pledge, grant security interests in, encumber or hypothecate the property of the Fund to secure any of the foregoing; provided, in all cases, that this may be done only in compliance with Securities Legislation.

### **ARTICLE 6 - DETERMINATION AND DISTRIBUTION OF NET INCOME AND NET CAPITAL GAINS**

#### **6.1 Determination of Net Income**

The Manager-Trustee shall compute the net income of the Fund (the “**Net Income**”) for each taxation year in accordance with the provisions of the Tax Act, other than paragraph 82(1)(b), taking into account such adjustments thereto determined by the Manager-Trustee in respect of amounts paid or payable by the Fund to Unitholders, non-capital losses, and such other amounts in the absolute discretion of the Manager-Trustee, but excluding therefrom the Net Capital Gains of the Fund for such taxation year. Such determination shall be made not less frequently than as of the close of business on the last day in each taxation year.

#### **6.2 Determination of Net Capital Gains**

The Manager-Trustee shall compute the net capital gains of the Fund (the “**Net Capital Gains**”) for each taxation year, which shall be the capital gains of the Fund for such taxation year less the capital losses of the Fund for such taxation year computed in accordance with the provisions of the Tax Act. Such determination shall be made not less frequently than as of the close of business on the last day in each taxation year of the Fund.

#### **6.3 Unitholder Entitlement for Tax Purposes**

- (a) Subject as hereinafter provided and subject to Article 11, the Manager-Trustee shall have the sole discretion to determine if any distribution or distributions of the property or assets of the Fund are to be made, the classes and series of Units such distribution will be paid on, the time or times of such distributions and the record date or dates for the purposes of determining Unitholders entitled to receive distributions.

- (b) The Manager-Trustee shall declare and credit as due and payable in each calendar year all of the Net Income of the Fund for the taxation year ending in such calendar year and a sufficient amount of the Net Capital Gains of the Fund for the taxation year ending in such calendar year so that the Fund will not have any obligation to pay tax under Part I of the Tax Act, other than alternative minimum tax, after taking into account any entitlement to a capital gains refund under the Tax Act. To the extent that such declaration is not made prior to 11:59 p.m. on December 31 of a calendar year, or such other date on which the Fund's taxation year may end, then at 11:59 p.m. on December 31 of that calendar year, or such other date on which the Fund's taxation year may end, an amount, not less than that amount necessary to ensure that the Fund will not be liable for income tax under Part I of the Tax Act, other than alternative minimum tax, for the taxation year ending in such calendar year, after taking into account any entitlement to a capital gains refund, shall be considered to have been declared for the Fund by the Manager-Trustee and to have been payable to persons who are Unitholders on December 31 of that year, or such other date on which the Fund's taxation year may end, and such amount shall be automatically reinvested in additional Units of the same class and series of Units of the Fund on which the amount was considered to have been declared. Immediately following such reinvestment, the number of Units of the relevant class or series of Units outstanding shall, notwithstanding Section 3.14, be automatically consolidated so that the Net Asset Value per Unit of such class or series after the reinvestment shall be the same as it was immediately before the amount was considered to have been declared as due and payable by the Fund (before any redesignation of Units from one series to another).
- (c) Unitholders of record on December 31 of each calendar year, or such other date on which the Fund's taxation year may end, shall be entitled to enforce payment of the amount of the aforesaid distributions to the extent that such distributions have not been paid to Unitholders in such calendar year. For these purposes any taxes withheld from, or paid or payable on account of income, shall be considered to have been paid or be payable on behalf of Unitholders to the extent that related income is made payable to such Unitholders for income tax purposes. Any amounts to be reinvested pursuant to paragraph (b) above, shall be deemed to have been distributed.

#### 6.4 Special Distributions

- (a) In the event that the Manager-Trustee agrees to accept a reduction in the management fee charged to the Fund with respect to the Units held by a Unitholder and/or to provide a rebate to the Fund in respect of all or any portion of the Unitholder's share of the Fund's operating expenses on condition that an amount equal to such reduction in the fees and/or expenses otherwise payable by the Fund is paid to the Unitholder, the Manager-Trustee shall distribute an amount equal to such reduction to such Unitholder (a "**Management Expense Distribution**"). Management Expense Distributions shall be calculated and distributed at such intervals as prescribed from time to time by the

Manager-Trustee and shall be payable out of Net Income and Net Capital Gains of the Fund for the taxation year ending in the calendar year in which the Management Expense Distributions are made to the extent necessary so that the Fund will not have any obligation to pay tax under Part I of the Tax Act after taking into account any entitlement to a capital gains refund under the Tax Act, and otherwise out of capital.

- (b) The Manager-Trustee shall have the sole discretion to determine the amount, if any, of the Fund's Net Capital Gains for its taxation year and the sole discretion to allocate all or any portion of such Net Capital Gains to a Unitholder who has redeemed Units of the Fund at any time in that year, provided that the amount of Net Capital Gains allocated to a particular redeeming Unitholder shall not exceed the amount, if any, by which the amount payable on the redemption of the Units exceeds the Adjusted Cost Base of the Units being redeemed.
- (c) If the total of the amounts determined by the Manager-Trustee under paragraph (b) for all those redeeming Unitholders in any year exceeds the Net Capital Gains of the Fund for that taxation year, Net Capital Gains shall be allocated rateably to those redeeming Unitholders based on the amounts determined under paragraph (b) above.
- (d) Such portion, if any, of the amount paid on the redemption of a Unit as is determined pursuant to paragraphs (b) or (c) shall be deemed to be a distribution of the Fund's Net Capital Gains for its taxation year ending in the calendar year.

## **6.5 Use of Capital**

The Manager-Trustee, in its sole discretion, may transfer temporarily from capital to income within the Fund, sufficient cash to facilitate distributions of Net Income or Net Capital Gains to the Unitholders of the Fund.

