

**MARRET HIGH YIELD STRATEGIES FUND**  
**AMENDED AND RESTATED DECLARATION OF TRUST**

Made as of October 7, 2010

## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

Section 1.1	Definitions .....	1
Section 1.2	<i>Income Tax Act</i> .....	8
Section 1.3	Reference to Acts Performed by the Fund .....	9
Section 1.4	Effect of Amendment and Restatement. ....	9

### ARTICLE 2 THE FUND

Section 2.1	Establishment of the Fund .....	9
Section 2.2	Name .....	9
Section 2.3	Situs and Head Office .....	9
Section 2.4	Purpose of the Fund .....	9
Section 2.5	Nature of Fund .....	10

### ARTICLE 3 THE TRUSTEE

Section 3.1	Confirmation of Agreement to Act .....	10
Section 3.2	Term of Office .....	11
Section 3.3	Automatic Vesting of Fund Property .....	12
Section 3.4	Trustee's Accounts .....	12
Section 3.5	Standard of Care and Duties of Trustee .....	12
Section 3.6	Expenses and Compensation of Trustee .....	13
Section 3.7	Notice to Trustee .....	13
Section 3.8	Qualification of Trustee .....	13
Section 3.9	Dealings with the Fund or Trustee .....	14

### ARTICLE 4 POWERS OF THE TRUSTEE

Section 4.1	General Powers of the Trustee.....	14
Section 4.2	Power to Invest .....	15
Section 4.3	Power to Borrow .....	15
Section 4.4	Power to Deal with Fund Property .....	16
Section 4.5	Power to Contract.....	16
Section 4.6	Power to Deliver Security .....	17
Section 4.7	Power to Deal with Banks and Trust Companies .....	17
Section 4.8	Power to Pay Taxes and Assessments .....	17
Section 4.9	Power to Satisfy Debts and Claims .....	17
Section 4.10	Power to Exercise Rights of Ownership .....	17
Section 4.11	Power to Collect.....	18
Section 4.12	Power to Determine Accounting Methods .....	18
Section 4.13	Power to Determine Fiscal Year and Taxation Year .....	18
Section 4.14	Power to Value Fund Property.....	19

Section 4.15	Power to Appoint Custodian.....	19
Section 4.16	Power to Appoint Transfer Agent .....	19
Section 4.17	Power to Appoint Auditors .....	19
Section 4.18	Power to Purchase Insurance.....	19
Section 4.19	Power to Use Nominees .....	20
Section 4.20	Power to Indemnify .....	20
Section 4.21	Power to File Prospectus and to Apply for Listing .....	20
Section 4.22	Power to Maintain Records and Provide Reports .....	20
Section 4.23	Power to Adopt and Use Seal.....	20
Section 4.24	Validity of Elections, Appointments, Resolutions and Actions.....	20
Section 4.25	Power to Engage and Remove Consultants, Agents and Employees.....	21
Section 4.26	Power to Delegate .....	21
Section 4.27	Presumption in Favour of Grant of Power .....	21
Section 4.28	Specific Obligations of Trustee .....	21

## **ARTICLE 5 STATEMENTS**

Section 5.1	Investment Objectives.....	22
Section 5.2	Investment Restrictions .....	22

## **ARTICLE 6 ISSUE AND SALE OF UNITS**

Section 6.1	Nature of Units .....	23
Section 6.2	Number of Units.....	23
Section 6.3	Fractional Units.....	24
Section 6.4	Allotment and Issue .....	24
Section 6.5	Rights, Warrants and Options .....	24
Section 6.6	Commissions and Discounts.....	24
Section 6.7	No Pre-Emptive Rights.....	25
Section 6.8	Donation of Units .....	25

## **ARTICLE 7 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS**

Section 7.1	Nature of Unit Certificates .....	25
Section 7.2	Certificates .....	25
Section 7.3	Certificate Fee.....	25
Section 7.4	Unit Certificates .....	25
Section 7.5	Register of Unitholders.....	25
Section 7.6	Transfer Agents and Registrars .....	26
Section 7.7	Blank Certificates.....	26
Section 7.8	Transfer of Units.....	26
Section 7.9	Successors in Interest of Unitholders.....	27
Section 7.10	Units Held Jointly or in Fiduciary Capacity .....	27
Section 7.11	Performance of Trusts.....	28
Section 7.12	Lost Certificates .....	28
Section 7.13	Death of Unitholders.....	28

Section 7.14	Unclaimed Interest, Dividends or Distributions.....	28
Section 7.15	Notice to Unitholders of Non-Eligibility for Deferred Income Plans .....	29
Section 7.16	Declaration as to Beneficial Owner .....	29
Section 7.17	Offer for Units.....	29

**ARTICLE 8  
BOOK-ENTRY ONLY SYSTEM**

Section 8.1	Book-Entry Only Certificate.....	32
Section 8.2	Notice to Clearing Agency .....	33
Section 8.3	Liability .....	33
Section 8.4	Definitive Certificates .....	33
Section 8.5	Redemption of Units .....	34

**ARTICLE 9  
REPURCHASE AND REDEMPTION OF UNITS**

Section 9.1	Repurchase of Units .....	34
Section 9.2	Redemption of Units .....	34

**ARTICLE 10  
DISTRIBUTIONS TO UNITHOLDERS**

Section 10.1	Distributions.....	36
Section 10.2	Additional Distribution to Become Payable.....	37
Section 10.3	Allocation for Income Tax Purposes.....	38
Section 10.4	Payment of Distributions .....	38
Section 10.5	Calculation of Net Asset Value per Unit.....	38
Section 10.6	Publication of Net Asset Value Per Unit .....	40
Section 10.7	Withholding Taxes .....	41
Section 10.8	Distributions on Termination .....	41
Section 10.9	Encroachment on Capital .....	41

**ARTICLE 11  
MANAGEMENT SERVICES**

Section 11.1	Management Services .....	41
Section 11.2	Duties of Manager .....	41
Section 11.3	Terms and Conditions of Management Agreement.....	42
Section 11.4	Termination of Management Agreement .....	42
Section 11.5	Assignment of Management Agreement .....	43
Section 11.6	Offerings .....	43
Section 11.7	Standard of Care.....	44
Section 11.8	Execution of Agreements by the Manager.....	44
Section 11.9	Power of Attorney .....	44
Section 11.10	Liability of Trustee .....	44
Section 11.11	Performance of Obligations.....	44
Section 11.12	Compensation of Manager .....	44

**ARTICLE 12  
CUSTODIAL ARRANGEMENTS**

Section 12.1	Appointment.....	45
Section 12.2	Obligations .....	45
Section 12.3	Use of Sub-Custodians and Depositories.....	45
Section 12.4	Standard of Care .....	46
Section 12.5	Registration .....	46
Section 12.6	Audit .....	47
Section 12.7	Fees .....	47
Section 12.8	Cash Balances.....	47
Section 12.9	Compliance with Law.....	47
Section 12.10	Removal and Resignation.....	47

**ARTICLE 13  
MEETINGS OF UNITHOLDERS**

Section 13.1	Meetings of Unitholders.....	48
Section 13.2	Notice of Meetings and Quorum .....	48
Section 13.3	Voting Rights of Unitholders.....	48
Section 13.4	Record Dates .....	51
Section 13.5	Proxies.....	51
Section 13.6	Financial Statements .....	51
Section 13.7	Other Unitholder Information.....	51
Section 13.8	Appointment of Inspector.....	52
Section 13.9	Notice to Unitholders.....	52

**ARTICLE 14  
LIABILITY OF TRUSTEE, MANAGER AND UNITHOLDERS AND OTHER MATTERS**

Section 14.1	Liability of Trustee .....	52
Section 14.2	General Limitation of Liability and Indemnification .....	52
Section 14.3	Exculpatory Clauses in Instruments.....	54
Section 14.4	Indemnification and Reimbursement.....	55
Section 14.5	Further Limitation on Indemnification .....	56
Section 14.6	Funds of the Trustee.....	56
Section 14.7	Trustee to Declare Interest .....	56
Section 14.8	Trustee May Have Other Interests.....	56
Section 14.9	Retention of Benefits by Trustee.....	57
Section 14.10	Interests of Consultants and Agents .....	57
Section 14.11	Execution of Instruments and Apparent Authority.....	58
Section 14.12	Execution of Documents by Manager .....	58
Section 14.13	Execution of Documents by Trustee.....	59
Section 14.14	Reliance.....	59

**ARTICLE 15  
AUDITORS**

Section 15.1	Qualification of Auditors .....	59
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Section 15.2	Appointment of Auditors.....	59
Section 15.3	Reports of Auditors.....	59
Section 15.4	Access to Records .....	60
Section 15.5	Appointment of Auditors.....	60

**ARTICLE 16  
TERMINATION OF FUND**

Section 16.1	Termination of the Fund.....	60
--------------	------------------------------	----

**ARTICLE 17  
SUPPLEMENTAL INDENTURES**

Section 17.1	Provision for Supplemental Indentures for Certain Purposes.....	62
--------------	---	----

**ARTICLE 18  
MISCELLANEOUS**

Section 18.1	Governing Law .....	62
Section 18.2	Counterparts .....	62
Section 18.3	Severability .....	62
Section 18.4	Execution and Effect of Amended and Restated Declaration of Trust .....	62
Section 18.5	Quantity, Gender and other Terms.....	63
Section 18.6	Table of Contents and Section Headings .....	63
Section 18.7	Inspection of Documents.....	63
Section 18.8	Statutes.....	63

**ARTICLE 19  
EXECUTION OF DECLARATION OF TRUST**

Section 19.1	Execution of Declaration of Trust .....	63
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## MARRET HIGH YIELD STRATEGIES FUND

### AMENDED AND RESTATED DECLARATION OF TRUST

**THIS AMENDED AND RESTATED DECLARATION OF TRUST** is made as of the 7th day of October, 2010 by Equity Financial Trust Company at its principal office in Toronto, Ontario.

#### RECITALS

**WHEREAS** Equity Financial Trust Company (the “**Trustee**”) established Marret High Yield Strategies Fund for the purposes of investing the funds of Marret High Yield Strategies Fund for the benefit of Unitholders (as defined herein) pursuant to a declaration of trust dated as of May 28, 2009 (the “**Original Declaration of Trust**”);

**AND WHEREAS** the Trustee wishes to amend and restate the Original Declaration of Trust;

**NOW THEREFORE THIS DECLARATION OF TRUST WITNESSETH THAT** the Trustee declares and confirms that it holds in trust Fund Property (as defined herein) for the benefit of the Unitholders from time to time upon the trusts and subject to the provisions hereof, as follows:

#### ARTICLE 1 INTERPRETATION

##### Section 1.1 Definitions

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

“**Additional Distribution**” means, with respect to any taxation year of the Fund, the amount, if any, by which the aggregate of the Net Income and Net Realized Capital Gains, less any Net Realized Capital Gains the tax on which would be refundable to the Fund in the current year under Part I of the *Income Tax Act* for such taxation year exceeds the aggregate of the Distributions paid or payable by the Fund to Unitholders for such taxation year.

“**Additional Distribution Date**” means December 31 of any taxation year.

“**affiliate**” shall have the following meaning: a Person shall be deemed to be an affiliate of another Person if one of them is an associate or insider (as those terms are defined in the *Securities Act* (Ontario)) of the other, or if they are “affiliated companies” or if one of them is “controlled” by or a “subsidiary” of the other within the meanings ascribed to those terms in the *Securities Act* (Ontario).

“**Annual Redemption Amount**” means in respect of Units a redemption price per Unit surrendered for redemption on the Annual Redemption Date that is equal to 100% of net assets of the Fund per Unit minus costs associated with the redemption,

including brokerage costs and where, for this purpose, the net assets of the Fund per Unit are calculated in the same manner as the Net Asset Value per Unit except that the value of the Forward Agreement is determined on the basis that any bonds, debentures and other debt obligations that are owned by Marret HYS Trust are valued by taking the bid price on the Valuation Date and any short position of Marret HYS Trust is valued by taking the ask price on the Valuation Date.

**“Annual Redemption Condition”** means where the average of the Net Asset Values of the Units on the first four Valuation Dates occurring in the month of May preceding the Annual Redemption Date in 2011 is less than \$10.00 and for any subsequent Annual Redemption Date is less than \$10.59.

**“Annual Redemption Date”** means the second last Business Day of July in each year, commencing in 2011.

**“Annual Redemption Payment Date”** means a date on or before the 10<sup>th</sup> Business Day of the month subsequent to an Annual Redemption Date.

**“Approved Rating”** means the long-term debt rating of the Counterparty or each successor counterparty of at least A by Standard & Poor’s, a division of The McGraw Hill Companies, Inc. or an equivalent rating from DBRS Limited, Moody’s Investors Service, Inc., Fitch Ratings or any of their respective successors.

**“Auditors”** means the firm of chartered accountants appointed as auditors of the Fund from time to time pursuant to Article 15 hereof. The current Auditors are PricewaterhouseCoopers LLP, Chartered Accountants.

**“Beneficial Holder”** means any person who holds a beneficial interest in Book-Entry Only Units as shown on the books of CDS or a CDS Participant.

**“Book-Entry Only System”** means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the securities settlement services of CDS in force from time to time, or any successor system which CDS may offer from time to time.

**“Book-Entry Only Units”** means Units and any other securities issued from time to time in accordance with this Declaration of Trust, entitling the beneficial owner to an interest in the property and assets of the Fund, that are issued in book-entry only form.

**“Business Day”** means any day except Saturday, Sunday, a statutory holiday in Toronto, Ontario or any other day on which the TSX is not open for trading.



**“Canadian Securities Portfolio”** means a specified portfolio of securities of Canadian public issuers that are “Canadian securities” as defined under subsection 39(6) of the *Income Tax Act* and are listed on the TSX.

**“CDS”** means CDS Clearing and Depository Services Inc. and includes any successor corporation or any other depository subsequently appointed by the Fund as the depository in respect of the Book-Entry Only Units.

**“CDS Participant”** means a broker, dealer, bank, other financial institution or other Person for whom, from time to time, CDS effects book entries for the Book-Entry Only Units deposited with CDS.

**“Closing Date”** means the date of the closing of the initial public offering of Units, which is expected to be on or about June 17, 2009 or such later date as the Fund and the agents for the initial public offering of Units may agree, but in any event not later than 90 days after a final receipt for the prospectus is issued.

**“Closing Market Price”** in respect of a security on a Monthly Redemption Date means (i) the closing price of such security on the TSX on such Monthly Redemption Date (or such other stock exchange on which such security is listed) if there was a trade on the Monthly Redemption Date and the market provides a closing price; (ii) the average of the highest and lowest prices of such security on the TSX on such Monthly Redemption Date (or such other stock exchange on which such security is listed) if there was trading on the Monthly Redemption Date and the market provides only the highest and lowest prices of the security traded on a particular day; or (iii) the average of the last bid and the last asking prices of the security on the TSX on such Monthly Redemption Date (or such other stock exchange on which the security is listed) if there was not trading on the applicable Monthly Redemption Date.

**“Counsel”** means any Person qualified to practice law and engaged in the practice of law.

**“Counterparty”** means The Bank of Nova Scotia in its capacity as counterparty under the Forward Agreement and/or such other Canadian financial institutions or their affiliates having an Approved Rating as the Fund may approve.

**“Court”** means any court of competent jurisdiction in the Province of Ontario.

**“Custodian”** means the custodian of the Fund Property appointed from time to time by the Manager pursuant to Section 12.1.

**“Custodian Agreement”** means the custodian agreement entered into from time to time by the Fund, and the Custodian and the Manager, as it may be amended from time to time.

**"Declaration of Trust"** means this Declaration of Trust, as amended, restated or modified from time to time.

**"Distribution Date"** means the date on which distributions are paid by the Fund, such date to be no later than the 10<sup>th</sup> Business Day after the applicable Record Date.

**"Distributions"** means distributions of the Fund declared in accordance with Section 10.1.

**"Extraordinary Resolution"** means a resolution passed by the affirmative vote of at least 66 $\frac{2}{3}$ % of the votes cast, either in person or by proxy, at a meeting of Unitholders called for the purpose of considering such resolution.

**"Forward Agreement"** means the forward purchase and sale agreement to be entered into between the Fund and the Counterparty on the Closing Date, or any contract entered into in whole or partial replacement thereof.

**"Fund"** means the Marret High Yield Strategies Fund constituted hereby.

**"Fund Expenses"** means all expenses incurred in connection with the operation and administration of the Fund, including, without limitation, all costs of Fund Investment transactions, the fees payable to the Counterparty under the Forward Agreement, fees payable to the Trustee, Manager and Transfer Agent, the Service Amount, custodial fees, legal, audit and valuation fees and expenses, fees and expenses of the members of the Independent Review Committee and expenses related to compliance with NI 81-107, premiums for directors' and officers' insurance coverage for the directors and officers of the Manager and members of the Independent Review Committee, costs of reporting to Unitholders, registrar and transfer agency costs, printing and mailing costs, listing fees and expenses and other administrative expenses and costs incurred in connection with the continuous public filing requirements of the Fund and investor relations, fees and expenses relating to any services provided by third parties, taxes, brokerage commissions, costs and expenses relating to the issue of securities of the Fund, costs and expenses of preparing financial and other reports, costs and expenses arising as a result of complying with all applicable laws, regulations and policies, extraordinary expenses that the Fund may incur and all amounts paid on account of indebtedness of the Fund. Such expenses will also include expenses of any action, suit or other proceeding in which or in relation to which the Manager, any member of the Independent Review Committee, the Custodian or the Trustee and/or any of their respective officers, directors, employees, consultants or agents (as applicable) is entitled to indemnity by the Fund.