## **6.6 Reinvestment of Distributions**

Each Unitholder shall, subject to Section 6.7 hereof, receive his Proportionate Share of any distribution of the Fund made in respect of the applicable classes and/or series of Units, other than as provided in Section 4.6, by the reinvestment thereof in additional Units of the applicable class and series of Units of the Fund at the Series Net Asset Value per Unit computed for the Valuation Date on which such distribution is made unless: (a) the Manager-Trustee has determined to make a cash distribution option available to Unitholders, this option is described in the Disclosure Documents and the Unitholder has requested payment of the Unitholder's distribution in cash; or (b) in the case of Management Expense Distributions, the Manager-Trustee has agreed that a Management Expense Distribution be paid in cash. No sales charge shall be payable with respect to Units issued upon the automatic reinvestment of distributions.

## **6.7 Distribution to Pay Elected Fees**

All or any part of the distribution in respect of which a Unitholder would otherwise receive additional Units may be applied to the payment of any fee or charge to which the Unitholder has agreed to be subject, such agreement by the Unitholder to be conclusively evidenced by the purchase of any Unit that gives rise to such fee or charge being levied, provided the nature and amount of such fee or charge was disclosed in the Disclosure Documents, or in Schedule "A" hereto. Upon payment of such fee or charge, any remaining amount of the distribution shall be reinvested in additional Units or, if permitted by the Manager-Trustee, distributed in cash on the basis provided in Section 6.6.

## **ARTICLE 7 - VOTING RIGHTS OF PORTFOLIO SHARES AND SECURITIES**

### **7.1 Right to Vote Shares and Securities in Investment Portfolio**

Except as provided or required in Securities Legislation, any shares or other securities carrying voting rights held from time to time as part of the assets of the Fund may be voted at any and all meetings of shareholders, bondholders, debentureholders, debenture stockholders or holders of other securities (as the case may be) in such manner and by such person or persons as the Manager-Trustee or other person appointed by the Fund for such purpose shall from time to time determine and as may be required under applicable Securities Legislation or under any exemptive relief granted by the local securities authorities from Securities Legislation.

### **7.2 Execution of Proxies**

The Manager-Trustee may also from time to time execute and deliver, or cause to be executed and delivered, proxies for and on behalf of the Fund and arrange for the issuance of voting certificates or other evidence of the right to vote in such names as it may from time to time determine. The Manager-Trustee shall be entitled to exercise the foregoing rights in its discretion as it considers to be in the best interests of the Unitholders and shall not be subject to any liability or responsibility in respect of the management of the investment in question or in respect of any vote, action or consent given or taken, or not given or taken, by the Manager-Trustee, whether in person or by proxy.

### **7.3 Approval of Arrangements and Other Matters**

The provisions of this Article shall apply to and govern not only a vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the assets of the Fund and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.

## **ARTICLE 8 - AUDITORS AND ACCOUNTS TO AND INFORMATION FOR UNITHOLDERS**

### **8.1 Appointment of Auditors**

The auditors of the Fund shall be appointed and may be replaced from time to time by the Manager-Trustee. The auditors so appointed shall continue in office until they have resigned or have been replaced in accordance with this Declaration of Trust and Securities Legislation. In the event of a casual vacancy, the Manager-Trustee shall appoint successor auditors.

### **8.2 Duties of Auditors**

The duties of the auditors shall include auditing the annual financial statements of the Fund and reporting thereon in accordance with the Disclosure Documents and, if applicable, Securities Legislation.

### **8.3 Remuneration of Auditors**

The auditors' remuneration shall be fixed by the Manager-Trustee from time to time and shall be payable by the Fund.

### **8.4 Reporting to Unitholders**

The Manager-Trustee shall make available and forward, upon request, to each Unitholder any information required to be distributed to Unitholders by Securities Legislation, but in any event shall forward to Unitholders upon request a copy of the audited annual financial statements of the Fund within 90 days of each fiscal year end.

### **8.5 Financial Year**

The financial year end of the Fund shall be determined by the Manager-Trustee.

### **8.6 Taxation Year**

The taxation year of the Fund shall be determined from time to time by the Manager-Trustee, subject to the provisions of the Tax Act.

### **8.7 Information for Income Tax Purposes**

The Manager-Trustee shall send, or cause to be sent, to all Unitholders information required by law for income tax purposes within the time prescribed by law.

### **8.8 Tax and Information Returns**

The Manager-Trustee is authorized to prepare and file, or cause to be prepared and filed, all tax returns and other information returns that the Fund or the Manager-Trustee is required by law to file. The Manager-Trustee is empowered to exercise all discretions and make all designations, elections, determinations and applications under the Tax Act or under any other applicable

legislation, regulations, policies or guidelines as may, in the opinion of the Manager-Trustee, be advisable or appropriate in connection with the Fund.

## **ARTICLE 9 - MEETING AND NOTICE PROVISIONS**

### **9.1 Meetings of Unitholders**

- (a) Meetings of Unitholders as a whole or of any class or series of Unitholders may be convened by the Manager-Trustee from time to time as it may deem advisable and in accordance with the notice provisions following.
- (b) Meetings of Unitholders as a whole of the Fund shall be convened to consider and approve:
  - (i) any matter which pursuant to Securities Legislation must be submitted to Unitholders for approval;
  - (ii) any amendment to this Declaration of Trust as may be required by Section 10.2; and
  - (iii) the appointment of a successor trustee in accordance with Section 11.2 and Section 12.16 hereof.
- (c) Unitholders holding Units having an aggregate Net Asset Value of not less than 30% of all outstanding Units may requisition a meeting of Unitholders by giving a written notice to the Manager-Trustee setting out in detail the reason(s) for calling and holding such a meeting.
- (d) If required by Securities Legislation or if the Manager-Trustee determines that any matter would affect Unitholders of one or more particular class or series of Units of the Fund in a manner materially different from the Unitholders as a whole of the Fund, the Manager-Trustee shall convene separate meetings of Unitholders of those classes and/or series of Units of the Fund. The meetings may be held concurrently and Unitholders shall be entitled to vote separately as a class or series, as applicable, with respect to any of these matters.

### **9.2 Notice to Unitholders**

Any notice required to be given to a Unitholder under this Declaration of Trust may be effectively given to each Unitholder of record (as at the pre-determined record date) by ordinary post addressed to such Unitholder at that Unitholder's last address appearing on the register of Unitholders or by such other means (including electronic mail) as the Unitholder may consent to from time to time. Any notice so given shall be conclusively deemed to have been received by the Unitholder three business days after the notice is mailed by ordinary post, or the next business day after electronic or other instantaneous means of communication, and, in proving notice, it shall be sufficient for the Manager-Trustee to prove that the notice was properly addressed and sent. Any notice given by electronic means shall be given in compliance with the provisions of Securities Legislation relating to the delivery of documents by electronic means. A

notice convening a meeting of Unitholders shall be given in accordance with Securities Legislation and shall state in general terms the business to be considered by the meeting and any other matter required by Securities Legislation and shall be accompanied by an information circular or other document or documents describing in sufficient detail the matters to be approved so as to enable Unitholders to make an informed decision. Accidental error or omission in giving notice to any Unitholder shall not invalidate any action or proceeding founded on such notice. A meeting of Unitholders may be held at any time and place without notice if all the Unitholders entitled to vote thereat are present in person or represented by proxy, or, if those not present or represented by proxy waive notice of, or otherwise consent to, such meeting being held.

### **9.3 Record Date for Notice of Meeting**

Subject to compliance with Securities Legislation, the Manager-Trustee may fix in advance a time and date, preceding the date of any meeting of Unitholders, as the record date for the determination of the Unitholders entitled to notice of the meeting.

### **9.4 Service on Joint Unitholders**

Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.

### **9.5 Sufficiency of Service**

Any notice or document sent by ordinary post or electronic delivery to, or left at the address of, a Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Manager-Trustee has notice of the death or bankruptcy, be deemed to have been duly served and the service shall be deemed sufficient service on all persons interested in the Units concerned.

### **9.6 Quorum for Meetings of Unitholders**

- (a) Unless otherwise required by the provisions hereof or by Securities Legislation, a quorum for purposes of a meeting of Unitholders of the Fund as a whole or of a series of Units of the Fund shall consist of Unitholders present in person or represented by proxy holding in total Units having an aggregate Net Asset Value of not less than thirty (30%) of the Net Asset Value attributable to all Units outstanding and entitled to vote thereon. If within 30 minutes from the time appointed for the meeting of Unitholders a quorum is not present, the meeting shall stand adjourned without notice to such day and time, being not less than 14 days thereafter, and to such place as may be appointed by the Chair, and at such adjourned meeting, the Unitholders present in person or by proxy shall be a quorum.
- (b) Notice of any adjourned meeting of Unitholders shall be given not less than 5 days in advance and otherwise in the same manner as for a regular meeting, except that such notice need not specify the nature of business to be transacted (other than new business not previously disclosed), and such notice shall state that



the Unitholders present at the adjourned meeting, whatever their number and the number of Units held by them, will form a quorum.

- (c) Unless otherwise required by the provisions hereof, all questions posed for the consideration of the Unitholders shall be determined by a majority of the votes cast on a show of hands and, in the case of an equality of votes, the Chair presiding at the meeting shall have a casting vote.

### **9.7 Chair, Secretary, Scrutineers**

A person, who need not be a Unitholder, appointed in writing by the Manager-Trustee shall preside at every meeting of Unitholders (and shall act as Chair of such meeting) and if no such person is appointed or if at any meeting the person appointed shall not be present within 15 minutes after the time appointed for holding the meeting, the Unitholders shall choose one of their number to be Chair. The Chair shall appoint some person, who need not be a Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Unitholders, may be appointed by the Chair.

### **9.8 Adjournments**

The Chair may, with the consent of any meeting of Unitholders at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business that might lawfully have been transacted at the meeting from which the adjournment took place.

### **9.9 Voting**

- (a) At any meeting of Unitholders, every person shall be entitled to vote who, as at the end of the business day immediately preceding the date of the meeting, is entered in the register of Unitholders, unless in the notice of meeting and accompanying materials sent to Unitholders in respect of the meeting, a record date is established for persons entitled to vote thereat.
- (b) Unless otherwise provided herein or by Securities Legislation, every question submitted to a meeting of Unitholders shall be decided by a majority of the votes expressed on a show of hands unless a poll is demanded. If a poll is duly demanded, it shall be taken in such manner as the Chair may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a Chair or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the Chair directs. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded. On a show of hands every Unitholder who, being an individual, is present in person or by proxy or, being other than an individual, is present by proxy shall have one vote. On a poll every Unitholder who is present in person or is represented by proxy shall have such number of votes as provided in Section 3.1. If Units are held jointly by two or more persons, any one of them present as aforesaid or represented by

proxy at a meeting of Unitholders may, in the absence of the other or others, vote thereon, but if more than one of them is present or represented by proxy, they shall vote together on the Units jointly held.

#### **9.10 Proxies**

Every Unitholder entitled to vote at meetings of Unitholders may, by means of a proxy, appoint a person, who need not be a Unitholder, as that Unitholder's nominee 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 in written or printed format or a format generated by telephonic or electronic means, shall be executed in writing or electronic signature by the Unitholder or the Unitholder's attorney authorized in writing or by electronic signature or, if the Unitholder is a body corporate, by an officer or attorney thereof duly authorized, and shall cease to be valid one year from its date. A proxy may be in such form as the Manager-Trustee from time to time may prescribe or in such other form as the Chair of the meeting may accept as sufficient, and shall be deposited with the secretary of the meeting before any vote is cast under its authority, or at such earlier time and in such manner as the Manager-Trustee may prescribe.

#### **9.11 Validity of Proxies**

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental incapability or incompetency of the principal or revocation of the proxy or of the authority under which the proxy was executed or the transfer of Units in respect of which the proxy is given, provided that no intimation in writing or by electronic means of such death, mental incapability or incompetency, revocation or transfer shall have been received by the Manager-Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### **9.12 Attendance by Others.**

Any officer or director of the Manager-Trustee or the Manager, representative of the auditors of the Fund and other individual approved by the Manager-Trustee may attend and speak at any meeting of Unitholders.