**"Fund Investment"** means an investment acquired by the Fund and **"Fund Investments"** means more than one Fund Investment taken collectively.

**"Fund Property"** means the property and assets of the Fund.

**"Income Tax Act"** means the *Income Tax Act* (Canada), as amended, or successor statutes, and shall include regulations promulgated thereunder.

**"Independent Review Committee"** means the independent review committee of the Fund appointed under NI 81-107.

**"Investment Objectives"** means the investment objectives of the Fund set out in Section 5.1.

**"Investment Restrictions"** means the investment restrictions of the Fund set out in Section 5.2.

**"Lender"** means a Canadian chartered bank or other lending institution.

**"Management Agreement"** means the management agreement between the Manager and the Trustee on behalf of the Fund respecting the management and administration of the Fund by the Manager, as it may be amended from time to time.

**"Management Fee"** means the management fee payable to the Manager, as more fully described in the Management Agreement.

**"Manager"** means the manager of the Fund, currently Marret Asset Management Inc. and thereafter such other Person as may be appointed manager of the Fund in accordance with the terms hereof.

**"Market Price"** means the weighted average trading price of the Units on the TSX (or such other stock exchange on which the Units are listed, if the Units are no longer listed on the TSX) for the 10 trading days immediately preceding the relevant Monthly Redemption Date.

**"Marret HYS Trust"** means Marret HYS Trust, an investment trust established pursuant to a declaration of trust dated as of May 28, 2009, as it may be amended from time to time.

**"Marret HYS Trust Portfolio"** means the portfolio of securities held by Marret HYS Trust from time to time.

**"Monthly Redemption Amount"** means a redemption price per Unit surrendered for redemption on a Monthly Redemption Date that is equal to the lesser of:

- (i) 94% of the Market Price of a Unit; and
- (ii) 100% of the Closing Market Price of a Unit on the applicable Monthly Redemption Date;

less, in each case, any costs associated with the redemption, including brokerage costs.

**“Monthly Redemption Date”** means the second last Business Day of a month other than July in a year where the Annual Redemption Condition has been met.

**“Monthly Redemption Payment Date”** means on or before the 10<sup>th</sup> Business Day of the month subsequent to a Monthly Redemption Date.

**“Net Asset Value of the Fund”** means, at any time, the net asset value of the Fund as determined in accordance with Section 10.5.

**“Net Asset Value per Unit”** means the net asset value per Unit determined in accordance with Section 10.5, as applicable.

**“Net Income”** or **“Net Loss”** of the Fund for any taxation year means the amount, if any, by which the income or loss of the Fund for such taxation year computed in accordance with the provisions of the *Income Tax Act*, other than paragraph 82(1)(b) and subsection 104(6) thereof and disregarding any designations made by the Fund under subsection 104(19) of the *Income Tax Act*, without reference to the Fund’s “capital gains” or “capital losses” (as those terms are defined in the *Income Tax Act*) for the taxation year, exceeds the non-capital losses of the Fund (as defined in the *Income Tax Act*) for any preceding taxation years of the Fund, to the extent that they may be, and are deducted in computing taxable income of the Fund for such taxation year for the purposes of the *Income Tax Act*.

**“Net Realized Capital Gains”** of the Fund for a taxation year of the Fund means the amount, if any, by which:

- (a) the capital gains realized by the Fund in the taxation year;  
exceed the aggregate of
- (b) the capital losses incurred by the Fund in the taxation year;
- (c) the unapplied capital losses incurred by the Fund in the preceding taxation years, to the extent that they may be, and are applied against capital gains realized by the Fund in the taxation year; and
- (d) any Net Loss for the year and, if the Trustee so determines, any unapplied non-capital losses (as defined in the *Income Tax Act*) of the Fund for preceding years of the Fund, in each case multiplied by the reciprocal of the applicable fraction in paragraph 38(a) of the *Income Tax Act*;

where, for this purpose, “capital gains” and “capital losses” shall be computed in accordance with the provisions of the *Income Tax Act*.

**“NI 81-107”** means National Instrument 81-107 – *Independent Review Committee for Investment Funds of the Canadian Securities Administrators* (or any successor policy, rule or national instrument), as it may be amended from time to time.

**"OBCA"** means the *Business Corporations Act* (Ontario), R.S.O. 1990, c.B.16, and shall include any rules and regulations promulgated thereunder.

**"OBCA Corporation"** means an offering corporation incorporated under and as defined in the OBCA.

**"Offering"** means an offering or issuance of Units or any other securities of the Fund or any rights to acquire Units or any other securities of the Fund, or both together, on a public or private basis.

**"Offering Document"** includes any one or more of a prospectus, registration statement, subscription agreement, information memorandum, private placement offering memorandum or similar public or private offering document.

**"Ordinary Resolution"** means a resolution passed by the affirmative vote of at least a majority of the votes cast, either in person or by proxy, at a meeting of Unitholders called for the purpose of considering such resolution.

**"Original Declaration of Trust"** has the meaning ascribed thereto in the recitals hereof.

**"Payee"** means each person who was a Unitholder of record as at the close of business on an Additional Distribution Date.

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

**"Pro Rata Share"** of any particular amount in respect of a Unitholder at any time shall be the product obtained by multiplying the particular amount by the number obtained when the number of Units that are owned by that Unitholder at that time is divided by the total number of Units outstanding at that time.

**"Record Date"** means the last Business Day of each calendar month prior to the Termination Date.

**"Redemption Notice"** means the notice provided (i) to a CDS Participant by a Beneficial Holder; or (ii) to the Transfer Agent by a Unitholder, in each case indicating the intention of that holder to exercise a redemption privilege described in Section 9.2.

**"Securities Act (Ontario)"** means the *Securities Act*, R.S.O. 1990, c.S-5, as amended, or successor statutes, and shall include rules and regulations promulgated thereunder.

**“Service Amount”** means the amount that the Fund will pay to the Manager calculated quarterly and paid as soon as practicable after the end of each calendar quarter equal to 0.40% per annum of the Net Asset Value of the Fund, plus applicable taxes. The Service Amount will be applied by the Manager to pay a service fee in an equal aggregate amount, plus applicable taxes, to brokers based on the number of Units held by their clients at the end of the relevant quarter.

**“Termination Date”** means May 30, 2014, or such later date as the term of the Fund is extended to in accordance with Section 16.1.

**“Total Distributions”** means the aggregate of the sum of all Distributions and Additional Distributions paid or payable to Unitholders in a taxation year.

**“Transfer Agent”** means such company as may from time to time be appointed by the Fund to act as registrar, transfer agent and distribution agent of the Units, together with any sub-transfer agent duly appointed by the Transfer Agent, provided that in the absence of such appointment, the Trustee shall be the Transfer Agent.

**“Trustee”** means Equity Financial Trust Company, in its capacity as trustee of the Fund, or such other Person as may be appointed the Trustee in accordance with the provisions hereof.

**“TSX”** means the Toronto Stock Exchange.

**“Unit”** means a unit of the Fund.

**“Unit Certificate”** means, in respect of Units, a certificate, in the form approved by the Trustee, evidencing one or more Units, issued and certified in accordance with the provisions hereof, which for greater certainty may include an electronic or paperless form of certificate as may be approved by the Trustee.

**“Unitholder”** means the holder of a Unit, as applicable.

**“Valuation Date”** means, at minimum, Thursday of each week, or if Thursday is not a Business Day, the immediately preceding Business Day, and the last Business Day of each month, and includes any other date on which the Manager elects, in its discretion, to calculate the Net Asset Value of the Fund and the Net Asset Value per Unit.

**“Valuation Time”** means the time at which trading closes on the TSX on the Valuation Date.

## **Section 1.2**      *Income Tax Act*

Any reference herein to a particular provision of the *Income Tax Act* shall include a reference to that provision as it may be renumbered or amended from time to time. Where

there are proposals for amendments to the *Income Tax Act* which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustee may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

**Section 1.3 Reference to Acts Performed by the Fund**

For greater certainty, where any reference is made in this Declaration of Trust to an act to be performed by the Fund, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by the Trustee on behalf of the Fund or by some other person duly authorized to do so by the Trustee or pursuant to the provisions hereof.

**Section 1.4 Effect of Amendment and Restatement.**

This Declaration of Trust sets out the Original Declaration of Trust as amended and restated by the Trustee and supersedes the Original Declaration of Trust from and including the date hereof.

**ARTICLE 2  
THE FUND**

**Section 2.1 Establishment of the Fund**

The Trustee hereby declares itself and agrees to act as trustee of the Fund and agrees to hold the Fund Property in trust for the benefit of the Unitholders, their successors, permitted assigns and personal representatives upon the trusts and subject to the terms and conditions of this Declaration of Trust, such trust to constitute the Fund hereunder.

**Section 2.2 Name**

The Fund shall be known by the name "Marret High Yield Strategies Fund" and, insofar as may be practicable, legal and convenient, the affairs of the Fund shall be conducted and transacted under that name, it being the intention that such name shall refer to the Fund and shall not refer to the Trustee or to the Unitholders. Should the Trustee determine that the use of the name "Marret High Yield Strategies Fund" is not practicable, legal or convenient then the Trustee may, as and when appropriate, adopt another name for the Fund.

**Section 2.3 Situs and Head Office**

The situs and the head office and residence of the Fund shall be located at 150 King Street West, Suite 2304, Toronto, Ontario, M5H 1J9 or such other location in Ontario as may be designated by the Manager.

**Section 2.4 Purpose of the Fund**

The Fund is intended to be an unincorporated "mutual fund trust" within the meaning of the *Income Tax Act*. The Fund is established, and shall be operated and maintained by the Trustee, for the purpose of the common or collective investment in the

manner set forth herein of cash and property received by the Fund from Unitholders for such purpose.

### **Section 2.5 Nature of Fund**

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

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

The beneficiaries of the Fund are the holders of Units. The beneficial interest of a Unitholder shall be limited to the right to receive its Pro Rata Share, in accordance with the terms hereof, of (i) distributions when and as declared, and (ii) the proceeds of liquidation of the Fund Property upon termination of the Fund, after satisfaction of all liabilities of the Fund, including the liabilities owed by the Fund to the Manager pursuant to the Management Agreement. The rights of a Unitholder shall be only those rights which are conferred upon the Unitholder hereunder, and the liabilities and obligations of a Unitholder shall be only those liabilities and obligations which are imposed upon Unitholders hereunder. Except as expressly provided for in this Declaration of Trust, Unitholders shall have no right to call for any partition or division of any portion of the Fund Property, nor shall they be called upon to share or assume any losses of the Fund or be liable for any assessment or further payments to the Fund or the Trustee of any kind by virtue of their ownership of Units, except with respect to the breach of any subscription agreement or similar document executed by or on behalf of Unitholders in respect of their investment in Units. The relationship of the Unitholders to the Trustee, to the Fund and to the Fund Property shall be solely in their capacities as beneficiaries in accordance with the rights conferred and liabilities and obligations imposed upon the Unitholders hereunder.

(2) The relationship of the Trustee to a Unitholder and the relationship of one Unitholder to another is not and shall not be treated as that of partners or joint venturers or as that of principal and agent or as members of a society, association, limited partnership or corporation or as that of shareholders of a corporation or other joint stock company but shall be that of a trust as herein described with each Unitholder being a beneficiary of the Fund, with no relationship of any one beneficiary to any other beneficiary save that of each being a beneficiary under the same Fund.

## **ARTICLE 3 THE TRUSTEE**

### **Section 3.1 Confirmation of Agreement to Act**

(1) The Trustee hereby confirms its agreement to act as the trustee of the Fund and to hold the Fund Property in trust for the benefit of the Unitholders on and subject to the terms and conditions of this Declaration of Trust and to hold such office unless and until it resigns



upon 90 days prior written notice to the Manager, it is removed by the Unitholders in accordance with Section 13.3 or it ceases to qualify to act as Trustee. The Trustee will resign if requested to do so by the Manager in the event that it ceases to qualify as Trustee and the Manager proposes a replacement trustee concurrently with submitting the resignation request. In these circumstances, the proposed replacement shall become the trustee of the Fund upon such resignation. In addition, in the event that the Trustee becomes bankrupt or insolvent or ceases to be a resident of Canada for the purposes of the *Income Tax Act*, the Trustee shall be deemed to have resigned and no prior notice shall be required in such circumstances. Notwithstanding the foregoing, any such resignation or removal shall only become effective upon the acceptance of appointment by a successor Trustee.

(2) If the Trustee delivers notice of resignation, is deemed to have resigned or is removed by Unitholders in accordance with Section 13.3, its successor who is nominated by the Manager must be approved by an Ordinary Resolution passed at a meeting duly called for such purpose. If no successor has been appointed within 90 days of such notice or after the Trustee shall have been deemed to have resigned, the Trustee, the Manager or any Unitholder may apply to a Court for the appointment of a successor Trustee.

(3) Notwithstanding Section 3.1(2), Unitholder approval shall not be required to approve the appointment of a Person as a successor Trustee where: (i) such Person becomes the successor Trustee as a result of the transfer to such Person of all or substantially all of the trust business or the indenture trust business of the transferring Trustee; or (ii) such Person is a trust company duly authorized to carry on business as a trust company in the relevant jurisdictions.

### **Section 3.2 Term of Office**

(1) The term of office of the Trustee executing this Declaration of Trust and each successor Trustee appointed in accordance with this Declaration of Trust thereafter shall continue until the Termination Date or until the Trustee resigns or is deemed to resign, is removed by Unitholders in accordance with Section 13.3 or ceases to qualify to act as Trustee and its successor is appointed to act as trustee of the Fund.

(2) The liabilities, duties and obligations of the Trustee shall automatically terminate when it ceases to be the Trustee as herein provided, subject to such Trustee being liable for the exercise of its powers and the discharge of its duties as herein provided while in office. Any successor Trustee shall not be responsible or liable for any act or omission of any Trustee preceding its appointment as successor Trustee, unless such successor Trustee was appointed as contemplated in Section 3.1(1).

(3) The appointment of any Person as the Trustee shall not be effective unless and until such Person shall have accepted such appointment by instrument in writing containing an undertaking to be bound as a trustee by the terms of this Declaration of Trust. An acceptance given in advance of such Person's appointment shall be deemed to have been validly given by such Person provided that such acceptance contains a provision that it shall take effect immediately upon such appointment and provided that it contains an

undertaking to be bound as a trustee by the terms of this Declaration of Trust upon such appointment.

(4) Failure of a Person to accept appointment as the Trustee shall result in the Trustee remaining in office until such time as some other Person has accepted appointment as the Trustee in accordance with this Declaration of Trust.

### **Section 3.3 Automatic Vesting of Fund Property**

(1) Upon a Person being appointed the Trustee, the Fund Property shall automatically vest in such Person.

(2) In the event that a Person ceases to be the Trustee, the Fund Property shall automatically vest in the succeeding Trustee without the necessity of any act of transfer or transmission by the former Trustee. Notwithstanding the foregoing, the Trustee hereby covenants to execute such deeds and other documents as Counsel for the Fund may reasonably request to evidence such automatic vesting.

(3) If the Trustee ceases to hold office, the same shall not operate to annul or to terminate the Fund or to revoke or invalidate any agreement made by or on behalf of the Fund hereunder.

### **Section 3.4 Trustee's Accounts**

Subject to the appointment of the Manager and the terms of the Management Agreement, the Trustee shall keep or cause to be kept such books, records and accounts as are necessary and appropriate to document the Fund Property and transactions of the Fund. If the financial statements of the Fund are prepared in accordance with Canadian generally accepted accounting principles and the Auditors' report to the Unitholders is to the effect that the audit examination included the examination, on a test basis, of evidence supporting the amounts and disclosures in the financial statements and an assessment of the accounting principles and significant estimates made by the Manager and that in the opinion of the Auditors the financial statements present fairly in all material respects the financial position of the Fund as at the end of the period for which the audit was made and the results of operations and changes in financial position of the Fund for the period under review are in accordance with Canadian generally accepted accounting principles, then such audited financial statements shall be a complete accounting of the administration of the Fund for the period included therein and the Trustee shall not be required to give a further or better accounting to any Unitholder or to any other Person.

### **Section 3.5 Standard of Care and Duties of Trustee**

The standard of care and duty imposed upon the Trustee shall be that the Trustee shall act honestly and in good faith, with a view to the best interests of the Unitholders, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

### **Section 3.6 Expenses and Compensation of Trustee**

(1) The Trustee shall be entitled to receive and shall be paid from the Fund Property fair and reasonable compensation for its services in an amount to be negotiated between the Manager on behalf of the Fund and the Trustee, provided that the Manager and Trustee are not the same Person or affiliates. If the Manager and the Trustee are the same Person or are affiliates, the Trustee shall not be paid any amount pursuant to this Section 3.6(1) as compensation for its services as trustee beyond the compensation payable to the Manager.