#### **9.13 Conduct of Meetings.**

To the extent that the rules and procedures for the conduct of a meeting of Unitholders are not prescribed herein, the rules and procedures shall be reasonable rules and procedures as are determined by the Chair of the meeting and such rules and procedures shall be binding upon all parties participating in the meeting.

#### **9.14 Minutes**

Minutes of all proceedings at every meeting of Unitholders shall be made and duly entered in books to be from time to time provided for that purpose by the Manager-Trustee and any such minutes as aforesaid if purporting to be signed by the Chair of the meeting shall be conclusive evidence of the matters therein stated and, until the contrary is proved, every such meeting in

respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

### **9.15 Written Resolution**

A written resolution signed by the holders of the requisite majority of the votes attaching to Units otherwise entitled to be voted at a meeting shall be effective as if it had been passed at a meeting in accordance with this Article 9, provided all Unitholders are provided a copy of the proposed resolution (and all such other information they would have otherwise been entitled to pursuant to Section 9.2) as soon as is practicable and in any event prior to the effective date of such resolution.

### **9.16 Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Unitholders or pursuant to Section 9.15 shall be binding on all Unitholders and their respective heirs, executors, administrators, successors and assigns, and all Unitholders shall be bound to give effect accordingly to every such resolution.

## **ARTICLE 10 - AMENDMENT**

### **10.1 Amendment by Manager-Trustee**

The Manager-Trustee may, without prior notice to or consent from any Unitholder, amend this agreement, by supplemental trust deed or by amending and restating this Declaration of Trust or the Schedules hereto:

- (a) in order to create additional classes of Units;
- (b) in order to protect the interests of the Unitholders, if necessary;
- (c) to cure any ambiguity or clerical error or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision if such amendment does not and shall not in any manner adversely affect the interests of any Unitholder as a holder of Units;
- (d) to remove any conflicts or other inconsistencies which may exist between any terms of this agreement and the provisions of any law or regulation applicable to or affecting the Fund;
- (e) to reflect any changes to any applicable legislation; or
- (f) in any other manner provided that such amendment does not and shall not materially adversely affect the interests of any Unitholder as a holder of Units in any manner.

Within ninety (90) days following the date of any amendment to this agreement made pursuant to this Section 10.1, the Manager-Trustee shall provide Unitholders with a copy of the amendment together with a written explanation of the reasons for such amendment.

## **10.2 Amendments Upon Unitholder Notice or Approval**

This agreement may be amended at any time by the Manager-Trustee:

- (a) with the approval of not less than two-thirds of the votes cast at a meeting of Unitholders of the Fund or applicable series of the Fund, as the case may be, duly called for the purpose of considering the proposed change (or by written resolution in accordance with Section 9.15); or
- (b) without the approval of the Unitholders, provided the Unitholders are given not less than 60 days written notice prior to the effective date of the proposed change in accordance with Section 9.2 (together with a copy of the amendment and an explanation of the reasons for the amendment), and each Unitholder is given the opportunity to redeem all of such Unitholder's Units prior to the effective date of such change. In such event, the Manager-Trustee shall be deemed to have waived, to the extent necessary, any lock-up and notice periods, and any redemption deductions for Units that are redeemed in the specified period.

All persons remaining or becoming Unitholders after the effective date of such change shall be bound by such change. No amendment to this Declaration of Trust may be made without the consent of the Manager-Trustee.

## **ARTICLE 11 - TERMINATION**

### **11.1 Termination**

The Manager-Trustee may, in its discretion, terminate the Fund or a class of Units of the Fund by giving notice, fixing the date of termination not earlier than 60 days following the mailing or other delivery of notice, to Unitholders of the Fund or of the class, as the case may be.

### **11.2 Failure to Appoint Successor Manager-Trustee**

In the event that the Manager-Trustee becomes incapable of acting or if, for any cause, a vacancy shall occur in the office of Manager-Trustee, the Manager-Trustee shall, or should the Manager-Trustee fail to do so any Unitholder may, call a meeting of Unitholders within 30 days thereafter for the purpose of appointing a successor Manager-Trustee. If the Unitholders do not appoint a permanent successor Manager-Trustee at such meeting, the Fund shall terminate and the Manager-Trustee or, should the Manager-Trustee fail to do so, a person appointed by the Unitholders at such meeting as a temporary Manager-Trustee shall wind up the Fund and distribute its assets in accordance with the provisions hereof.

### **11.3 Procedure on Termination**

On the effective date of termination of the Fund, or class of Units of the Fund, or as soon thereafter as the Manager-Trustee deems advisable, the Manager-Trustee shall sell all non-cash assets of the Fund, or those attributable to the applicable class, as the case may be, or such portion as may be necessary, unless the Manager-Trustee determines that it would be in the best interests of the Unitholders to distribute some or all of such assets *in specie*. The Manager-Trustee shall be entitled to retain out of any moneys in its hands full provision for all costs, charges, expenses, claims and demands incurred, made or reasonably anticipated by the Manager-Trustee in connection with or arising out of the termination of the Fund, or the applicable series, and the distribution of the assets attributable thereto to Unitholders and out of the moneys so retained to be indemnified and saved harmless against any such costs, charges, expenses, claims and demands. The Manager-Trustee shall distribute from time to time to Unitholders of record as of the effective date of termination their Proportionate Share of all property and assets of the Fund attributable to the applicable class of Units and available at that time for the purpose of such distribution. As of and from the effective date of termination of the Fund, or the applicable class, or as of such other date as the Manager-Trustee may determine, the rights of Unitholders with respect to redemption or redesignation of Units of the Fund, or the applicable class, shall cease. If required by the Manager-Trustee, a form of release satisfactory to the Manager-Trustee shall be provided by each Unitholder prior to the distribution of the Unitholder's Proportionate Share of the assets attributable to the applicable class of Units.

### **11.4 No Further Activities**

Following the effective date of termination of the Fund, the Manager-Trustee shall carry on no further activities with respect to the Fund save for the winding-up of the Fund.

## **ARTICLE 12 - THE MANAGER-TRUSTEE**

### **12.1 Rights and Powers**

By way of supplement to (and, where permitted, notwithstanding) the provisions of any statute of any province or territory of Canada for the time being relating to trustees and in addition to any other provisions of this Declaration of Trust, it is expressly declared as follows:

- (a) the Manager-Trustee shall have and shall be entitled to exercise, in its discretion, all of the rights and powers that an owner of the Fund Property would be entitled to have and exercise, including the right and power to enter into any and all agreements that it deems necessary for the operation of the Fund;
- (b) the Manager-Trustee may employ such assistants, including agents, attorneys, bankers, chartered accountants, counsel, managers, investment advisers, investment managers, notaries, officers and servants, as it may reasonably require for the proper discharge of its duties hereunder and shall not be responsible for any misconduct, neglect or default on the part of any such assistant unless such assistant shall be the Manager-Trustee or an associate or affiliate of the Manager-Trustee or any of their respective directors, officers or employees and, subject to Section 12.15, may pay reasonable remuneration for all services

performed for it in the discharge of the trusts hereof without taxation of any costs or fees of such counsel, solicitor or attorney and shall be entitled to receive reimbursement for all disbursements, costs, liabilities and expenses made or incurred by it in the discharge of its duties hereunder;

- (c) the Manager-Trustee shall, except as herein otherwise provided, as regards all the trusts, powers, authorities and discretions vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode of and time for the exercise thereof and, in the absence of wilful neglect or default, it shall not be responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof;
- (d) the Manager-Trustee may delegate to any company or person the performance of any of the trusts, authorities and powers vested in it hereunder without regard to whether such trusts, authorities or powers are normally delegated by trustees and any such delegation may be made upon such terms and conditions and subject to such regulations, including limitations as to sub-delegation, as the Manager-Trustee may consider to be in the interests of the Unitholders; and
- (e) except as hereinafter provided with respect to affiliates of the Manager-Trustee and to obtaining any required approval of Unitholders, the Manager-Trustee may appoint any person, including an affiliate of the Manager-Trustee, to assume the duties and responsibilities of the Manager-Trustee hereunder in accordance with Section 12.16 hereof.

## **12.2 Banking**

The banking business of the Fund, or any part thereof, shall be transacted with such bank, trust company, investment dealer or other firm or corporation carrying on a banking business as the Manager-Trustee may designate, appoint or authorize from time to time and all such banking business, or any part thereof, shall be transacted on the Fund's behalf by such one or more officers of the Manager-Trustee and/or other persons as the Manager-Trustee may designate, appoint or authorize from time to time including, but without restricting the generality of the foregoing: the operation of the Fund's accounts; the making, signing, drawing, accepting, endorsing, negotiating, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for and orders relating to any property of the Fund; the execution of any agreement relating to any such banking business and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Fund's behalf to facilitate such banking business.

## **12.3 Management and Investment Services**

The Manager-Trustee is vested with the sole management of the Fund. In carrying out the management of the Fund, the Manager-Trustee is responsible for the day-to-day administration of the Fund including, when considered appropriate by the Manager-Trustee, the preparation and filing of Disclosure Documents, as and when required, to permit offering of the Units of the

Fund in those jurisdictions specified from time to time by the Manager-Trustee, the preparation of all written and printed material for distribution to investors and ensuring compliance with the registration and filing, reporting and similar requirements of all regulatory bodies having jurisdiction over the sale of Units of the Fund. The Manager-Trustee may also assume the performance of such other general supervisory and administrative functions on behalf of the Fund as it may elect from time to time. The Manager-Trustee also provides or causes to be provided investment counselling services to the Fund for the management of the investment portfolio of the Fund.

#### **12.4 Appointment of Substitute Manager, Principal Distributor, and Registrar and Transfer Agent**

The Manager-Trustee may appoint, upon such terms and conditions as it may determine and subject to the person so appointed agreeing to comply with the standard of care required under Securities Legislation, a substitute manager and one or more agents (who may, but need not be, the same individual or company and who may, but need not be, the substitute manager) to provide management and administrative services to the Fund, to act as principal distributor of the Units of the Fund and to act as registrar and transfer agent of the Fund, provided that the substitute manager, principal distributor and registrar and transfer agent shall be appointed pursuant to one or more agreements between the Fund and the manager or other agent, as the case may be. In addition to any other authority or power that the Manager-Trustee may delegate, the Manager-Trustee may delegate to any manager appointed by it the authority to sign on its behalf any Disclosure Documents and other documents or instruments that the Manager-Trustee is or may be required to sign in its capacity as manager of the Fund, provided such delegation is not prohibited by any applicable legislation, regulations, policies or guidelines. In order to comply with applicable securities legislation or any decision document of applicable securities regulatory authorities, or if the Manager-Trustee determines it to be in the best interests of the Fund, the Manager-Trustee and/or the substitute manager may confer certain powers and authority on an independent review committee.

#### **12.5 Appointment of Investment Adviser or Sub-Adviser**

The Manager-Trustee or substitute manager may appoint or retain an Investment Adviser and/or a Sub-Adviser to make investment decisions with respect to the property of the Fund in accordance with the investment objective, policies and restrictions of the Fund as set forth in this Declaration of Trust and Schedule "A" hereto, which appointment shall be on such terms and conditions as the Manager-Trustee or substitute manager shall determine. All fees of the Investment Adviser and Sub-Adviser, if any, shall be borne by the Manager-Trustee or substitute manager, as may be agreed between them.

#### **12.6 Responsibility of the Manager-Trustee**

To the extent required under Securities Legislation, the Manager-Trustee shall be responsible for the advice received from the Investment Adviser and any Sub-Adviser.