(2) In addition, the Trustee shall be entitled to receive reimbursement from the Fund Property for expenses reasonably incurred by it in connection with the affairs of the Fund.

(3) The Trustee shall have a lien on the Fund Property (which shall have priority over the interests of Unitholders) to enforce the payment of fees, costs, expenses and other amounts payable or reimbursable by the Fund to the Trustee.

### **Section 3.7 Notice to Trustee**

Any written notice or written communication given or required to be given to the Trustee shall be deemed:

- (a) in the case of delivery, to have been duly given when the same is personally delivered to the Trustee at its principal business office;
- (b) in the case of dispatch by facsimile, e-mail or similar telecommunication device, to have been duly given on the first Business Day thereafter; or
- (c) in the case of dispatch by post, when addressed to the Trustee at its principal business office, to have been duly given at five o'clock in the afternoon (local time of the sender) on the fifth day after the day the same was deposited in a public post box or post office (or if such fifth day is a non-Business Day, the first Business Day thereafter) excluding each day during which there exists any general interruption of postal services due to strike, lockout or other cause.

### **Section 3.8 Qualification of Trustee**

The following persons are disqualified from being the Trustee:

- (a) any individual who is less than eighteen years of age;
- (b) any individual who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a Person who is not an individual, other than a corporation authorized or permitted to act as a trustee of the Fund pursuant to applicable law;
- (d) a Person who is a non-resident of Canada as defined in the *Income Tax Act*; and

- (e) a Person who has the status of bankrupt or goes into liquidation.

If the Trustee dies, is dissolved, becomes bankrupt, goes into liquidation or otherwise is disqualified from being the Trustee or becomes incapable of acting hereunder, the Manager will forthwith appoint a new Trustee who will be deemed to have served as Trustee from the time its predecessor Trustee died, was dissolved, became bankrupt, went into liquidation or otherwise was disqualified from being the Trustee or became incapable of acting hereunder.

### **Section 3.9 Dealings with the Fund or Trustee**

It is a term of the Fund that any Person dealing with the Fund or the Trustee on behalf of the Fund need not satisfy himself that this Declaration of Trust is being complied with or that the Trustee is acting in compliance with fiduciary obligations; and the Trustee shall have authority to so provide in any contract on behalf of the Fund with any Person. For greater certainty, each Person dealing with the Fund or the Trustee on behalf of the Fund (including without limitation each creditor of the Fund or the Trustee on behalf of the Fund) shall be entitled to enforce its rights under any agreement with the Fund or the Trustee on behalf of the Fund and have direct recourse to the assets of the Fund to satisfy the obligations of the Fund or the Trustee on behalf of the Fund to that Person under that agreement, notwithstanding any contravention of the terms of the Fund by the Trustee or any breach of the Trustee's fiduciary obligations. Such recourse to the assets of the Fund will exist in full even if (a) the Trustee has no right to seek indemnification from the assets of the Fund or to apply the assets of the Fund in satisfaction of those obligations or those rights of the Trustee are impaired, or (b) the agreement made between that Person and the Fund or the Trustee on behalf of the Fund conferred no benefit on the Fund.

## **ARTICLE 4 POWERS OF THE TRUSTEE**

### **Section 4.1 General Powers of the Trustee**

Subject to the appointment of the Manager under Article 11 and to the limitations, prohibitions, restrictions and obligations imposed upon the Fund under Article 5 and elsewhere in this Declaration of Trust, the Trustee is hereby vested with and shall have, without other or further authorization, continuing, full, absolute and exclusive power, control, and authority over, and management of, the Fund Property and the affairs and undertaking of the Fund, to the same extent as if the Trustee was the sole and absolute owner of such property and may exercise the same without the necessity of applying to any court for leave to do so. Subject to the provisions of Section 3.5 and Section 14.1, the Trustee shall not be liable, answerable or accountable for any loss or damage resulting from the exercise by the Trustee of a discretion or its refusal to exercise a discretion. Without restricting or limiting the generality of the foregoing, such powers of the Trustee shall include the powers enumerated in the ensuing sections of this Article 4 and elsewhere in this Declaration of Trust.

#### **Section 4.2 Power to Invest**

(1) The Trustee shall have the power, in accordance with the Investment Objectives and subject to the Investment Restrictions as contained herein and for such consideration as it may deem proper, to invest in, issue commitments with respect to, purchase or otherwise acquire, for cash or other property, and hold for investment and reinvestment, Fund Investments, securities, derivatives and other property, whether real, personal or mixed, whether moveable or immovable, whether tangible or intangible and wheresoever situate.

(2) In the exercise of its powers, the Trustee shall not be limited by any law now or hereafter in effect limiting the investments which may be held or retained by trustees or other fiduciaries, but it shall have, subject to the provisions of Section 4.1, full authority and power to make any and all investments that the Trustee, in its absolute discretion, but in accordance with the Investment Objectives and subject to the Investment Restrictions as contained herein, shall determine, and without liability for loss, even though such investments or any of them shall be of a character or in an amount not considered proper for the investment of trust funds or which do not or may not produce income.

(3) The Trustee shall have the power to purchase (in the open market or by invitation for tenders) Units for cancellation, subject to applicable law and stock exchange requirements.

(4) The Trustee shall have the power to invest in or use derivative and other instruments for hedging, leverage or any other purposes consistent with the Investment Objectives and subject to the Investment Restrictions.

#### **Section 4.3 Power to Borrow**

(1) Subject to Section 5.2, the Trustee shall have the power to:

- (a) borrow (which for these purposes includes borrowing on margin, borrowing securities and incurring indebtedness for various purposes, including purchasing Fund Investments in accordance with the Investment Objectives and subject to the Investment Restrictions, effecting market purchases of Units, maintaining liquidity, funding redemptions and paying distributions, borrowing against the Fund Property or encumbering Fund Investments or other Fund Property to secure the Fund's obligations under the Forward Agreement and paying expenses or other liabilities of the Fund); and
- (b) charge, mortgage, hypothecate, pledge and/or grant security interests in, free and clear from any and all trusts, all or any of the currently owned or subsequently acquired Fund Property, to secure such borrowed funds, indebtedness or guarantee, or in connection with any derivative or other instrument;

including to enter into, draw upon and comply with the terms and conditions of any loan facility.

(2) The Trustee shall not borrow money or securities or incur indebtedness unless the loan agreement, promissory note, guarantee or other documents to be signed by the Trustee in connection with such borrowing, indebtedness or guarantee clearly states that the Lender or prime broker acknowledges that the Trustee and the Unitholders shall have no liability in respect of such borrowings and that the Lender or prime broker shall look solely to the Fund Property for satisfaction of any claims of any nature arising in connection with such borrowing and that the Fund Property only shall be subject to levy or execution, provided however that, in the event of an Offering the consideration for which is satisfied by instalment, the Trustee shall be entitled to assign the right to be paid the final instalment owing by Unitholders pursuant to such Offering.

#### **Section 4.4 Power to Deal with Fund Property**

Subject to Article 5, the Trustee shall have the power:

- (a) to sell, factor, exchange, distribute to Unitholders or otherwise dispose of, or grant options with respect to, any of the Fund Property (including, in the event of an Offering the consideration for which is satisfied by instalment, any instalment payments due to the Fund in respect of the issuance of Units and security granted to the Fund in respect thereof) or any interest therein, at any time held hereunder, including pursuant to the Forward Agreement, free and clear from any and all trusts, at public or private sale, for cash or on terms, without advertisement, and subject to such restrictions, stipulations, agreements and reservations as it shall deem proper, and to lend any of the Fund Property at any time held hereunder subject to such restrictions, stipulations, agreements and reservations as it shall deem proper, including the power to take back security or other things of value for the whole or any part of the Fund Property lent by it or the purchase price of any of the Fund Property sold or transferred by it, and to execute and deliver any deed or other instrument in connection with the foregoing; and
- (b) to otherwise deal with any property comprising part of the Fund Property or any interests therein resulting from enforcement of any rights relating to any of the Fund Property, and to own, manage, use and hold such Fund Property and such interests, but notwithstanding the foregoing, the Trustee shall not lend Fund Investments to securities borrowers unless: (i) the borrower will pay to the Fund a negotiated securities lending fee and will make compensation payments to the Fund equal to any distributions received by the borrower on the securities borrowed; (ii) the securities loans qualify as "securities lending arrangements" for the purposes of the *Income Tax Act*; and (iii) the Fund will receive prescribed collateral security.

#### **Section 4.5 Power to Contract**

Subject to any other provisions of this Declaration of Trust, the Trustee shall have the power to make, execute, acknowledge and deliver any and all deeds, conveyances, contracts, agreements, waivers, releases or documents of transfer and any and all other

instruments in writing as it deems necessary, proper or desirable in order to promote or advance the purposes, objectives and provisions of this Declaration of Trust, whether for a term extending beyond the office of the Trustee or beyond the possible termination of the Fund or for a lesser term.

**Section 4.6 Power to Deliver Security**

Subject to the provisions of Section 4.3 and Section 5.2, the Trustee shall have the power to make, execute, acknowledge and deliver any charge, mortgage, hypothec, pledge and/or other instrument giving or creating a lien or charge upon or security interest in all or any part of the Fund Property, to secure the payment of any indebtedness of the Fund, or the performance of any obligation of the Fund under any contract or agreement of the Fund.

**Section 4.7 Power to Deal with Banks and Trust Companies**

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

**Section 4.8 Power to Pay Taxes and Assessments**

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

**Section 4.9 Power to Satisfy Debts and Claims**

The Trustee shall have the power to pay or satisfy out of the Fund Property any debts of or claims against the Fund or the Fund Property, and to incur and to pay any charges or expenses which, in the opinion of the Trustee, are necessary or desirable for the affairs of the Fund and which are for the account of the Fund, including the Fund Expenses.

**Section 4.10 Power to Exercise Rights of Ownership**

The Trustee shall have the power to exercise all the rights, powers and privileges pertaining to the ownership of all or any part of the Fund Property to the same extent that any Person might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, either in person or by proxy or power of attorney (with or

without power of substitution) to one or more individuals, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action.

**Section 4.11 Power to Collect**

The Trustee shall have the power to collect and sue for all sums of money or other property or claims that are believed due to the Fund; to give receipts for all sums of money or property received; to adjust the rate of interest at any time on any sums that may be due or become due to the Fund; to receive and release, in whole or in part, the collateral or security for all or any part of the Fund Property; to consent to the extension of the time for payment, or to the renewal of all or any part of the Fund Property; to engage or intervene in, prosecute, defend, compromise, abandon or adjust by arbitration or otherwise any action, suit, proceeding, dispute, claim, demand or thing relating to all or any part of the Fund Property; to foreclose any mortgage or other security interest forming all or any part of the Fund Property; to exercise any power of sale, and to convey good title thereunder free of any and all trusts, and, in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property (whether or not such property meets the requirements of Article 5 (except for the restrictions set out in Section 5.2(1)(a) and Section 5.2(1)(c) which must be satisfied at all times) or any policy of the Trustee from time to time in effect with respect to investments); to acquire, accept or receive title to property in lieu of foreclosure or sale (whether or not such property meets the requirements of Article 5 (except for the restrictions set out in Section 5.2(1)(a) and Section 5.2(1)(c) which must be satisfied at all times) or any policy of the Trustee from time to time in effect with respect to investments); to participate in any arrangement with creditors (including a reorganization or composition) for enforcing or protecting the interests of the Fund as the owner or holder of all or any part of the Fund Property and to that end to transfer to and deposit with any Person any such Fund Property; to appoint or join with others to appoint a receiver or receiver and manager in respect of the enforcement of any rights relating to any of the Fund Property or to act in either of such capacities either alone or jointly with others and to pay any assessment levied in connection with any such arrangement; to extend the time, with or without security, for the payment or delivery of any debt or property; and to execute and enter into any release, agreement, contract or other instrument and, in connection with any of the foregoing, to vote or otherwise act in exercise of any rights relating to any of the Fund Property.

**Section 4.12 Power to Determine Accounting Methods**

The Trustee shall have the power, in consultation with the Auditors, to determine the method or form in which the books of account of the Fund shall be kept and from time to time to change the method or form of keeping the accounts.

**Section 4.13 Power to Determine Fiscal Year and Taxation Year**

The Trustee shall have the power from time to time to change the fiscal year and/or the taxation year of the Fund and, until so changed, the fiscal year of the Fund shall end on December 31 in each year and the taxation year of the Fund shall end on December 31 in each year.



**Section 4.14 Power to Value Fund Property**

The Trustee shall have the power to determine conclusively the value of any or all Fund Property in accordance with the principles set out in Section 10.5(2) hereof. In determining such value, the Trustee or the Manager, as the case may be, may consider such information and advice as the Trustee or the Manager, as the case may be, in its sole judgment, may deem material and reliable. The Trustee or the Manager, as the case may be, shall also have the power to value any Fund Property from time to time, and to keep the books of the Fund and render reports to the Unitholders and other Persons on the basis of the values so determined.

**Section 4.15 Power to Appoint Custodian**

Subject to the provisions of Section 12.1 hereof, the Trustee shall have the power at any time to appoint any Person, which the Trustee in its discretion considers appropriate, as a Custodian for any or all of the Fund Property or instruments forming part of the Fund's records, and may at any time revoke any such appointment by a signed instrument delivered to such Person, with or without the appointment of a successor. While any Custodian is so acting, copies of any instrument deposited with and certified by the Custodian to be a true copy may be relied on as if it were the original thereof by any Person dealing with the Trustee or the Fund.

**Section 4.16 Power to Appoint Transfer Agent**

The Trustee shall have the power to appoint on behalf of the Fund and on such terms and conditions as the Manager on behalf of the Fund may determine, a Transfer Agent.

**Section 4.17 Power to Appoint Auditors**

If the position of Auditors becomes vacant at any time, the Trustee may fill such vacancy by appointing a nationally recognized firm of chartered accountants qualified to practice in the Province of Ontario as Auditors to hold office until a meeting of Unitholders is held to confirm the appointment of the new Auditors. The Trustee shall have the power to determine and pay the remuneration of the Auditors from time to time in office, such payments to be made out of the Fund Property.

**Section 4.18 Power to Purchase Insurance**

The Trustee shall have the power to purchase and pay for, out of the Fund Property, insurance for the protection of the Fund Property, the Unitholders, the Trustee, members of the Independent Review Committee, consultants or agents of the Trustee, the Manager and its directors and officers, any portfolio manager and its directors and officers, or any Person with whom the Fund has dealings, in such amounts as the Trustee shall deem adequate to cover all claims and liabilities of every nature arising by reason of holding or having held Units or of holding or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such Person in such capacity, including any action taken or omitted that may be determined to constitute negligence, provided that the Fund is not prohibited under Article 14 hereof or under any applicable law to indemnify such Person against such liability.

**Section 4.19 Power to Use Nominees**

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

**Section 4.20 Power to Indemnify**

In addition to the mandatory indemnification provided for in Article 14, the Trustee on behalf of the Fund shall have the power, to the extent permitted by law, to indemnify, or enter into agreements with respect to the indemnification of, any Person with whom the Fund has dealings (including the shareholders, directors, officers, employees and agents of such Persons), including members of the Independent Review Committee, the Manager, the directors and officers of the Manager, any portfolio manager and its directors and officers and the Custodian (subject to the limitation in Section 14.4 hereof) to such extent as the Trustee shall determine.

**Section 4.21 Power to File Prospectus and to Apply for Listing**

The Trustee shall have the power from time to time to prepare, sign and file or cause to be prepared, signed and filed with the appropriate authorities an Offering Document and any amendment thereto, relating to or resulting from an Offering of the Units or other securities issued or held by the Fund (including instalment receipts) and to pay the costs thereof and related thereto out of the Fund Property whether or not such Offering is or was of direct benefit to the Fund or those Persons (if any) who were Unitholders immediately prior to such Offering. The Trustee shall have the power to make or cause to be made an application for the listing on any stock exchange of the Units or other securities of the Fund, and to do all things which in the opinion of the Trustee may be necessary or desirable to effect or maintain such listing or listings.

**Section 4.22 Power to Maintain Records and Provide Reports**

The Trustee shall have the power to maintain the proper records of the Fund and provide such reports to Unitholders or other Persons as may be required under applicable law or as the Trustee may from time to time determine.

**Section 4.23 Power to Adopt and Use Seal**

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

**Section 4.24 Validity of Elections, Appointments, Resolutions and Actions**

Notwithstanding anything to the contrary contained in this Declaration of Trust, the failure to comply with any of the provisions hereof relating to the election, appointment or

qualifications of the Trustee, the Manager, any portfolio manager, the Auditors or the Custodian shall not affect the validity or enforceability of any such election or appointment or of any action taken by the Trustee, the Manager, any portfolio manager, the Auditors or the Custodian.

**Section 4.25 Power to Engage and Remove Consultants, Agents and Employees**

The Trustee shall have the power to engage, by contract or otherwise, and to remove such professional or other consultants and agents as the Trustee considers advisable in the discharge of its duties. The Trustee may pay out of the Fund Property the proper fees and disbursements or other compensation of such consultants and agents.

**Section 4.26 Power to Delegate**

The Trustee shall have the power to, and shall in accordance with the terms of the Management Agreement, delegate from time to time to its officers, employees, consultants, agents and other Persons, including the Manager and any portfolio manager, the doing of such things and the exercise of such powers hereunder as the Trustee may from time to time deem expedient.

**Section 4.27 Presumption in Favour of Grant of Power**

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

**Section 4.28 Specific Obligations of Trustee**

The Trustee shall have the following specific obligations to the Fund which it is empowered to meet in its sole judgment and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) generally to exercise any of the powers of an owner with respect to the Fund Investments and other Fund Property held in the Fund;
- (b) to make distributions, upon the advice of the Manager as to the timing and amounts of such distributions, payable to Unitholders;
- (c) to determine, upon the advice of the Manager, all material questions and matters of doubt which may arise in the course of the administration of the Fund or distribution of the Fund Property or upon the dissolution and termination of the Fund in accordance with the terms and conditions herein

to the extent that such matters are not otherwise dealt with herein, including any questions which arise with respect to the implementation or interpretation of the Investment Restrictions; and

- (d) to exercise all powers and to do all acts and things as are necessary or incidental to carry out the obligations referred to in this Section 4.28.

## ARTICLE 5 STATEMENTS

### Section 5.1 Investment Objectives

The investment objectives of the Fund are: (i) to maximize total returns for Unitholders, consisting of both tax-advantaged distributions and capital appreciation and reducing risk; and (ii) to provide Unitholders with attractive monthly tax-advantaged distributions, initially targeted to be 8.00% per annum on the original issue price of \$10.00 per Unit by obtaining exposure to the Marret HYS Trust Portfolio. To achieve exposure to the Marret HYS Trust Portfolio, the Fund will enter into the Forward Agreement with the Counterparty. The Fund will pre-pay in cash or in kind its purchase obligations under the Forward Agreement, and the Counterparty will agree to deliver to the Fund on the Termination Date (or earlier in whole or in part at the request of the Fund) the Canadian Securities Portfolio with an aggregate value equal to the redemption proceeds of the relevant number of units of Marret HYS Trust, net of any amount owing by the Fund to the Counterparty.

### Section 5.2 Investment Restrictions

- (1) The Fund shall be subject to the following Investment Restrictions. The Fund will not:
  - (a) with respect to the securities acquired pursuant to the Forward Agreement, purchase any securities other than “Canadian securities” for the purposes of the *Income Tax Act*;
  - (b) purchase the securities of an issuer for the purposes of exercising control over management of that issuer or if, as a result of such purchase, the Fund would be required to make a take-over bid that is a “formal bid” for the purposes of applicable securities laws;
  - (c) make or hold any investment that would result in the Fund failing to qualify as a “mutual fund trust” for purposes of the *Income Tax Act* and will not acquire any property that would be “taxable Canadian property” of the Fund as such term is defined in the *Income Tax Act* (if the definition were read without reference to paragraph (b) thereof); or
  - (d) make or hold any investment that would result in the Fund being subject to the tax for specified investment flow-through trusts as provided for in the section 122 of the *Income Tax Act*.

(2) The Fund will not enter into or maintain a forward agreement or other derivative contract (other than the Forward Agreement or an agreement entered into for the same purpose), unless the Fund holds the underlying securities or other cash cover (within the meaning of National Instrument 81-102 - Mutual Funds of the Canadian Securities Administrators) in an amount which, together with margin on account of the forward agreement or other derivative and the market value of the forward agreement or derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the forward agreement or derivative (being that amount that is equal to the number of shares underlying the forward agreement or derivative multiplied by the current market value of such shares).

(3) The Investment Restrictions shall comply with applicable laws, regulations or other requirements imposed by applicable regulatory authorities. If any such regulatory authority having jurisdiction over the Fund or any Fund Property shall enact any law, regulation or requirement which is in conflict with any Investment Restriction then in force, such Investment Restriction in conflict shall, if the Trustee on advice of Counsel to the Fund so resolves, be deemed to have been amended to the extent necessary to resolve any such conflict, and, notwithstanding Section 13.3(3)(c), any such amendment shall not require the approval of the Unitholders, whether or not such amendment is material.

## **ARTICLE 6 ISSUE AND SALE OF UNITS**

### **Section 6.1 Nature of Units**

(1) The beneficial interests in the Fund shall be divided into interests of one class which shall be entitled to the rights and subject to the limitations, restrictions and conditions set out herein, and the interest of each Unitholder shall be determined by the number of Units registered in the name of the Unitholder.

(2) Each Unit shall entitle the holder thereof to one vote at all meetings of the Unitholders.

(3) Each Unit represents an equal undivided beneficial interest in any distribution from the Fund (whether of Net Income, Net Realized Capital Gains or other amounts) and in any net assets of the Fund in the event of termination or winding-up of the Fund. All Units outstanding from time to time shall be entitled to equal shares in (i) distributions when and as declared to holders of Units, and (ii) the proceeds of liquidation of the Fund Property in the event of termination or winding-up of the Fund, after satisfaction of all liabilities of the Fund, including the liabilities of the Fund to the Manager pursuant to the Management Agreement. All Units shall rank among themselves equally and rateably without discrimination, preference or priority.

### **Section 6.2 Number of Units**

The Fund is authorized to issue an unlimited number of Units. Once issued, the number of outstanding Units may be consolidated or subdivided as the Trustee, at the

direction of the Manager, shall determine, provided that notice of any such consolidation or subdivision is first disseminated to the public by press release.

### **Section 6.3 Fractional Units**

Fractions of Units may be issued which will have the same rights, restrictions, conditions and limitations attaching to whole Units in the proportion which they bear to a whole Unit, except that fractional Units will not have the right to vote.

### **Section 6.4 Allotment and Issue**

Subject to the limitations of this Section 6.4, the Trustee shall allot and issue Units at such time or times and in such manner (including pursuant to any plan from time to time in effect relating to distributions of the Fund in Units in the manner contemplated in Section 10.2, or any distribution reinvestment plan established by the Fund from time to time), and for such consideration and to such Person, Persons or class of Persons as the Manager in its sole discretion shall determine, having regard to such matters as would be considered by the board of directors of an OBCA Corporation when issuing shares in comparable circumstances. In particular, the Manager may determine the issue price per Unit and any commission to be paid to registered dealers in connection with such issuance. Units may be issued as fully paid in money, property or past services or on an instalment receipt basis. If and when issued, a Unit shall not, unless issued on an instalment receipt basis, be subject to call or assessment by the Trustee. In the event that Units are issued in whole or in part for a consideration other than cash, the resolution allotting and issuing such Units shall express the fair equivalent in cash of the other consideration received. In the event Units are issued on an instalment receipt basis, the Fund may take security over the Units so issued as security for unpaid instalments and may assign all or any part of its interest in that security. Units may not be issued for net proceeds per Unit less than the most recently calculated Net Asset Value per Unit prior to the date of the setting of the subscription price by the Fund.

### **Section 6.5 Rights, Warrants and Options**

Subject to the restrictions contained in Section 6.4, the Trustee may create and issue rights, warrants (including so-called "special warrants" which may be exercisable for no additional consideration) or options to subscribe for fully paid Units and may issue Units on an instalment receipt basis. Subject to Section 6.4, such rights, warrants or options may be exercisable, and such instalment receipts may be issued, at such subscription price or prices and at such time or times as the Trustee may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustee may determine. A right, warrant or option is not a Unit and a holder thereof is not a Unitholder.

### **Section 6.6 Commissions and Discounts**

Subject to Section 6.4, the Trustee may provide for the payment of commissions to Persons in consideration of their subscribing or agreeing to subscribe whether absolutely or conditionally for Units or of their agreeing to procure subscriptions therefor, whether absolute or conditional, having regard to such matters as would be considered by the board of directors of an OBCA Corporation when issuing shares in comparable circumstances.

**Section 6.7 No Pre-Emptive Rights**

No Person shall be entitled, as a matter of right, to subscribe for or purchase any Units.

**Section 6.8 Donation of Units**

Units may be donated to the Fund in which case they shall be cancelled and the holder thereof, if a registered holder, shall be removed from the register of Unitholders with respect to the donated Units.

**ARTICLE 7  
CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS**

**Section 7.1 Nature of Unit Certificates**

The provisions of this Article 7 shall not in any way alter the nature of the Units or the relationships of a Unitholder to the Trustee and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units if desirable to issue them to Unitholders and the recording of all transactions in respect of Units and Unit Certificates whether by the Fund, securities dealers, stock exchanges, Transfer Agents or other persons.

**Section 7.2 Certificates**

Subject to the provisions of Section 8.1, every Unitholder or his duly authorized agent is entitled to a Unit Certificate bearing an identifying serial number in respect of the Units held by him, signed in the manner hereinafter prescribed, but the Trustee is not bound to issue more than one Unit Certificate in respect of a Unit or Units held jointly or in common by two or more Persons and delivery of a Unit Certificate to one of them shall be sufficient delivery to all.

**Section 7.3 Certificate Fee**

The Trustee may establish a reasonable fee to be charged for every Unit Certificate issued, and the fee shall be paid by the Fund.

**Section 7.4 Unit Certificates**

The Unit Certificate shall be in such form and shall contain such information as is from time to time approved by the Manager, subject to applicable law.

**Section 7.5 Register of Unitholders**

A register shall be kept by, or on behalf and under the direction of, the Trustee, which register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of the Unit Certificates representing such Units and a record of all transfers and redemptions thereof. Subject to the provisions of Article 8, only Unitholders whose Units are so recorded shall be entitled to receive distributions and to exercise or enjoy the rights of Unitholders hereunder. The Person registered as a Unitholder on the register of the Fund shall be treated as the owner of such

Unit for all purposes, including without limitation payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders. Accordingly, neither the Trustee nor the Manager shall be bound to recognize any transfer or attempted transfer, pledge or other disposition of a Unit, or any equitable or other claim with respect thereto, whether or not the Fund, the Trustee or the Manager shall have actual or other notice thereof, until such Unit shall have been transferred on the register of the Fund as herein provided. Notwithstanding the foregoing, in the event Units are issued as Book-Entry Only Units, the provisions of Article 8 shall apply.

#### **Section 7.6 Transfer Agents and Registrars**

In pursuance of its power to engage the services of consultants and agents, the Trustee may appoint itself or one of its affiliates and/or one or more chartered banks or banking institutions or trust companies to act as Transfer Agents for the Units (which may be but need not be the Trustee) and may provide for the transfer of Units in one or more places within or outside Canada (provided that if such appointments are made there shall be a transfer agent and registrar within the Province of Ontario). The Trustee may enter into agency agreements with such Transfer Agents and may pay their compensation out of the Fund Property. In the event of such appointment, such Transfer Agents shall keep all necessary registers and other books, including electronic books, for recording original issues and registering and transferring the Units. If the Trustee has appointed a Transfer Agent, no Unit Certificate shall be valid unless countersigned by or on behalf of a Transfer Agent. Except as required by this Declaration of Trust, or by the Trustee, such Transfer Agents shall perform those functions and duties usually performed by transfer agents of shares of corporations having share capital. In the case of an original issue of Units, any Transfer Agent may rely and act upon the written instruction of the Trustee without inquiry into the receipt by the Fund of, or the sufficiency of, the consideration for such original issue.

#### **Section 7.7 Blank Certificates**

In accordance with the usual custom of corporations with share capital which have a transfer agent, signed Unit Certificates in blank may be deposited by the Trustee with any Transfer Agent, to be used by the Transfer Agent in accordance with the authority, conferred upon it as occasion may require, and in so doing neither the Trustee nor other signatory of such Unit Certificates shall be responsible for any loss resulting from such deposit.

#### **Section 7.8 Transfer of Units**

(1) Subject to Section 6.4, Units shall be, for all purposes of the Fund and this Declaration of Trust, personal and moveable property, and shall be transferable at any time and from time to time by endorsement and delivery of the Unit Certificates in the same manner and subject to the same provisions and conditions, so near as may be, as are applicable to transfers of shares of an OBCA Corporation. Transfers shall be recorded on the register of Unitholders and a new Unit Certificate for the Units so transferred shall be issued to the transferee, and in case of a transfer of only part of the Units represented by any Unit Certificate, a new Unit Certificate for the residue thereof shall be issued to the transferor. If Units are issued as Book-Entry Only Units, the provisions of Article 8 apply.



(2) The Trustee shall not impose any restriction on the transfer of Units except pursuant to Section 6.4 unless such restriction is necessary, in the opinion of Counsel to the Fund: (i) as a condition of obtaining or maintaining the status of the Fund as a “unit trust” and a “mutual fund trust” under the *Income Tax Act*; (ii) in order to comply with any applicable laws, regulations or other requirements imposed by regulatory authorities; or (iii) in order to obtain, maintain or renew any licences, rights, status or powers pursuant to any other applicable laws, regulations or other requirements imposed by any stock exchange or other applicable regulatory authorities. If any such restriction is or becomes necessary, the Trustee shall have the power to restrict the transfer of Units on the books of the Fund without liability to Unitholders or others who are thereby restricted from making a transfer.

(3) The Trustee may require any Unitholder, upon demand from time to time, to disclose to the Trustee in writing such information with respect to direct and indirect ownership of Units as the Trustee may deem necessary to comply with any of the foregoing.

(4) Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of any Transfer Agent appointed by the Trustee where registers are maintained for Unit Certificates pursuant to the provisions of this Article 7. Any Unit Certificates tendered for exchange shall be surrendered to the Trustee or appropriate Transfer Agent and then shall be cancelled.

#### **Section 7.9 Successors in Interest of Unitholders**

Any Person becoming entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units and shall receive a new Unit Certificate (if Unit Certificates are being issued) therefor upon production of evidence thereof satisfactory to the Trustee and delivery of the existing Unit Certificate to the Trustee or a Transfer Agent. Until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes, whether or not the Fund, the Trustee, the Manager, or a Transfer Agent shall have actual or other notice of such death, bankruptcy, incompetence or other event.

#### **Section 7.10 Units Held Jointly or in Fiduciary Capacity**

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

### **Section 7.11 Performance of Trusts**

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

### **Section 7.12 Lost Certificates**

In the event that Unit Certificates are issued and any Unit Certificate is lost, stolen, destroyed or mutilated, the Trustee may authorize the issuance of a new Unit Certificate for the same number of Units in lieu thereof. The Trustee may in its discretion, before the issuance of such new Unit Certificate, require the owner of the lost, stolen, destroyed or mutilated Unit Certificate, or the legal representative of the owner, to make such affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustee deems necessary and may require the applicant to supply to the Fund a "lost certificate" or similar bond in such reasonable amount as the Trustee directs, indemnifying the Trustee, the Manager and the Transfer Agents for so doing. The Trustee shall have the power to acquire from an insurer or insurers a blanket lost security bond or bonds in respect of the replacement of lost, stolen, destroyed or mutilated Unit Certificates. The Fund shall pay all premiums and other sums of money payable for such purpose out of the Fund Property with such contribution, if any, by those insured as may be determined by the Trustee. If such blanket lost security bond is acquired, the Trustee may authorize and direct (upon such terms and conditions as the Trustee may from time to time impose) any Transfer Agent, trustee, paying agent or others to whom the indemnity of such bond extends to take such action to replace lost, stolen, destroyed or mutilated Unit Certificates without further action or approval by the Trustee. The Trustee shall be entitled to charge a reasonable fee to Unitholders for the replacement of lost Unit Certificates.

### **Section 7.13 Death of Unitholders**

The death of a Unitholder during the continuance of the Fund shall not terminate the Fund or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust or give such Unitholder's legal representatives a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustee, the Manager, or the Fund Property, but shall only entitle the legal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 7.9 hereof, a new Unit Certificate in place of the Unit Certificate held by the deceased Unitholder, if applicable, and upon the acceptance thereof such legal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

### **Section 7.14 Unclaimed Interest, Dividends or Distributions**

In the event that the Trustee holds any distributable amounts which are unclaimed or which cannot be paid for any reason, neither the Trustee nor its distribution disbursing

agent shall be under any obligation to invest or reinvest the same but shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the Person or Persons entitled thereto. The Trustee shall, as and when required by law, and may at any time prior to such required time, pay all or part of the distributable amounts so held to the public trustee (or other similar government official or agency) whose receipt shall be a good acquittance and discharge of the obligations of the Trustee.

#### **Section 7.15 Notice to Unitholders of Non-Eligibility for Deferred Income Plans**

If the Trustee becomes aware that the Units have ceased to be qualified investments for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans and tax-free savings accounts (all within the meaning of the *Income Tax Act*) or any of such plans, the Trustee shall give notice to Unitholders at their latest address as shown on the register of Unitholders that Units have ceased to be qualified investments for such plans. The Trustee shall not be liable to the Fund or to any Unitholder for any costs, expenses, charges, penalties or taxes imposed upon a Unitholder as a result of or by virtue of a Unit not being a qualified investment for any such plan, notwithstanding any failure or omission of the Trustee to have given such notice, provided the Trustee has complied with Section 3.5.

#### **Section 7.16 Declaration as to Beneficial Owner**

The Trustee may require any Unitholder as shown on the register of Unitholders to provide a declaration, in form prescribed by the Trustee, as to the beneficial owner of Units registered in such Unitholder's name and as to the jurisdiction in which such beneficial owner is resident, and such other information as may be necessary in order to carry out the provisions of this Declaration of Trust.