## **12.7 Duties of the Investment Adviser**

The Investment Adviser shall have, and a Sub-Adviser may have, responsibility for making investment decisions with respect to the Fund. The Investment Adviser may itself receive investment advice from one or more Sub-Advisers retained by it in accordance with Securities Legislation. Unless otherwise agreed, each Sub-Adviser will make recommendations to the Investment Adviser with respect to the investments of the Fund that are in accordance with the Fund's stated investment objective, policies and restrictions. The Investment Adviser will, and a Sub-Adviser may, select brokers and dealers to execute portfolio transactions on behalf of the Fund and will transmit purchase and sale orders to such brokers and dealers. All fees, costs and expenses related to the Sub-Advisers shall be borne by the Investment Adviser, the Manager-Trustee or the substitute manager.

## **12.8 Custodian**

The Manager-Trustee shall not co-mingle any assets of the Fund with its own assets. The Manager-Trustee shall appoint one or more of a bank, trust company, investment dealer or any other institution that is qualified to act as a custodian to be responsible for the safekeeping of all of the portfolio assets of the Fund and who shall be paid for those services out of the assets of the Fund, or to make such other arrangements for the safe custody of some or all of the Fund's assets as the Manager-Trustee deems prudent.

## **12.9 Standard of Care of Manager-Trustee**

The Manager-Trustee shall exercise its powers and discharge its duties hereunder as the manager and as the trustee of the Fund honestly, in good faith and in the best interests of the Fund and shall perform the duties of the manager and as the trustee to the standard of care a reasonably prudent person would exercise in the circumstances.

## **12.10 Dealing with Others and Self**

The Manager-Trustee's services to the Fund are not exclusive and, subject to the limitations otherwise provided in this Declaration of Trust on the power and authorities of the Manager-Trustee and the Manager-Trustee's standard of care as set out in Section 12.9, the Manager-Trustee may for any purpose, 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, including without limitation, itself and any partnership, trust or body corporate with which it may directly or indirectly be 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), without being liable to account therefor and without being in breach of this Declaration of Trust, subject only to the requirements of Securities Legislation. Without limiting the generality of the foregoing, the Manager-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 Fund, whether on the Manager-Trustee's own account or for the account of another (in a fiduciary capacity or otherwise);



- (b) act in the same transaction as agent for more than one client;
- (c) use in other capacities, knowledge gained in its capacity as Manager-Trustee hereunder; provided that such use does not adversely affect the interests of the Fund and provided further that the Manager-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 Fund Property;
- (d) retain cash balances from time to time on hand in the Fund and pay interest to the Fund on such balances and the Manager-Trustee may, in its sole discretion;
- (e) invest in the securities or other property of any entity with which the Manager-Trustee may be directly or indirectly associated, affiliated or interested; and
- (f) earn profits from any of the activities listed herein;

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

#### **12.11 Interests of Officers and Others**

Any director, officer, employee, consultant or agent of the Fund, the Manager-Trustee or Investment Adviser may, while so engaged:

- (a) acquire, hold and dispose of any property for its own individual account even if such property is of a character which could be held by such Fund and may exercise all rights of an owner of such property as if it were not a director, officer, employee, consultant or agent, as the case may be; and
- (b) have personal business of any nature and may continue such business interests for its own account including the rendering of professional or other services and advice to other persons for gain;

and such activities shall be deemed not to conflict with its duties as director, officer, employee, consultant or agent of or to the Fund, the Manager-Trustee or the Investment Adviser. Except as otherwise specifically agreed with the Fund, no such director, officer, employee, consultant or agent shall have any duty to present to the Fund any investment opportunity which may be received in any capacity other than as such director, officer, employee, consultant or agent. Failure to present to the Fund any such investment opportunity shall not make such director, officer, employee, consultant or agent liable in law or in equity to pay or account to the Fund or to any Unitholder (whether acting individually or on behalf of all Unitholders as a class) for any benefit, profit or advantage derived therefrom.

#### **12.12 Reliance**

In exercising its powers and discharging its duties hereunder, the Manager-Trustee may, but shall not be bound to, with respect to any act done or permitted to be done by it, rely upon:

- (a) any reports prepared for it by the Fund's service providers, including financial statements of the Fund stated in a written report prepared by the auditors of the Fund to present fairly the financial position of the Fund;
- (b) any instrument or document reasonably believed by it to be genuine and to be correct; or
- (c) the advice or opinion of legal counsel, accountants, appraisers or other experts, including, without restricting the generality of the foregoing, any manager, consultant, adviser, investment manager, Investment Adviser, Sub-Adviser or custodian retained by or on behalf of the Manager-Trustee;

and the Manager-Trustee shall in no event be liable under this Declaration of Trust for any action taken or not taken as a result of so relying in good faith.

### **12.13 General Disclaimer of Liability**

The Manager-Trustee or any other person retained by the Manager-Trustee to discharge any of the Manager-Trustee's responsibilities shall not be liable to the Fund, to any Unitholder or any other person for any loss, damage, cost, charge, judgment or expense (including reasonable legal costs) resulting from any act or omission in connection with the discharge of its duties and obligations under this Declaration of Trust except to the extent such loss, damage, cost, charge, judgment or expense is caused by its negligence, misfeasance, wilful default or failure to comply with its standard of care set out in Section 12.9. The liability of the Manager-Trustee in respect of its actions as Manager Trustee of the Fund (except liability for breach of Section 12.9 hereof) is limited to the realizable value of the assets of the Fund.

### **12.14 Indemnification of Manager-Trustee**

- (a) The Manager-Trustee and its affiliates and their respective directors, officers, employees, consultants and agents shall at all times be indemnified and saved harmless by the Fund from and against:
  - (i) costs (including legal costs on a solicitor and own client basis), charges and expenses, judgments and amounts paid in settlement, properly sustained or incurred by any of them in or about any action, suit or proceeding that is brought, commenced or prosecuted against it for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by it in or about the proper execution of the duties of its office; and
  - (ii) all other costs, charges and expenses properly sustained or incurred by any of them in or about or in relation to the affairs of the Fund;

provided that the act, deed, omission, matter or thing that caused the payment of the costs, charges, expenses, fees, judgments or amounts paid in settlement was in the best interest of the Fund and provided that such person or companies shall not be indemnified by the Fund where: (i) there has been negligence, misfeasance or

wilful misconduct on the part of the Manager-Trustee or such other person; or (ii) the Manager-Trustee has failed to fulfil its standard of care as set forth in Section 12.9, unless in an action brought against such person or companies they have achieved complete or substantial success as a defendant or, in the case of a criminal suit or administrative action or proceeding, such person or company had reasonable grounds for believing that its conduct was lawful.