#### **Section 7.17 Offer for Units**

(1) In this Section 7.17:

- (a) **"associate"** shall have the meaning given to such term in the Securities Act (Ontario);
- (b) **"Dissenting Unitholder"** means a Unitholder who does not accept an Offer referred to in Section 7.17(3) and includes any assignee of the Unit of a Unitholder to whom such an Offer is made, whether or not such assignee is recognized under this Declaration of Trust;
- (c) **"Offer"** means an offer to acquire outstanding Units where, as of the date of the offer to acquire, the Units that are subject to the offer to acquire, together with the Offeror's Units, constitute in the aggregate 20% or more of all outstanding Units;
- (d) **"offer to acquire"** includes an acceptance of an offer to sell;

- (e) **“Offeror”** means a Person, or two or more Persons acting jointly or in concert, who make an Offer;
- (f) **“Offeror’s Notice”** means the notice described in Section 7.17(3); and
- (g) **“Offeror’s Units”** means Units beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.

(2) If an Offer for all of the outstanding Units (other than Units held by or on behalf of the Offeror or an affiliate or associate of the Offeror) is made and, by such Offer, the Offeror agrees to be bound by the provisions of this Article 7, and:

- (a) within the time provided in the Offer for its acceptance or within 45 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by Unitholders representing at least 90% of the outstanding Units, other than the Offeror’s Units;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for the Units of the Unitholders who accepted the Offer; and
- (c) the Offeror complies with Section 7.17(3) and Section 7.17(5);

the Offeror is entitled to acquire, and the Dissenting Unitholders are required to sell to the Offeror, the Units held by the Dissenting Unitholders for the same consideration per Unit payable or paid, as the case may be, under the Offer.

(3) Where an Offeror is entitled to acquire Units held by a Dissenting Unitholder pursuant to Section 7.17(2), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the **“Offeror’s Notice”**) to each Dissenting Unitholder stating that:

- (a) Unitholders holding at least 90% of the Units of all Unitholders, other than Offeror’s Units, have accepted the Offer;
- (b) the Offeror is bound to take up and pay for, or has taken up and paid for, the Units of the Unitholders who accepted the Offer;
- (c) Dissenting Unitholders must transfer their respective Units to the Offeror on the terms on which the Offeror acquired the Units of the Unitholders who accepted the Offer within 21 days after the date of the sending of the Offeror’s Notice; and
- (d) Dissenting Unitholders must send their respective Unit Certificate(s) to the Fund within 21 days after the date of the sending of the Offeror’s Notice.

(4) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to Section 7.17(3), shall, within 21 days after the sending of the Offeror's Notice, send his or her Unit Certificate(s) to the Fund, duly endorsed for transfer, if a Unit Certificate has been provided.

(5) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Section 7.17(3), the Offeror shall pay or transfer to the Trustee, or to such other person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to Section 7.17(2).

(6) The Trustee, or the person directed by the Trustee, shall hold in trust for the Dissenting Unitholders the cash or other consideration it receives under Section 7.17(5), but such cash or other consideration shall not form any part of the Fund Property. The Trustee, or such persons, shall deposit cash in a separate account in a Canadian chartered bank, and shall place other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.

(7) Within 30 days after the date of the sending of an Offeror's Notice pursuant to Section 7.17(3), the Trustee, if the Offeror has complied with Section 7.17(5), shall:

- (a) do all acts and things and execute and cause to be executed all instruments as in the Trustee's opinion may be necessary or desirable to cause the transfer of the Units of the Dissenting Unitholders to the Offeror;
- (b) send to each Dissenting Unitholder who has complied with Section 7.17(4) the consideration to which such Dissenting Unitholder is entitled under this Section 7.17; and
- (c) send to each Dissenting Unitholder who has not complied with Section 7.17(4) a notice stating that:
  - (i) his or her Units have been transferred to the Offeror;
  - (ii) the Trustee or some other person designated in such notice are holding in trust the consideration for such Units; and
  - (iii) the Trustee, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Certificate(s) or such other documents as the Trustees or such other person may require in lieu thereof;

and the Trustee is hereby appointed the agent and attorney of the Dissenting Unitholders for the purposes of giving effect to the foregoing provisions.

(8) Subject to applicable law, an Offeror cannot make an Offer for Units unless, concurrent with the communication of the Offer to any Unitholder, a copy of the Offer is provided to the Fund.

**ARTICLE 8**  
**BOOK-ENTRY ONLY SYSTEM**

**Section 8.1 Book-Entry Only Certificate**

Unless the Trustee otherwise determines, and subject to Section 8.4, registration of interests in and transfers of the Units will be made through the Book-Entry Only System. The Trustee shall request that the Transfer Agent register such Book-Entry Only Units in the name of CDS or its nominee in such denominations as the Fund may specify. A global Unit Certificate or Certificates representing such Book-Entry Only Units registered in the name of CDS or its nominee and authenticated by the Trustee may be held by CDS, provided that CDS may also hold such Book-Entry Only Units as an electronic position or uncertificated security upon receipt of a direction thereof from the Trustee. No Beneficial Holder will receive definitive Unit Certificate(s) representing such Beneficial Holder's interest in the Book-Entry Only Units except as provided in Section 8.4. Unless and until definitive Unit Certificates have been issued to the Beneficial Holders pursuant to Section 8.4:

- (a) all references herein to actions by, notices given to or by or payments made to Unitholders shall refer to actions taken by, or notices given to or by or payments made to CDS, where applicable, upon instruction from the CDS Participants;
- (b) the Trustee, the Manager and the Transfer Agent may deal with CDS for all purposes (including the making of distributions on the Book-Entry Only Units) as the sole holder of the Book-Entry Only Units and the authorized representative of the Beneficial Holders and such dealings with CDS will constitute satisfaction or performance, as applicable, of their respective obligations hereunder;
- (c) the rights of the Beneficial Holders shall be exercised only through CDS and shall be limited to those established by law and agreements between such Beneficial Holders and CDS or CDS Participants;
- (d) CDS will make book-entry transfers among CDS Participants and receive and transmit distributions on the Book-Entry Only Units to such CDS Participants;
- (e) a Beneficial Holder will have no direct rights as against the Fund or the Trustee or the Manager who may treat CDS as the sole Unitholder; and
- (f) whenever this Declaration of Trust requires or permits actions to be taken based upon instructions or directions of Unitholders evidencing a specified percentage of the outstanding Units, such instructions or directions may be given by Beneficial Holders acting through CDS and CDS Participants owning Units evidencing the requisite percentage of Units and CDS shall be deemed to be counted in that percentage only to the extent that it has

received instructions to such effect from the Beneficial Holders or CDS Participants and has delivered such instructions to the Trustee.

### **Section 8.2 Notice to Clearing Agency**

Whenever a notice or other communication is required to be provided to Unitholders, unless and until definitive Unit Certificate(s) have been issued to Beneficial Holders pursuant to Section 8.4, the Trustee shall provide all such notices and communications to CDS and CDS shall deliver such notices and communications to the Beneficial Holders in accordance with the Securities Act (Ontario) and other applicable securities laws (including national policies or instruments).

### **Section 8.3 Liability**

Subject to compliance with the provisions of Section 8.1, none of the Fund, the Trustee, the Manager or the Transfer Agent shall have any responsibility or liability for any aspect of the records relating to or payments made by CDS to or for the benefit of Beneficial Holders on account of their beneficial interest in any Book-Entry Only Units.

### **Section 8.4 Definitive Certificates**

If:

- (a) CDS advises the Fund that it is no longer willing or able to discharge properly its responsibilities as depository with respect to the Book-Entry Only Units and the Fund is unable to locate a qualified successor; or
- (b) the Trustee, upon the recommendation of the Manager, advises CDS in writing that it has elected to terminate its participation in the Book-Entry Only System in respect of the Units;

the Trustee shall so notify CDS and request that CDS notify all Beneficial Holders of the occurrence of any such event and of the availability to Beneficial Holders of definitive Unit Certificate(s). As soon as is reasonably practicable thereafter, upon the surrender by CDS to the Trustee of the global Unit certificate(s) representing the Book-Entry Only Units, the Fund shall execute and the Trustee shall certify and issue through CDS, definitive Unit Certificate(s) in a form adopted by the Trustee and prepared in compliance with all applicable laws to the same extent as if the Fund were an OBCA Corporation, register such Unit Certificates in the names of such Persons as CDS may direct and deliver such Unit Certificates in accordance with the instructions of CDS, all based on instructions received by CDS from the Beneficial Holders, and cause the names of such Persons as CDS has instructed to be entered on the register. None of the Fund, the Trustee, the Manager or the Transfer Agent shall be liable for any delay in delivery of such instructions. Upon the issuance of definitive Unit Certificate(s), the Trustee shall recognize the registered holders of the definitive Unit Certificate(s) as holders of Units.

### **Section 8.5 Redemption of Units**

(1) In order to exercise redemption privileges a Beneficial Holder of Units must deliver a Redemption Notice to the CDS Participant through which it holds its Units sufficiently in advance to allow such CDS Participant to deliver the Redemption Notice to CDS at its office in the City of Toronto on behalf of the Beneficial Holder, in time for CDS to surrender the Units subject to such Redemption Notice pursuant to Section 9.2(1) by no later than 5:00 p.m. (Toronto time) on the date which is the last Business Day of the month preceding the Monthly Redemption Date or the Annual Redemption Date, as applicable.

(2) By causing a CDS Participant to deliver to CDS a Redemption Notice, an owner shall be deemed to have irrevocably surrendered his Units for redemption and appointed such CDS Participant to act as his exclusive settlement agent with respect to the exercise of the redemption privilege and the receipt of payment in connection with the settlement of obligations arising from such exercise, provided that the Manager may from time to time prior to a Monthly Redemption Date or an Annual Redemption Date permit the withdrawal of a Redemption Notice on such terms and conditions as the Manager may determine, in its sole discretion, provided that in the opinion of the Manager such withdrawal will not adversely affect the Fund. Any expense associated with the preparation and delivery of the Redemption Notice or its withdrawal will be for the account of the Beneficial Holder exercising the redemption privilege.

(3) Any Redemption Notice which CDS determines to be incomplete, not in proper form or not duly executed shall for all purposes be void and of no effect and the redemption privilege to which it relates shall be considered for all purposes not to have been exercised thereby. A failure by a CDS Participant to exercise redemption privileges or to give effect to the settlement thereof in accordance with the Beneficial Holder's instructions will not give rise to any obligations or liability on the part of the Fund, the Trustee, or the Manager to the CDS Participant or Beneficial Holder.

## **ARTICLE 9 REPURCHASE AND REDEMPTION OF UNITS**

### **Section 9.1 Repurchase of Units**

The Fund may, in its sole discretion, from time to time purchase (in the open market or by invitation for tenders) Units for cancellation subject to applicable law and stock exchange requirements, based on the Manager's assessment that such purchases are accretive to Unitholders, in all cases at a price per Unit not exceeding the most recently calculated Net Asset Value per Unit immediately prior to the date of any such purchase of Units.

### **Section 9.2 Redemption of Units**

(1) Subject to the Fund's right to suspend redemptions (as described in Section 9.2(5)), Units may be surrendered for redemption at a price per Unit as follows:



- (a) for redemption on a Monthly Redemption Date to the principal office of the Transfer Agent in Toronto, Ontario where the Units are surrendered by no later than 5:00 p.m. (Toronto time) on the date which is the last Business Day of the month preceding the Monthly Redemption Date at a redemption price per Unit equal to the Monthly Redemption Amount; and
- (b) for redemption on the Annual Redemption Date, if and only if the Annual Redemption Condition has been met, to the principal office of the Transfer Agent in Toronto, Ontario where the Units are surrendered by no later than 5:00 p.m. (Toronto time) on the date which is not less than ten Business Days prior to the Annual Redemption Date at a redemption price per Unit equal to the Annual Redemption Amount.

(2) Payment will be made by the Fund to the Unitholder as follows: (i) in the case of a redemption made on a Monthly Redemption Date, by payment on or before the Monthly Redemption Payment Date; (ii) in the case of a redemption made on an Annual Redemption Date, by payment on or before the Annual Redemption Payment Date. Any unpaid distribution payable to Unitholders of record on or before a Monthly Redemption Date or an Annual Redemption Date, as applicable, in respect of Units tendered for redemption will also be paid on the applicable Monthly Redemption Payment Date or Annual Redemption Payment Date, as applicable. All redemption payments shall be made by wire transfer of immediately available funds or by cheque, drawn on a Canadian chartered bank or a trust company in lawful money in Canada payable at par to or to the order of the Unitholder who has surrendered Units for redemption. Payments made by the Fund of the Monthly Redemption Amount or the Annual Redemption Amount, as applicable, are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Fund shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

(3) The Trustee may, on such date or dates as the Manager directs, make such designations, determinations and allocations for tax purposes of amounts or portions of amounts which the Fund has received, paid, declared payable or allocated to Unitholders as distributions or redemption proceeds. In addition, on any redemption the Fund may, in its sole discretion, designate payable to the redeeming Unitholder as part of the redemption price any capital gains realized by the Fund in the taxation year of the Fund in which the redemption occurs.

(4) Units may be surrendered for redemption by presentation by the Unitholder to the Transfer Agent of a Redemption Notice in a form acceptable to the Transfer Agent, specifying the number of Units to be redeemed, and if definitive Unit Certificates have been issued therefor, accompanied by such Unit Certificates, in each case, by no later than 5:00 p.m. (Toronto time) on the date which is the last Business Day of the month preceding the Monthly Redemption Date or at least ten Business Days prior to the Annual Redemption Date, as applicable, provided however that if the Units are held in the Book-Entry Only

System at the time of such redemption, a Beneficial Unitholder should comply with Section 8.5 for the redemption of any Units.

(5) The Manager, on behalf of the Fund, may direct the Trustee to suspend the redemption of Units or payment of redemption proceeds (a) for the whole or any part of a period during which normal trading is suspended on one or more stock exchanges, options exchanges or futures exchanges on which more than 50% of the securities included in the Canadian Securities Portfolio (by value) are listed and traded; or (b) for any period not exceeding 120 days during which the Manager determines that conditions exist which render impractical the sale of assets of the Fund or which impair the ability of the Manager to determine the value of the assets of the Fund. The suspension may apply to all requests for redemption received prior to the suspension, but as for which payment has not been made, as well as to all requests received while the suspension is in effect. In such circumstances all Unitholders shall have, and shall be advised that they have, the right to withdraw their requests for redemption. Redemptions so suspended will be effected at a price determined on the first date that the Net Asset Value per Unit, Market Price and Closing Market Price, as applicable, is calculated following the termination of the suspension. The suspension shall terminate in any event on the first Business Day on which the condition giving rise to the suspension has ceased to exist provided that no other condition under which a suspension is authorized then exists. To the extent not inconsistent with official rules and regulations promulgated by any government body having jurisdiction over the Fund, any declaration of suspension made by the Manager shall be conclusive.

(6) Subject to Section 9.2(5) any and all Units which have been surrendered for redemption shall be deemed to be outstanding until, but not after, the close of business on the applicable Monthly Redemption Date or Annual Redemption Date. From and after the date the Units are surrendered for redemption, such Units shall cease to be entitled to share in the income or any participation in the assets of the Units and the Unitholder thereof shall not be entitled to exercise any of the rights of holders of Units in respect thereof other than the right to be paid the Monthly Redemption Amount or Annual Redemption Amount, as applicable, in respect of such Units and to receive the amount of all unpaid distributions in respect of such Units which were payable on or before the applicable Monthly Redemption Date or the Annual Redemption Date, unless payment of the Monthly Redemption Amount or the Annual Redemption Amount, as applicable, or unpaid distributions shall not have been made on the applicable Monthly Redemption Payment Date or the Annual Redemption Payment Date, or shall have been dishonoured.

## **ARTICLE 10 DISTRIBUTIONS TO UNITHOLDERS**

### **Section 10.1 Distributions**

(1) The Fund will make monthly distributions to Unitholders at the discretion of the Trustee, upon the advice of the Manager. Until changed by the Fund, upon the determination of the Manager in its sole discretion, the current distribution rate of the Fund

is set at an amount equal to \$0.067 per Unit, representing a yield of 8.00% per annum on the issue price of Units having an issue price of \$10. The Fund shall, for any Distribution Date, distribute any such distribution, in such amounts as determined by the Manager, in its sole discretion, to Unitholders of record as of the close of business on the immediately preceding Record Date in accordance with the Pro Rata Share of each Unitholder on that Record Date. Each Unitholder shall have the right to enforce the payment of its share of such distributions on any Distribution Date or, where such Distribution Date occurs in the month of January, on the Record Date for such distribution; provided that such distributions may, at the option of the Fund and subject to compliance with applicable securities laws and the requirements of other regulatory authorities, be satisfied by the issuance of additional Units having a value equal to the cash shortfall. For the purposes of this Section 10.1 the value of the additional Units to be issued shall be determined using the closing trading price or if there was no trade, the average of the last bid and the last ask prices) of the Units on such Distribution Date, (or, if such Distribution Date is not a Business Day, on the last Business Day preceding the Distribution Date) on the principal stock exchange where the Units are listed or, if not so listed, such other value as the Trustee shall determine. Distributions made pursuant to this Section 10.1 shall be regarded as payments on account of Net Income and Net Realized Capital Gains and to the extent that the aggregate of such distributions paid or payable during any taxation year of the Fund exceed the aggregate of Net Income and Net Realized Capital Gains for such taxation year, such excess shall be regarded as a distribution on account of capital. The Fund may make other distributions at any time in addition to monthly distributions if the Manager considers it appropriate to do so.

(2) With respect to any distribution by the Fund in or in respect of a taxation year, the Fund shall make available to each Unitholder annually on or about March 31 of the following year information necessary to enable such Unitholder to complete an income tax return with respect to amounts paid or payable by the Fund to the Unitholders in the preceding taxation year of the Fund.

#### **Section 10.2 Additional Distribution to Become Payable**

(1) Having regard to the intention of the Trustee that a sufficient amount of Net Income and Net Realized Capital Gains will be payable to Unitholders in each taxation year so the Fund will not have any liability for income tax under Part I of the *Income Tax Act* for such year (other than tax on Net Realized Capital Gains that would be refundable to the Fund with respect to the relevant taxation year), on December 31 of each taxation year of the Fund (an “**Additional Distribution Date**”) an amount, if any, equal to the Pro Rata Share of the Additional Distribution will be payable to each Person who is a Unitholder of record as at the close of business on December 31 of such year (a “**Payee**”). Each Payee has the right to enforce the payment of its share of distributions payable pursuant to this Section 10.2 on each Additional Distribution Date.

(2) Notwithstanding Section 10.2(1), all or part of any Additional Distribution may, at the option of the Manager and subject to compliance with applicable securities laws and the

requirements of other regulatory authorities, be satisfied by the issuance of additional Units having a value equal to the amount of the Additional Distribution not being satisfied in cash. For the purposes of this Section 10.2 the value of the additional Units to be issued shall be determined using the Closing Market Price of a Unit on such Additional Distribution Date, (or, if such Additional Distribution Date is not a Business Day, on the last Business Day preceding the Additional Distribution Date) or, if not so listed, such other value as the Trustee shall determine.

Following such issue of additional Units on an Additional Distribution Date, the outstanding Units will be automatically consolidated on a basis such that the number of consolidated Units (before giving effect to any redemption of Units on such date) is equal to the number of Units outstanding immediately preceding the Additional Distribution Date, except in the case of a non-resident Unitholder if tax was required to be withheld in respect of the distribution, in which case the consolidation will result in such Unitholder holding that number of Units equal to (i) the number of Units held by such Unitholder prior to the distribution plus the number of Units received by such Unitholder in connection with the distribution (net of withholding taxes) multiplied by (ii) the fraction obtained by dividing the aggregate number of Units outstanding prior to the distribution by the aggregate number of Units that would be outstanding following the distribution and before the consolidation if no withholding were required in respect of any part of the distribution payable to any Unitholder.

### **Section 10.3 Allocation for Income Tax Purposes**

Net Income and Net Realized Capital Gains for any taxation year of the Fund shall be allocated to each person who was a Unitholder at any time during such taxation year in an amount calculated by multiplying such Net Income or Net Realized Capital Gains by a fraction, the numerator of which is the portion of Total Distributions received or that becomes receivable by such Unitholder in the taxation year and the denominator of which is the aggregate amount of Total Distributions.

### **Section 10.4 Payment of Distributions**

Unless a Unitholder is a participant in any distribution reinvestment plan established by the Fund from time to time, all cash distributions payable to a Unitholder pursuant to Section 10.1(1) and Section 10.2, less any amount required to be withheld therefrom under applicable law, shall be paid in Canadian funds by the mailing or delivery of a cheque to each registered Unitholder or in such other manner as the Trustee determines. Any payments so made shall, unless the cheque is not honoured on presentation, discharge the Fund and the Trustee from all liability to the Unitholder in respect of the amount thereof plus any amount required by law to be withheld.

### **Section 10.5 Calculation of Net Asset Value per Unit**

(1) The Net Asset Value per Unit shall be calculated as of the Valuation Time on each Valuation Date by the Manager in accordance with the provisions of this Declaration of Trust. The Net Asset Value per Unit calculated as of the Valuation Time on any Valuation Date shall remain in effect until the Valuation Time on the next following Valuation Date.

The Net Asset Value per Unit on any Valuation Date shall be calculated by dividing the Net Asset Value of the Fund (including an allocation of any net realized capital gains or other amounts payable to Unitholders on or before such date) on such Valuation Date by the total number of Units outstanding on such Valuation Date (before giving effect to any issue of Units issued on that date or the redemption of Units redeemed on that date). The Net Asset Value per Unit shall be expressed in Canadian dollars.

(2) In calculating the Net Asset Value per Unit on such Valuation Date, Net Asset Value of the Fund will be calculated by subtracting the aggregate amount of the Fund's liabilities from the aggregate value of the Fund's assets. The value of the aggregate assets on such Valuation Date is to be determined as follows:

- (a) the value of any cash on hand or on deposit, bill, demand note, account receivable, prepaid expense, distribution, dividend or other amount receivable (or declared to holders of record of securities owned by the Fund on a date before the Valuation Date as of which the value of the assets is being determined, and to be received) and interest accrued and not yet received shall be deemed to be the full amount thereof provided that if the Manager has determined that any such deposit, bill, demand note, account receivable, prepaid expense, distribution, dividend or other amount receivable (or declared to holders of record of securities owned by the Fund on a date before the Valuation Date as of which the value of the assets is being determined, and to be received) or interest accrued and not yet received is not otherwise worth the full amount thereof, the value thereof shall be deemed to be such value as the Manager determines to be the fair market value thereof;
- (b) the value of any bonds, debentures, other debt obligations and short positions shall be valued by taking the average of the bid and ask prices quoted by a major dealer or recognized information provider in such securities at consistent times on a Valuation Date. Short term investments including notes and money market instruments shall be valued at cost plus accrued interest;
- (c) the value of any security which is listed or traded upon a stock exchange (or if more than one, on the principal stock exchange for the security, as determined by the Manager) shall be determined by taking the latest available sale price of recent date, or lacking any recent sales or any record thereof, the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Manager such value does not reflect the value thereof and in which case the latest offer price or bid price shall be used), as at the Valuation Date on which the value of the assets is being determined, all as reported by any means in common use;
- (d) the value of the Forward Agreement and any other forward contract will be the value that would be realized by the Fund if, on the date on which the

value of the assets is being determined, the Forward Agreement or any other forward contract were closed out in accordance with its terms;

- (e) the value of any security which is traded over-the-counter will be priced at the average of the last bid and asked prices quoted by a major dealer or recognized information provider in such securities;
- (f) the value of any security or other asset for which a market quotation is not readily available will be its fair market value on the Valuation Date on which the value of the assets is being determined as determined by the Manager (generally the Manager will value such security at cost until there is a clear indication of an increase or decrease in value);
- (g) any market price reported in currency other than Canadian dollars will be translated into Canadian currency at the rate of exchange available to the Fund from the Custodian on the Valuation Date on which the value of the assets is being determined;
- (h) listed securities subject to a hold period will be valued as described above with an appropriate discount as determined by the Manager and investments in private companies and other assets for which no published market exists will be valued at the lesser of cost and the most recent value at which such securities have been exchanged in an arm's length transaction which approximates a trade effected in a published market, unless a different fair market value is determined to be appropriate by the Manager; and
- (i) the value of any security or property to which, in the opinion of the Manager, the above principles cannot be applied (whether because no price or yield equivalent quotations are available as above provided, or for any other reason) shall be the fair market value thereof determined in good faith in such manner as the Manager from time to time adopts;

provided, however, that for purposes of calculating the Net Asset Value per Unit, on a fully diluted basis if appropriate, in connection with a redemption of Units, the value of the Forward Agreement will be determined on the basis that any bonds, debentures and other debt obligations that are accrued by Marret HYS Trust will be valued by taking the bid price on the Valuation Date and any short positions of Marret HYS Trust will be valued by taking the ask price on the Valuation Date.

#### **Section 10.6 Publication of Net Asset Value Per Unit**

The Fund will make available to the Canadian financial press for publication on a weekly basis the Net Asset Value per Unit.

### **Section 10.7 Withholding Taxes**

The Fund may deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distribution and shall remit such funds to the appropriate taxation authorities in the time and manner required by law.

### **Section 10.8 Distributions on Termination**

On the Termination Date, Section 10.2 shall apply mutatis mutandis as if the Termination Date were December 31 of a taxation year of the Fund.

### **Section 10.9 Encroachment on Capital**

For greater certainty, on direction of the Manager, the Trustee may encroach on and pay from the capital of the Fund an amount payable under this Article 10 if the Net Income, calculated without regard to the provisions of the *Income Tax Act*, is insufficient to permit payment of the amount so payable.

## **ARTICLE 11 MANAGEMENT SERVICES**

### **Section 11.1 Management Services**

The Trustee shall appoint or retain a Manager to manage the business and affairs of the Fund on such terms and conditions as the Trustee shall determine, and as may be set forth more particularly in the Management Agreement. Except as otherwise provided herein or as expressly prohibited by law, the Trustee may grant or delegate to the Manager such authority as the Trustee may in its sole discretion deem necessary or desirable to effect the actual administration of the duties of the Trustee under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees. The Trustee may grant broad discretion to the Manager to, among other things, administer and manage the day-to-day operations of the Fund, to act as agent for the Fund, to execute documents on behalf of the Fund and to make decisions which conform to general policies and general principles set forth herein or established by the Trustee.

The Manager shall have the powers and duties expressly provided for herein and in the Management Agreement, including the power to make all decisions regarding the business of the Fund and to further delegate administration of the Fund, where in the discretion of the Manager, it would be in the best interests of the Fund and the Unitholders to do so.

### **Section 11.2 Duties of Manager**

Under the terms of the Management Agreement, the Manager shall be responsible for providing, or causing to be provided, management and administrative services and facilities to the Fund, including, without limitation:

- (a) entering into, on behalf of the Fund, the Forward Agreement and administering the Forward Agreement;

- (b) authorizing and paying expenses incurred on behalf of the Fund;
- (c) appointing the Custodian, registrar and transfer agent, auditors, legal counsel and other organizations or professionals serving the Fund;
- (d) providing office space and facilities;
- (e) preparing accounting, management and other reports, including such interim and annual reports to Unitholders, financial statements, tax reporting to Unitholders and income tax returns as may be required by applicable law;
- (f) monitoring the ability of the Fund to pay distributions;
- (g) communicating with Unitholders;
- (h) ensuring that the Net Asset Value per Unit is calculated and published;
- (i) ensuring that the Fund complies with all regulatory requirements and applicable stock exchange listing requirements;
- (j) calling meetings of Unitholders as required; and
- (k) providing such other managerial and administrative services as may be reasonably required for the ongoing business and administration of the Fund.

### **Section 11.3 Terms and Conditions of Management Agreement**

It is confirmed that the initial Manager is Marret Asset Management Inc. In the event that the Manager resigns or is terminated as Manager for whatever reason, any new manager appointed by the Trustee shall enter into an agreement which contains terms and conditions similar to the Management Agreement.

### **Section 11.4 Termination of Management Agreement**

(1) The Management Agreement may be terminated at any time by the Trustee on 90 days written notice with the approval of the Unitholders by an Extraordinary Resolution passed at a duly convened meeting of Unitholders called for the purpose of considering such Extraordinary Resolution.

(2) In the event the Manager is in material breach or default of the provisions of the Management Agreement and, if capable of being cured, such breach or default has not been cured within 30 days notice of such breach or default to the Manager, the Trustee shall give notice thereof to Unitholders and Unitholders may direct, by Ordinary Resolution, the Trustee to remove the Manager and appoint a successor Manager.

(3) The Management Agreement may be terminated by the Trustee immediately in the event of the commission by the Manager of any fraudulent act and shall be automatically



terminated if the Manager becomes bankrupt, insolvent or makes a general assignment for the benefit of its creditors.

(4) The Manager may resign if the Fund is in breach or default of the provisions of the Management Agreement and, if capable of being cured, such breach or default has not been cured within 30 days notice of such breach or default to the Fund.

(5) Notwithstanding Section 13.3(3)(c), in the event that the Management Agreement is terminated as provided above, the Trustee shall promptly appoint a successor Manager to carry out the activities of the Manager.

(6) Any subsequent Manager so appointed will be subject to removal or termination with the approval of the Unitholders by an Extraordinary Resolution approved at a meeting of Unitholders called for that purpose in accordance with the provisions set forth in Article 13.

(7) Any arrangement between the Fund and the Manager or any affiliate thereof not otherwise specifically referred to in this Declaration of Trust shall be on terms no less favourable to the Fund than those available from arm's length parties (within the meaning of the *Income Tax Act*) for comparable services.

#### **Section 11.5 Assignment of Management Agreement**

The Manager may assign the Management Agreement to any party with the approval of the Unitholders by an Ordinary Resolution approved at a meeting duly called for such purpose in accordance with the provisions set forth in Article 13, provided that any assignment of the Management Agreement by the Manager to an affiliate shall not require Unitholder approval.

#### **Section 11.6 Offerings**

The Trustee hereby delegates to the Manager responsibility for any and all matters relating to an Offering and for any and all matters relating to the issuance of Units whether or not pursuant to an Offering including:

- (a) ensuring compliance with all applicable laws;
- (b) all matters relating to the content of any Offering Documents, the accuracy of the disclosure contained therein, and the certification thereof;
- (c) all matters concerning the terms of any material contracts pertaining to such Offering;
- (d) all matters concerning any underwriting agreement, agency agreement or subscription agreement providing for the sale of Units or rights to Units; and
- (e) all matters concerning the price at which the Units shall be offered.

**Section 11.7 Standard of Care**

The Manager shall, and the Management Agreement shall provide that the Manager shall, act honestly and in good faith and in the best interests of the Fund and its Unitholders and shall exercise the care, diligence and skill that a reasonably prudent manager would exercise in comparable circumstances.

**Section 11.8 Execution of Agreements by the Manager**

The Manager may, and if directed by the Manager in writing, the Trustee shall, execute any agreements on behalf of the Fund as the Manager shall have authorized within the scope of any authority delegated to it hereunder.

**Section 11.9 Power of Attorney**

Without limiting any of the other provisions of this Article 11, the Trustee hereby irrevocably delegates to the Manager from time to time the full power and authority, and irrevocably constitutes the Manager its true and lawful attorney in fact, to sign on behalf of the Fund all prospectuses, annual information forms, management proxy circulars, financial statements, other Offering Documents and any other documents or agreements ancillary or similar thereto or to complete the transactions contemplated thereby that are required to be signed by the Fund from time to time.

**Section 11.10 Liability of Trustee**

Subject to applicable law, the Trustee shall have no liability or responsibility for any matters delegated to the Manager hereunder or under the Management Agreement, and the Trustee, in relying on the Manager shall be deemed to have complied with its obligations under Section 3.5 and shall be entitled to the benefit of the indemnity provided in Section 14.4.

**Section 11.11 Performance of Obligations**

In the event that the Manager is unable or unwilling to perform its obligations under the Management Agreement, or any matter that is contemplated by the Declaration of Trust to be done or performed by the Manager, or there is no Manager, the Trustee shall either perform all obligations of the Manager thereunder or such matters contemplated by this Declaration of Trust to be done or performed by the Manager or shall be entitled to engage another Person that is duly qualified to perform such obligations or do or perform such matters.

**Section 11.12 Compensation of Manager**

For its services, the Manager shall be entitled to receive a Management Fee from the Fund in such amount and upon the terms set out in the Management Agreement.

## ARTICLE 12 CUSTODIAL ARRANGEMENTS

### **Section 12.1 Appointment**

The Manager, on behalf of the Fund, shall appoint a Canadian chartered bank or trust company to act as custodian of the Fund Property. The Manager shall ensure that the Custodian and any sub-custodian is an institution permitted to act as a custodian of portfolio securities of an investment trust.

### **Section 12.2 Obligations**

With respect to the Fund Property which it holds in safekeeping, the Custodian may be authorized, pursuant to the Custodian Agreement to:

- (a) complete transactions only in accordance with instructions given by the Manager or any portfolio manager;
- (b) detach and realize on maturity any coupons;
- (c) surrender and realize the Fund Property as soon as reasonably practicable after maturity or redemption upon receipt of disposal instructions;
- (d) make payments in accordance with the instructions of the Manager or any portfolio manager, the Trustee or as contemplated by this Declaration of Trust;
- (e) keep accurate accounts of investments, receipts and transactions in connection with its obligations as Custodian hereunder, which accounts and all records relating thereto shall be open at reasonable times to inspection and audit by the Manager, the Trustee and the Auditor; and
- (f) furnish the Manager, within 90 days following December 31 in each year or such other period as may be agreed upon by the Manager and the Trustee, and within 60 days after its removal or resignation as Custodian, with a written account setting forth investments, receipts, disbursements and other transactions effected by it during such period. Upon the expiration of 90 days from the date of filing such annual or other accounts with the Manager, the Custodian shall be forever relieved and discharged from liability or accountability to anyone with respect to the propriety of its acts and transactions shown in any such account, except with respect to such acts or transactions to which the Manager, and portfolio manager or the Trustee has objected by written statement delivered to the Custodian within such 90 day period.