- (b) The Manager-Trustee is hereby authorized from time to time to cause the Fund to give indemnities to any person (except the Manager-Trustee in its capacity as manager, principal distributor and registrar and transfer agent of the Fund or any associate or affiliate of the Manager-Trustee or any of their respective directors, officers or employees, other than in respect of reimbursement for costs, expenses or liabilities that are the responsibility of the Fund), including any member of any independent review committee, who has undertaken or is about to undertake any liability on behalf of the Fund and any action taken by the Manager-Trustee under this Section shall not require confirmation or approval by the Unitholders, provided that such indemnities shall be permitted under Securities Legislation and shall be limited to actions properly taken or liabilities properly incurred by such persons on behalf of the Fund. In no event shall such indemnities cover any action or liability arising out of a failure to satisfy any applicable standard of care.
- (c) The Manager-Trustee, at the expense of the Fund, may purchase and maintain insurance on behalf of the Fund in respect of any obligation of the Fund to indemnify any person pursuant to Subsection 12.14(a) hereof.

### **12.15 Compensation and Expenses**

- (a) The Manager-Trustee is not compensated for its services as trustee of the Fund.
- (b) For services performed as Manager hereunder, the Manager-Trustee is entitled to receive the management fees and/or performance fees payable by the Fund as set out in Schedule "A" attached hereto.
- (c) The Fund shall be responsible for payment of all expenses relating to the operation of the Fund and the carrying on of its business, including, but not limited to:
  - (i) administrative fees and expenses of the Fund, which include the Manager-Trustee's fees, any third party administrator's fees, accounting and legal costs, insurance premiums, custodial fees, registrar and transfer agency fees and expenses, fees, costs and expenses relating to issue and redemption of Units all Unitholder communication expenses including the cost of meetings of all Unitholders, the cost of soliciting votes and the cost of providing information to Unitholders (including financial and other reports), research expenses, consulting fees, organizational expenses, the cost of maintaining the Fund's existence and regulatory fees and expenses, and all reasonable extraordinary or non-recurring expenses; and

- (ii) fees and expenses relating to the Fund's portfolio investments, including the cost of securities, interest on borrowings and commitment fees and related expenses payable to lenders, prime brokers and counterparties, brokerage fees, commissions and expenses, and banking fees.
- (d) The expenses listed above shall be allocated by the Manager-Trustee to each series of Units of the Fund as follows:
  - (i) all Series Expenses shall be allocated only to the series of Units of the Fund in respect of which the Series Expenses were incurred; and
  - (ii) each type of Common Expense shall be allocated among the series of Units of the Fund as determined by the Manager-Trustee, in its sole discretion.
- (e) For avoidance of doubt and subject to the other provisions of this Declaration of Trust, no management fees or incentive fees are payable by the Fund that, to a reasonable person, would duplicate a fee payable by the Partnership for the same service, and no sales fees or redemption fees are payable by the Fund in relation to its purchases or redemptions of securities of the Partnership that, to a reasonable person, would duplicate a fee payable by an investor in the Fund. All fees and expenses of investment advisors and sub-advisors shall be expenses of the Manager-Trustee or the substitute manager or the General Partner, but not the Fund or the Partnership.

#### **12.16 Resignation of Manager-Trustee**

The Manager-Trustee shall have the right to resign as trustee and manager of the Fund by giving notice in writing to the Unitholders not less than 60 days prior to the date on which such resignation is to take effect. Such resignation shall take effect on the date specified in such notice. The Manager-Trustee may appoint any person, including an affiliate of the Manager-Trustee, to assume the duties and responsibilities of the Manager-Trustee hereunder and upon such approval being obtained and such person agreeing to act as Manager-Trustee for the Unitholders of the Fund, and assuming the duties and responsibilities of the Manager-Trustee hereunder, the Manager-Trustee shall cease to be Manager-Trustee for the Unitholders of the respective Fund and shall be relieved from its duties and responsibilities under this Declaration of Trust, provided however that Unitholders must be given not less than 60 days' written notice prior to the appointment of a successor Manager-Trustee. If no such successor Manager-Trustee is appointed by the Manager-Trustee, a meeting of Unitholders shall be held for the purpose of appointing a successor Manager-Trustee in accordance with Section 11.2.

#### **12.17 Successor Trustees**

The right, title and interest of the Manager-Trustee as trustee in and to the Fund property shall vest automatically in any person who may hereafter become the trustee upon its appointment by the Manager-Trustee without any further act and it shall thereupon have all the rights, privileges, powers, obligations and immunities of the Manager-Trustee as trustee hereunder. Such right, title

and interest shall vest in the successor trustee whether or not conveyancing documents have been executed and delivered in connection therewith.

**IN WITNESS WHEREOF** the Manager-Trustee has caused this Declaration of Trust to be executed as of the date set forth above.

**DONVILLE KENT ASSET MANAGEMENT INC.**

Per:   
\_\_\_\_\_  
Jason Donville  
President and Chief Executive Officer

Per:   
\_\_\_\_\_  
Ali Jaffer  
Chief Financial Officer

## SCHEDULE "A"

As of April 1, 2015, the DKAM Capital Ideas Trust is closed to accepting new subscriptions. Despite the foregoing, the Manager-Trustee may in the future, at any time and from time to time, decide to accept new subscriptions for one or more classes of the fund, at its sole discretion, subject always to the Manager-Trustee's right to refuse subscriptions in whole or in part.

### DKAM Capital Ideas Trust

#### Investment Objective and Strategies:

- The investment objective of the Fund is to invest substantially all of its capital in DKAM Capital Ideas Fund LP (the "**Partnership**"), an Ontario limited partnership formed to invest in securities. The investment objective of the Partnership is to maximize returns on investments. The Partnership intends to accomplish its set objective through superior securities selection and the use of leverage.