### **Section 12.3 Use of Sub-Custodians and Depositories**

(1) The Custodian may be authorized pursuant to the Custodian Agreement, to appoint such sub-custodians as the Trustee and the Manager may agree upon from time to time,

provided such sub-custodians and any agreements therewith meet any requirements imposed by law (including the provisions of any applicable national or local policy of any applicable Canadian securities administrators) from time to time. Pursuant to the Custodian Agreement, the Custodian shall review on a periodic basis, and in any event no less frequently than annually, all arrangements with sub-custodians to ensure continued compliance with such requirements. In addition, the Custodian shall, within 60 days of the end of the financial year of the Fund, provide the Fund with a report setting out the names and addresses of all sub-custodians appointed by the Custodian holding securities for the Fund and stating whether to the best of the knowledge and belief of the Custodian after making reasonable inquiry such sub-custodians meet such requirements.

(2) Pursuant to the Custodian Agreement, either the Custodian or any sub-custodian may use depository facilities of CDS or such other domestic or foreign depository system or clearing agent as the Custodian or any sub-custodian may deem advisable provided such depository or clearing agency is duly authorized under the laws of its jurisdiction of incorporation or organization to operate a trans-national book based system. The Custodian or any sub-custodian may forward to such depositories any securities now or hereafter received by the Custodian or such sub-custodian pursuant to this Declaration of Trust which are eligible or hereafter become eligible for deposit at the said depositories, to be registered in the name of a nominee of the depository and to be held in an account in the name of the Custodian or such sub-custodian along with other securities held by the depository on behalf of the Custodian or such sub-custodian, and in fulfilling instructions from the Fund, the Custodian or such sub-custodian may receive and deliver securities through the depository's clearing service.

(3) Pursuant to the Custodian Agreement, any sub-custodian appointed by the Custodian may appoint a sub-sub-custodian as the Trustee and the Manager may agree upon from time to time, provided any such appointment and all arrangements in respect thereof meet any requirements imposed by law (including the provisions of any policies adopted by any applicable Canadian securities administrators) from time to time.

#### **Section 12.4 Standard of Care**

Pursuant to the Custodian Agreement, in carrying out its duties hereunder, including the selection and retention of sub-custodians and the giving of instructions to sub-custodians, the Custodian shall exercise (a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, or (b) at least the same degree of care as it exercises with respect to its own property of a similar kind, if this is a higher degree of care than that referred to in clause (a). The Custodian shall not warrant title or guarantee the authenticity of any security received by it or a sub-custodian pursuant to this Article 12.

#### **Section 12.5 Registration**

All securities which are not registered in the name of the Fund shall be registered in the name of the Custodian, or in the name of a sub-custodian or depository, or their respective nominees, with an account number or other designation sufficient to establish

that the beneficial ownership of the securities is vested in the Fund. Where securities are held in bearer form, pursuant to the Custodian Agreement, the Custodian shall designate or segregate them so as to establish that the beneficial ownership of such securities is vested in the Fund. Regardless of the form of registration, pursuant to the Custodian Agreement, the Custodian shall not be responsible for advising the Fund of the expiry of rights or warrants in connection with the securities or to present for redemption or exchange any securities which may be called for such purpose and the Custodian is not responsible for examining lists of drawn and redeemed bonds or notices relating to coupons or dividends.

#### **Section 12.6 Audit**

Pursuant to the Custodian Agreement, the Custodian shall permit the Auditors to inspect, during normal business hours, the securities of the Fund held by the Custodian, provided that the Custodian has received prior written notice of such inspection and the date and time of such inspection is agreeable to the Custodian and the Custodian is advised by such written notice of the identity and means of identifying the persons who shall make the inspection.

#### **Section 12.7 Fees**

The fees and expenses of the Custodian for acting as custodian of the assets of the Fund shall be based upon such fee schedule as the Manager and the Custodian may agree to from time to time. The fees of any sub-custodian appointed as contemplated by Section 12.3 shall be borne by the Custodian.

#### **Section 12.8 Cash Balances**

The Custodian or any sub-custodian appointed by it may retain any cash balances of the Fund on deposit with it in an account with itself or any of its affiliates which bears interest at its daily non-chequing savings rate or such other rate as it may determine without being liable to account for any profit resulting from the use of such cash balances while on deposit. The Custodian or such sub-custodian may from time to time change the above-mentioned interest rate without notice.

#### **Section 12.9 Compliance with Law**

Pursuant to the Custodian Agreement, the Custodian may be authorized to take or refrain from taking any action with respect to its obligations under this Article 12 where required by applicable law. The Custodian may suspend or limit any transfer of the Fund Property hereunder if required by law or by circumstances beyond its control.

#### **Section 12.10 Removal and Resignation**

The Custodian Agreement may provide that the Custodian may be removed by the Trustee or the Manager, on behalf of the Fund, upon 60 days written notice. The Custodian may be removed by the Trustee or the Manager immediately in the event the Custodian is declared bankrupt or shall be insolvent or the assets or the business of the Custodian shall become liable to seizure or confiscation by any public or governmental authority or the Custodian may resign upon 60 days written notice to the Manager whereupon the Manager

shall on behalf of the Trustee and for the benefit of the Fund retain a successor Custodian to carry out the activities of the Custodian.

## **ARTICLE 13 MEETINGS OF UNITHOLDERS**

### **Section 13.1 Meetings of Unitholders**

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

### **Section 13.2 Notice of Meetings and Quorum**

(1) Notice of all meetings of Unitholders shall be given in accordance with applicable laws. Any adjourned meeting may be held as adjourned, without further notice. The accidental omission to give notice to or the non-receipt of notice by a Unitholder shall not invalidate any meeting of Unitholders or any action taken by Unitholders at such meeting. Notwithstanding the foregoing, a meeting of Unitholders may be held at any time without notice if all the Unitholders are present or represented thereat or those not so present or represented have waived notice. Any Unitholder (or duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section 13.2, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

(2) At any meeting of Unitholders, subject as hereinafter provided, a quorum shall consist of two or more Unitholders present in person or by proxy representing not less than five percent of the Units then outstanding. In the event of such quorum not being present on the date for which the meeting is called within one-half hour after the time fixed for the holding of such meeting, the meeting, if convened upon the request of Unitholders, shall be dissolved, but in any other case, the meeting shall stand adjourned to such day being not more than 14 days later and to such place and time as may be appointed by the chairman of the meeting (which for greater certainty can be at a later time on the date of the originally scheduled meeting) and if at such adjourned meeting a quorum as defined above is not present, the Unitholders present either in person or by proxy shall be deemed to constitute a quorum.

### **Section 13.3 Voting Rights of Unitholders**

(1) This Declaration of Trust may be amended by the written consent of the Unitholder in lieu of a meeting if there is only one Unitholder.

(2) Except as required by Section 13.3(3) and Section 13.3(4) or as contemplated elsewhere in this Declaration of Trust, this Declaration of Trust may be amended by an Ordinary Resolution.

(3) The following may only be undertaken with the approval of the Unitholders by an Extraordinary Resolution:

- (a) the removal of the Trustee or any of its affiliates as the trustee of the Fund;
- (b) any change in the Investment Objectives or Investment Restrictions unless such changes are necessary to ensure compliance with applicable laws, regulations or other requirements imposed by applicable regulatory authorities from time to time;
- (c) any material change in the Management Agreement or change in the Manager, other than a change in the Manager where the new manager is an affiliate of the Manager;
- (d) any increase in the Management Fee;
- (e) any amendment, modification or variation in the provisions or rights attaching to the Units;
- (f) any change in frequency of calculating Net Asset Value per Unit to less often than weekly;
- (g) after the closing of the initial public offering of Units and the issue of Units on the exercise of any over-allotment option in connection therewith, the issuance of additional Units, including any offering of rights, warrants or options to existing Unitholders to acquire Units, other than: (i) for net proceeds per Unit equal to or greater than 100% of the most recently calculated Net Asset Value per Unit calculated prior to the entering into of the commitment by the subscriber to purchase such Units or prior to the offering, as the case may be; or (ii) by way of Unit distribution;
- (h) any merger, arrangement or similar transaction or the sale of all or substantially all of the assets of the Fund other than in the ordinary course of business;
- (i) any liquidation, dissolution or termination of the Fund except if it is determined by the Manager, in its sole discretion, to be in the best interest of the Unitholders or otherwise in accordance with the terms of this Declaration of Trust; and
- (j) any amendment to this Section 13.3(3) of this Declaration of Trust except as permitted by Section 13.3(4).

(4) The Trustee is entitled to amend this Declaration of Trust without the consent of, or notice to, the Unitholders, to:

- (a) remove any conflicts or other inconsistencies which may exist between any terms of this Declaration of Trust and any provisions of any law, regulation or requirements of any governmental authority applicable to or affecting the Fund;
- (b) make any change or correction in this Declaration of Trust which is of a typographical nature or is required to cure or correct any ambiguity or defective or inconsistent provision, clerical omission, mistake or manifest error contained therein;
- (c) bring this Declaration of Trust into conformity with applicable laws, rules and policies of Canadian securities regulators or with current practice within the securities or investment fund industries, provided such amendments do not, in the opinion of the Manager, adversely affect the pecuniary value of the interest of the Unitholders or restrict any protection for the Trustee or the Manager or increase their respective responsibilities;
- (d) maintain the status of the Fund as a “mutual fund trust” or, if applicable, a “registered investment” for the purposes of the *Income Tax Act*, or to respond to amendments to such Act or to the interpretation or administration thereof;
- (e) provide added protection or benefit to Unitholders; or
- (f) to make such modifications as may be necessary or desirable in connection with the termination of the Forward Agreement prior to the Termination Date as contemplated by Section 16.1(4)(b).

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

(6) At all meetings of Unitholders, each Unitholder entitled hereunder to vote thereat shall have one vote for each whole Unit held.

(7) The Manager shall not be entitled to vote any Units held beneficially by it in any vote of Unitholders respecting the Manager or the Management Agreement.

(8) Except as set forth in Section 11.4, Section 15.5, Section 16.1(1) and in this Section 13.3, no action taken by the Unitholders and no resolution of the Unitholders at any meeting shall in any way bind the Trustee other than any resolution of the Unitholders in respect of any matter required by securities laws, stock exchange rules or other laws or regulations to be submitted to the Unitholders for their approval. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be carried out in



the manner set forth in this Section 13.3 by Ordinary Resolution of the Unitholders unless otherwise specifically provided under any specific provision of this Declaration of Trust.

(9) Every resolution passed in accordance with the provisions of this Declaration of Trust at a meeting of Unitholders shall be binding on all Unitholders, whether present at or absent from such meeting, and each Unitholder shall be bound to give effect accordingly to every such resolution.

#### **Section 13.4 Record Dates**

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

#### **Section 13.5 Proxies**

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

#### **Section 13.6 Financial Statements**

The Fund shall prepare and file such financial statements and other continuous disclosure documents as are required by applicable law.

#### **Section 13.7 Other Unitholder Information**

(1) The Manager will cause to be maintained with respect to the Fund the same records, where applicable, as are required to be maintained by Section 140(1) of the OBCA. Unitholders will be entitled to have access to such records and to take extracts therefrom,

including obtaining a list of Unitholders, to the same extent and subject to the same conditions as provided in Section 145(1) of the OBCA.

(2) In addition to the financial statements referred to in Section 13.6, the Manager will make available to Unitholders on or before March 31 of each year such other reports as are from time to time required by applicable law, including prescribed forms needed for completion of the Unitholders' tax returns under the *Income Tax Act* and equivalent provincial legislation.

### **Section 13.8 Appointment of Inspector**

The Trustee shall call a meeting of Unitholders upon the written request of Unitholders holding in the aggregate not less than 10% of the Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustee and the Manager of their responsibilities and duties in respect of the Fund and an inspector may be appointed for such purpose, at the expense of the Fund, at such meeting by an Ordinary Resolution.

### **Section 13.9 Notice to Unitholders**

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

## **ARTICLE 14**

### **LIABILITY OF TRUSTEE, MANAGER AND UNITHOLDERS AND OTHER MATTERS**

#### **Section 14.1 Liability of Trustee**

The Trustee as trustee shall be liable to the Fund for any loss, damage, claim, cost, charge, expense or liability resulting from wilful misconduct, bad faith, negligence or disregard of the Trustee's obligations hereunder or occasioned by any breach by the Trustee of the standard of care and duty prescribed by Section 3.5.

#### **Section 14.2 General Limitation of Liability and Indemnification**

(1) The Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian and consultants and agents of the Fund, in incurring any debts, liabilities or obligations, or in taking or omitting to take any other actions for or in connection with the affairs of the Fund are, and shall be conclusively deemed to be, acting for and on behalf of the Fund, and not in their own personal capacities.

(2) No Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with Fund Property or the obligations or the affairs of the Fund or with respect to any agreement relating to the Fund or with respect to any act or omission of the Trustee, any member of the Independent Review Committee, the

Manager, any portfolio manager, the Custodian or any other Person in the performance or exercise, or purported performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or such other Person whether under this Declaration of Trust or otherwise or with respect to any transaction entered into by the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or by any other Person whether pursuant to this Declaration of Trust or otherwise, and all such Persons shall look solely to the Fund Property for satisfaction of claims of any nature arising out of or in connection therewith and the Fund Property only shall be subject to levy or execution. No Unitholder shall be liable to indemnify the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any other Person with respect to any such liability incurred or with respect to any taxes payable by the Fund or by the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any other Person on behalf of or in connection with the Fund, except to the extent that any such liability may be satisfied from the Fund Property. Nothing herein shall preclude the Trustee from exercising any rights granted to it under the *Income Tax Act* or any other applicable taxation legislation to withhold from amounts payable to Unitholders or otherwise recover from Unitholders any taxes which the Fund has paid on behalf of Unitholders.

(3) Subject to Section 14.1 and Section 14.4 hereof, and except as provided in, or for any material breach or default of the obligations under, this Declaration of Trust, the Management Agreement, any portfolio management agreement or any agreement that the Custodian has with the Fund, by the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager or the Custodian, as the case may be, none of the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager or the Custodian, nor any director, officer, employee, consultant or agent thereof (collectively the “**Responsible Parties**”) shall be subject to any liability whatsoever, in tort, contract or otherwise, in connection with Fund Property or the affairs of the Fund, including in respect of any loss or diminution in value of any Fund Property, or the purchase, sale or retention of any Fund Investment by the Manager or any portfolio manager, on behalf of the Fund, to the Fund or to any Responsible Party or to Unitholders, or any of them, or to any other Person for anything done or permitted to be done by any of them including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the affairs of the Fund. Except to the extent provided in this Section 14.2(3), no Responsible Party shall be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses (including legal costs) against or with respect to the Fund arising out of anything done or permitted by any of them to be done in respect of the execution of the duties of their office or for or in respect of the affairs of the Fund. The Fund shall be solely liable therefor and resort shall be had solely to the Fund Property for the payment or performance thereof. The Trustee shall not be liable for the acts or omissions of any member of the Independent Review Committee, the Manager, any portfolio manager or the Custodian.

(4) If, notwithstanding the provisions of this Declaration of Trust, the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any Unitholder or any of their directors, officers, employees, consultants or agents shall be held personally liable as such to any other Person in respect of any debt, liability or obligation incurred by or on behalf of the Fund or subject to Section 14.1, Section 14.2 and Section 14.4 hereof, any action taken or omitted to be taken for or in connection with the affairs of the Fund, such Trustee, member of the Independent Review Committee, Manager, any portfolio manager, Custodian, Unitholder and their directors, officers, employees, consultants and agents (as applicable) shall be entitled to indemnity and reimbursement out of the Fund Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including the fees and disbursements of Counsel.

(5) For greater certainty, in this Article 14, the terms Trustee, any portfolio manager, Manager and Custodian shall include, where the context so requires, the directors, officers, employees, consultants and agents thereof.

### **Section 14.3 Exculpatory Clauses in Instruments**

The Trustee and the Manager shall use reasonable means to inform all Persons having dealings with the Fund of the limitation of liability set forth in Section 14.2 and shall cause to be inserted in any written agreement, undertaking or obligation made or issued on behalf of the Fund an appropriate statement of the disavowal and limitation of liability as set forth in Section 14.2, but the omission of such statement from any such instrument shall not render the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any Unitholder or consultant or agent of the Fund liable to any Person, nor shall the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any Unitholder or any consultant or agent of the Fund be liable to any Person for such omission. If, notwithstanding this provision, the Trustee, any member of the Independent Review Committee, the Manager any portfolio manager, or any Unitholder or any consultant or agent of the Fund shall be held liable to any other Person by reason of the omission of such statement from any such agreement, undertaking or obligation, such Trustee, member of the Independent Review Committee, Manager, any portfolio manager, Custodian, Unitholder, consultant or agent shall be entitled to indemnity and reimbursement out of the Fund Property to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined, including the fees and disbursements of Counsel.

Notwithstanding the foregoing, the Trustee shall not execute on behalf of the Fund a loan agreement, promissory note or other document evidencing or related to the borrowing of money by the Fund unless such document contains an appropriate statement of disavowal and limitation of liability as set forth in Section 14.2.