#### Classes and Features of each Class:

- **Class A** –designed for all investors, other than those who are entitled to purchase Class B or Class F Units.
- **Class B** – designed only for investors who invest an initial investment amount of \$10 million.
- **Class F** – designed only for investors who are investing through a fee-based account established with a registered dealer and other investors in respect of whom no trailing commission is paid.
- A new series of Units of each Class will be issued on each successive Valuation Date on which Units are issued.

#### Minimum Initial and Subsequent Investment Amount:

- The minimum initial investment for Class A and Class F units is \$150,000 or \$50,000 for accredited investors (or such lesser amount as may be accepted by the Manager-Trustee and permitted under applicable securities laws). The minimum initial investment for Class B units is \$10 million.
- The minimum subsequent investment for Class A, Class B and Class F units is \$10,000 for accredited investors or \$150,000 for investors relying upon the minimum investment amount.

Subject to applicable laws, the Manager-Trustee has the right to vary such minimum initial and subsequent amounts.

**Purchasers:**

- The Units are being distributed in Canada pursuant to available exemptions from the prospectus requirements in all provinces and territories of Canada except for Newfoundland and Labrador. The Units may be distributed to Non-Residents on a case-by-case basis in accordance with the Declaration of Trust and legal and tax advice.

**Permitted Investments:**

- The Fund's portfolio associated with the Class A units, Class B units and Class F units will be invested in Class A units and Class F units of the Partnership, respectively.

**Investment Constraints:**

- The Fund may only purchase units of the Partnership.

**Management Fees and Expenses:**

- DKAM as the investment manager of the Partnership receives certain management fees payable by the Partnership as set out below. The Class A units, Class B units and Class F units of the Partnership are charged a different management fee. As the assets of the Fund will be invested in the Partnership and DKAM is the investment manager of the Partnership, there are no performance fees or management fees payable directly by the Fund. The Fund will pay all ordinary expenses incurred in connection with the operation and administration of the Fund.

- As investment manager of the Partnership, DKAM receives monthly management fees, in arrears, on the last Valuation Date in each month, equal to 1/12 of

2% for Class A units of the Partnership;  
1.75% for Class B units of the Partnership;  
1% for Class F units of the Partnership,

on the respective net asset value of such class of the Partnership as at the first business day of such month.

- Management fees payable by the Partnership are subject to GST/HST and will be deducted as an expense of the Partnership in the calculation of the net asset value of the Partnership.



## **SCHEDULE “B”**

### **Valuation Principles**

The value of the assets of the Fund is determined with reference to the following valuation methods, depending on the type of security being valued:

- (i) The value of any cash on hand or on deposit, bills, demand notes, accounts receivable, prepaid expenses, dividends receivable (if such dividends are declared and the date of record is before the date as of which the Net Asset Value of the Fund is being determined) and interest accrued and not yet received, shall be deemed to be the full amount thereof, unless the Manager-Trustee, or third party engaged by the Manager-Trustee, determines that any such deposit, bill, demand note, account receivable, prepaid expense, dividend receivable or interest accrued and not yet received is not worth the full amount thereof, in which event the value thereof shall be deemed to be such value as the Manager-Trustee, or third party engaged by the Manager-Trustee, determines to be the reasonable value thereof.
- (ii) The value of any security which is listed or dealt in upon a public securities exchange shall be valued at the last available trade price on the Valuation Date or, if the Valuation Date is not a business day, on the last business day preceding the Valuation Date. If no sales are reported on such day, such security shall be valued at the average of the current bid and asked prices. If the closing price is outside of the closing bid-ask range, then the closest bid or ask to the last trade shall be used. Securities that are listed or traded on more than one public securities exchange or that are actively traded on over-the-counter markets while being listed or traded on such securities exchanges or over-the-counter markets shall be valued on the basis of the market quotation which, in the opinion of the Manager-Trustee or third party engaged by the Manager-Trustee, most closely reflects their fair value.
- (iii) Any securities which are not listed or dealt in upon any public securities exchange shall be valued at the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Manager-Trustee or third party engaged by the Manager-Trustee, such value does not reflect the value thereof and in which case, the latest offer price or bid price as best reflects the value thereof should be used), as at the Valuation Date.
- (iv) The value of any restricted security shall be the lesser of (i) the value thereof based on any available reported quotations in common use and (ii) that percentage of the market value of securities of the same class, the trading of which is not restricted or limited by reason of any representation, warranty or agreement or by law, equal to the percentage

that the acquisition cost thereof was of the market value of such securities at the time of acquisition thereof.

- (v) All Trust Property valued in a foreign currency and all liabilities and obligations of the Fund payable by the Fund in foreign currency shall be converted into Canadian funds by applying the rate of exchange obtained from the best available sources to the Manager-Trustee or to the third party engaged by the Manager-Trustee to calculate Net Asset Value.
- (vi) Each transaction of purchase or sale of portfolio securities effected by the Fund shall be reflected in the computation of the Net Asset Value of the Fund on the trade date.
- (vii) The value of any security or property to which, in the opinion of the Manager-Trustee or third party engaged by the Manager-Trustee, the above principles cannot be applied (whether because no price or yield equivalent quotations are available or for any other reason), shall be the fair value thereof determined in such manner as the Manager-Trustee, or third party engaged by the Manager-Trustee, may from time to time determine based on standard industry practice.
- (viii) Short positions shall be marked-to-market, i.e. carried as a liability equal to the cost of repurchasing the securities sold short applying the same valuation techniques described above.
- (ix) All other liabilities shall include only those expenses paid or payable by the Fund, including accrued contingent liabilities; however (A) organizational and start up expenses shall be amortized by the Fund over a 5 year period; and (B) expenses and fees allocable only to a class and series of Units shall not be deducted from the Net Asset Value of the Fund prior to determining the Net Asset Value of each class and series, but shall thereafter be deducted from the Net Asset Value so determined for each such class and series.
- (x) The Manager-Trustee may determine such other rules as it deems necessary from time to time, which rules may deviate from Canadian generally accepted accounting principles.