#### **Section 14.4 Indemnification and Reimbursement**

(1) Subject to Section 14.5, each Person who is, or shall have been the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any Unitholder, or a director, officer, employee, consultant or agent thereof, and each Person who shall have served as a director or officer of any entity at the request of the Trustee or the Manager (collectively, the “**Indemnified Parties**”), shall, subject to any applicable law, be indemnified and reimbursed by the Fund out of the Fund Property against all liabilities and expenses (including judgments, fines, penalties, interest, amounts paid in settlement with the consent of the Trustee and Counsels’ fees and disbursements on a solicitor and client basis) reasonably incurred in connection with such Indemnified Party being or having been such Trustee, a member of the Independent Review Committee, Manager, any portfolio manager, Custodian or Unitholder or director, officer, employee, consultant or agent thereof (as applicable), or having served as a director or officer of any entity at the request of the Trustee or the Manager, including in connection with any action, suit or proceeding to which any Indemnified Party may hereafter be made a party by reason of being or having been such Trustee, a member of the Independent Review Committee, Manager, any portfolio manager, Custodian or Unitholder or director, officer, employee, consultant or agent thereof (as applicable), or having served as a director or officer of any entity at the request of the Fund, except for liabilities and expenses resulting from the Indemnified Party’s wilful misconduct, bad faith, negligence, breach of its duties or standard of care, or material breach or default of the Indemnified Party’s obligations under the relevant agreement between such Indemnified Party and the Fund. An Indemnified Party shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Fund Property, and no Unitholder or other Person shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

(2) For purposes of the preceding paragraph, (i) “action, suit or proceeding” shall include every action, suit or proceeding, civil, criminal, administrative, investigative or other, (ii) the right of indemnification conferred thereby shall extend to any threatened action, suit or proceeding and the failure to institute it shall be deemed its final determination, (iii) advances may be made by the Fund against costs, expenses and fees incurred in respect of the matter or matters as to which indemnification is claimed, provided that any advance shall be made only if the Fund receives an opinion of Counsel to the effect that, on the basis of the facts known to such Counsel that such Trustee, member of the Independent Review Committee, Manager, any portfolio manager, Custodian, Unitholder or director, officer, employee, consultant or agent thereof (as applicable) is entitled to indemnification under this Section 14.4. If required by applicable law, the Indemnified Party will be required to repay any advances. The foregoing right of indemnification shall not be exclusive of any other rights to which the Trustee, any member of the Independent Review Committee, the Manager, any portfolio manager, the Custodian or any Unitholder or director, officer, employee, consultant or agent thereof may be entitled as a matter of law or which may be lawfully granted to such Person and the provisions of this Section 14.4 are severable, and if any provisions hereof shall for any reason be determined invalid or

ineffective, the remaining provisions of this Declaration of Trust relating to indemnification and reimbursement shall not be affected thereby.

#### **Section 14.5 Further Limitation on Indemnification**

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

#### **Section 14.6 Funds of the Trustee**

The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.

#### **Section 14.7 Trustee to Declare Interest**

If the Trustee has, directly or indirectly, any interest in any contract or transaction to which the Fund is or is to be a party, it shall declare such interest in such contract or transaction to the Manager and shall at that time disclose the nature and extent of such interest.

#### **Section 14.8 Trustee May Have Other Interests**

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

- (a) to be an affiliate of a Person from whom any Fund Property has been or is to be purchased or to whom any Fund Property has been or is to be sold by the Fund;
- (b) to use in other capacities knowledge gained in its capacity as the Trustee, provided that it may not make use of any specific confidential information for its own benefit or advantage or for the benefit or advantage of any other Person that, if generally known, might reasonably be expected to affect materially the value of any of the Units;
- (c) to be, or to be an affiliate of, any Person with whom the Fund contracts or deals, or which supplies services to the Fund, including as an underwriter, banker, registrar, transfer agent, distribution agent and custodian of the Fund, as warrant trustee under any warrant indenture governing warrants issued by the Fund and as depository appointed by the Fund under any instalment receipt arrangement of the Fund; and in respect of such contract or arrangement the Trustee agrees to fulfil the obligations of underwriter, banker, registrar, transfer agent, distribution agent, custodian, warrant

trustee or depository, as the case may be, set out in any document addressing the obligations of underwriter, banker, registrar, transfer agent, distribution agent, custodian, warrant trustee and depository, as applicable, signed by the Trustee as such.

- (d) to acquire, hold and sell Units as an affiliate of or fiduciary for any other Person, or as an affiliate of any Person who acquires, holds or sells Units, and to exercise all rights of a holder thereof as if it were not the Trustee;
- (e) to acquire, hold and dispose of, for its own account, any property, real or personal, even if such property is of a character which could be held by the Fund and to exercise all rights of an owner of such property as if it were not the Trustee; and
- (f) to have business interests of any nature and to continue such business interests while the Trustee, including the rendering of professional or other services and advice to other Persons for gain.

#### **Section 14.9 Retention of Benefits by Trustee**

Provided the Trustee discloses the nature and extent of its interest in any contract or transaction as required by Section 14.7, the Trustee is hereby expressly permitted (notwithstanding any liability which might otherwise be imposed by law or in equity upon such Trustee as a trustee) to derive direct or indirect benefit, profit or advantage from time to time as a result of the relationships, matters, contracts, transactions, affiliations or other interests permitted under Section 14.8 and such Trustee shall not be liable in law or in equity to pay or account to the Fund, or to any Unitholder, whether acting individually or on behalf of itself and other Unitholders, for any such direct or indirect benefit, profit or advantage nor shall any contract or transaction be void or voidable at the instance of the Fund or any Unitholder.

#### **Section 14.10 Interests of Consultants and Agents**

- (1) Any consultant or agent of the Fund may, while so engaged and so long as it complies with this Declaration of Trust and any other applicable agreements:
  - (a) acquire, hold and dispose of any property, real or personal, for its own account even if such property is of a character which could be held by the Fund, and may exercise all rights of an owner of such property as if it were not a consultant or agent, as the case may be;
  - (b) have business interests of any nature and may continue such business interests for its own account including the rendering of professional or other services and advice to other persons for gain; and
  - (c) acquire, hold and sell Units in its own capacity or as an affiliate of or fiduciary for any other Person, or as an affiliate of any Person who acquires, holds or sells Units, and may exercise all rights of a holder thereof as if it

were not a consultant or agent of the Fund, provided that it may not make use of any specific confidential information for its own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of any of the Units;

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

(2) For greater certainty, the services of the Manager under the Management Agreement shall not be exclusive, and nothing in the Management Agreement shall prevent any such Person, or, any affiliate thereof, from providing similar services to other investment funds and other clients (whether or not their investment objectives and policies are similar to those of the Fund) or from engaging in other activities.

#### **Section 14.11 Execution of Instruments and Apparent Authority**

(1) Any instrument executed in the name of the Fund or on behalf of the Fund by the Trustee or the Manager shall constitute and shall be deemed to constitute a valid obligation of the Fund enforceable in accordance with its terms as if executed by the Trustee.

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

#### **Section 14.12 Execution of Documents by Manager**

Any approval, consent, direction, order or request required or permitted by this Declaration of Trust to be given or made by the Manager shall (except where otherwise expressly provided herein) be sufficiently given or made if expressed in writing signed in the name of the Manager by one of its duly authorized representatives, as the same may be designated from time to time by the Manager in writing.



**Section 14.13 Execution of Documents by Trustee**

The Trustee may appoint any Person or Persons on behalf of the Fund either to sign documents generally, or to sign specific documents. Any documents so signed by such Person or Persons shall be binding upon the Fund without any further authorization or formality.

**Section 14.14 Reliance**

(1) The Trustee shall be entitled to rely on statements, advice or opinions (including financial statements and Auditors' reports) of the Manager, any portfolio manager, the Custodian, consultants, the Auditors, Counsel or agents whose profession gives authority to a statement made by them on the subject in question and who are considered by the Trustee to be competent.

(2) Subject to Section 3.5 hereof, the Trustee shall be fully protected in relying upon any instruments or directions given by an officer, director, employee or agent of the Manager or by a broker, any portfolio manager, Custodian or any Unitholder, or by such other parties as may be authorized to give instructions or directions to the Trustee. If required by the Trustee, the Custodian, any portfolio manager and the Manager shall file with the Trustee a certificate of incumbency setting forth the names of parties authorized to give instructions or directions to the Trustee together with specimen signatures of such persons and the Trustee shall be entitled to rely on the latest such certificate of incumbency filed with it. The Trustee, the Custodian, any portfolio manager, and the Manager shall each be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and signed or presented by the proper person or persons.

**ARTICLE 15  
AUDITORS**

**Section 15.1 Qualification of Auditors**

The Auditors shall be a nationally recognized firm of chartered accountants qualified to practice in the Province of Ontario.

**Section 15.2 Appointment of Auditors**

The initial Auditors are PricewaterhouseCoopers LLP, Chartered Accountants, who shall hold office at such remuneration as may be agreed upon by the Auditors and the Manager.

**Section 15.3 Reports of Auditors**

The Auditors shall audit the accounts of the Fund at least once in each year, shall make a report to the Trustee and the Unitholders on the annual financial statements of the Fund and fulfil such other responsibilities as they may properly be called upon to assume.

**Section 15.4 Access to Records**

The Auditors shall have access to all records relating to the affairs of the Fund including the relevant records of the Manager, any portfolio manager, the Trustee, the Custodian and any Transfer Agent.

**Section 15.5 Appointment of Auditors**

If the position of Auditors becomes vacant at any time, the Manager shall, on behalf of the Trustee pursuant to the power granted to the Trustee under Section 4.17, appoint new Auditors. The Unitholders may at a meeting of the Unitholders duly called and held for that purpose, remove the Auditors before the expiration of their term of office and appoint other Auditors to hold office by Ordinary Resolution (provided that the only Persons whose names may be put into nomination shall be Persons who meet the requirements of Section 15.1).

**ARTICLE 16  
TERMINATION OF FUND**

**Section 16.1 Termination of the Fund**

(1) The Fund created hereby commenced on the date of execution of this Declaration of Trust and shall continue until the Termination Date provided that, prior to the Termination Date, the Manager may present a proposal to extend the terms of the Fund for a further five year period, subject to the approval of the Unitholders by Ordinary Resolution at a meeting called for such purposes. All Unitholders shall have the right to have their Units redeemed on May 30, 2014 at the Net Asset Value per Unit on May 30, 2014, regardless of whether they voted in favour of the term extension.

(2) Notwithstanding Section 16.1(1) or any other provision hereof, in the event that the Manager resigns and no new Manager is appointed by the Trustee within 120 days of the Manager giving notice to the Trustee of such resignation, the Fund will automatically terminate on the date which is 60 days following the end of such 120 day period.

(3) Notwithstanding Section 16.1(1) or any other provision hereof, the Manager may, in its discretion and upon not less than 30 days prior written notice to the Unitholders by way of press release, terminate the Fund without the approval of Unitholders if, in its opinion, it would be in the best interests of the Unitholders. The Fund shall issue a second press release at least 10 days in advance of such date.

(4) Notwithstanding Section 16.1(1), Section 13.3(3) or any other provision hereof, in the event of an early termination of the Forward Agreement, the Manager may (i) terminate the Fund provided that the Manager has given the Unitholders notice of such termination by way of press release at least 60 days in advance of such Early Termination, or (ii) enter into a new forward agreement or amend this Declaration of Trust to permit the Fund to hold the Marret HYS Trust Portfolio directly, which actions shall not require approval of the Unitholders, provided that the Fund shall issue a press release at least 30 days in advance of any such termination of the Forward Agreement and provided further that the Fund shall

issue a second press release notifying Unitholders of any intention to enter into a new forward agreement or to so amend this Declaration of Trust.

(5) Prior to the Termination Date, the Manager will, after settlement of the Forward Agreement, dispose of the Canadian Securities Portfolio acquired under the Forward Agreement to the extent practicable and will satisfy or make appropriate provision for all liabilities of the Fund.

(6) The Manager may, in its discretion and upon not less than 30 days prior written notice to the Unitholders, postpone the Termination Date by a period of up to 180 days if the Manager determines that it will be unable to convert all of the Fund Investments to cash prior to the original Termination Date and the Manager determines it would be in the best interests of the Unitholders to do so.

(7) Prior to the Termination Date, the Trustee shall proceed to wind up the affairs of the Fund and may fulfil or discharge the contracts of the Fund, perform or cause the Auditors to perform any final audit of the Fund Property, collect the Fund's assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Fund Property to one or more Persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its affairs. The Trustee shall sell and convert into money the Fund Property and after paying, retiring or providing for the payment of all known liabilities and obligations of the Fund, and providing for indemnity against any other outstanding liabilities and obligations, the Trustee shall divide the proceeds of sale, and any portion of the Fund Property not sold in connection with such termination, among the Unitholders rateably according to the respective number of Units held by them. In making any sale under this provision, the Trustee shall have the power to sell by public auction or by private contract and to buy in or rescind or vary any contract of sale and to resell without being answerable for loss and, for said purposes, to do all things, including the execution and delivery of documents, as may be shown to be in its judgment necessary or desirable in connection therewith. The powers of sale and all other powers herein given to the Trustee shall continue as to all property at any time remaining in its hands or ownership, even though the time fixed for distribution of Fund Property may have passed. Any securities or other Fund Property the liquidation of which is not practicable or in respect of which the Manager considers liquidation not to be appropriate prior to the Termination Date shall be distributed to Unitholders in specie.

(8) To the extent that the affairs of the Fund have not been completely wound up and all of the Fund Property distributed to Unitholders on or prior to the Termination Date, this Declaration of Trust shall continue in force and effect to the extent necessary or desirable to permit the Trustee to complete the winding up of the affairs of the Fund and distribute the remaining Fund Property to Unitholders as soon as practicable and, in such event, the Trustee shall carry on no activities on behalf of the Fund except for the purpose of winding up the affairs of the Fund.

**ARTICLE 17  
SUPPLEMENTAL INDENTURES**

**Section 17.1 Provision for Supplemental Indentures for Certain Purposes**

The Trustee may, without approval of the Unitholders and subject to the provisions hereof, and shall, when so directed in accordance with the provisions hereof, execute and deliver indentures or instruments supplemental hereto which thereafter shall form part hereof, for any one or more of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 13.3(4) where the Trustee may do so without the consent, approval or ratification of the Unitholders or any other Person; and
- (b) modifying or amending any provision of this Declaration of Trust where the modification or amendment has been approved by Ordinary Resolution or, if required, by Extraordinary Resolution.

**ARTICLE 18  
MISCELLANEOUS**

**Section 18.1 Governing Law**

This Declaration of Trust is governed by the laws of the Province of Ontario and with reference to the laws thereof and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the said Province.

The Court shall have exclusive jurisdiction in all matters respecting the creation, administration and enforcement of the Fund.

**Section 18.2 Counterparts**

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

**Section 18.3 Severability**

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

**Section 18.4 Execution and Effect of Amended and Restated Declaration of Trust**

An amended and restated Declaration of Trust, setting forth the terms of this Declaration of Trust, as amended to the time of execution, may be executed at any time or

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

**Section 18.5 Quantity, Gender and other Terms**

In this Declaration of Trust whenever the singular form is used, the same shall include the plural as and when required by the context. Words denoting one gender include the other or the neuter, and words denoting the neuter denote either gender, unless a contrary intention is to be inferred from or required by the subject matter or context. References in this Declaration of Trust to “hereof”, “herein”, and “hereunder” shall be deemed to refer to this Declaration of Trust and shall not be limited to the particular text, Article, or Section in which such words appear. In this Declaration of Trust, unless the context otherwise requires, the word “including” is not limiting, whether or not non-limiting language such as “without limitation” or “but not limited to” or words of similar import, is used with reference thereto.

**Section 18.6 Table of Contents and Section Headings**

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

**Section 18.7 Inspection of Documents**

This Declaration of Trust shall be open to inspection by Unitholders, the Manager, any portfolio manager and any agent, consultant or creditor of the Fund and upon written request from any Unitholder, the Trustee shall as quickly as reasonably possible furnish him with a copy hereof. The records of the Fund (other than accounting records, and lists of the holders of Units except as hereinafter specifically provided) shall be open to inspection by the Unitholders to the same extent and upon the same conditions as apply to shareholders of an OBCA Corporation. Unitholders shall have the right to make or cause to be made a list of all or any of the holders of the Units, to the same extent and upon the same conditions as apply to shareholders of an OBCA Corporation.

**Section 18.8 Statutes**

Any reference in this Declaration of Trust to any statute, regulation, rule or policy statement shall include any subsequent amendment or successor legislation.

**ARTICLE 19  
EXECUTION OF DECLARATION OF TRUST**

**Section 19.1 Execution of Declaration of Trust**

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

**IN WITNESS WHEREOF** this Declaration of Trust has been executed by the proper signing officers of the Trustee, duly authorized in that regard.

**EQUITY FINANCIAL TRUST COMPANY,  
as Trustee**

By: (Signed)  
Derrice Richards  
Senior Advisor, Trust Services

By: (Signed)  
Kathy Thorpe  
Senior Trust Officer