
MENU FOODS INCOME FUND

DECLARATION OF TRUST

MARCH 25, 2002

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MENU FOODS INCOME FUND

THIS DECLARATION OF TRUST is made the 25th day of March, 2002.

B E T W E E N:

SERGE DARKAZANLI, resident in the Province of Alberta **THOMAS DI GIACOMO**, resident in the Province of Ontario, and **THOMAS LUBA**, resident in the Province of Ontario, all of whom are the first trustees (the "Initial Trustees") of the trust constituted by this Declaration of Trust, and each person who after the date hereof becomes a trustee of the trust as herein provided (each person, while a trustee of the trust as herein provided, hereinafter called a "Trustee"),

OF THE FIRST PART,

- and -

PAUL HENDERSON, resident in the Province of Ontario (hereinafter called the "Initial Unitholder") and all persons who after the date hereof become holders of Units of the trust as herein provided (collectively at any time, each person who is at that time a holder of a Unit of the trust as herein provided, hereinafter called the "Unitholders"),

OF THE SECOND PART.

WHEREAS the Initial Unitholder desires to create a trust for investment purposes, including investing in securities of Menu Foods Operating Trust ("MFOT");

AND WHEREAS for the purpose of settling the trust created hereunder, the Initial Unitholder is paying to the Trustees an amount of \$10.00 in lawful money of Canada (the "Initial Contribution");

AND WHEREAS the Trustees have agreed to hold the Initial Contribution and all amounts and assets subsequently received under this Declaration of Trust or in respect of the investment of the assets of the Trust in accordance with the provisions hereinafter set forth (the "Trust");

AND WHEREAS the Initial Unitholder and the Trustees desire that the beneficiaries of the Trust, including the Initial Unitholder, shall be the holders of Units;

AND WHEREAS it is intended that Trust Units be offered for sale to members of the public pursuant to a Prospectus;

AND WHEREAS the Initial Unitholder and the Trustees desire that the Trust shall qualify as a "mutual fund trust" pursuant to subsection 132(6) of the *Income Tax Act* (Canada);

AND WHEREAS the parties hereto desire to set out the agreements, terms and conditions which shall govern their mutual and respective rights, powers and obligations with respect to the settlement and administration of the Trust.

NOW THEREFORE THIS DECLARATION WITNESSETH THAT in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustees declare, covenant and agree with the Unitholders, and the Unitholders covenant and agree with the Trustees, as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Declaration of Trust including the recitals hereto, the following terms shall have the following meanings:

- (a) **“affiliate”** has the meaning that would be ascribed thereto in the *Securities Act* (Ontario) if the word company was changed to person (as defined herein);
- (b) **“associate”** has the meaning ascribed thereto in the *Securities Act* (Ontario), as amended from time to time;
- (c) **“Auditors”** means the firm of chartered accountants appointed as the auditors of the Trust from time to time in accordance with the provisions hereof and, initially, means PricewaterhouseCoopers LLP;
- (d) **“Book-Entry 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 Service of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (e) **“Business Day”** means a day which is not a Saturday, Sunday, bank holiday or holiday in the City of Toronto, Ontario;
- (f) **“Cash Flow of the Trust”** shall be calculated in accordance with Section 5.1 and shall mean the amount so calculated;
- (g) **“CDS”** means The Canadian Depository for Securities Limited and its successors;
- (h) **“CDS Participant”** means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with CDS and pledges of securities deposited with CDS;
- (i) **“Class B Exchangeable Units”** means the Class B Exchangeable limited partnership units of MFLP;

- (j) **“Closing”** means the completion of the issue of Trust Units to the public pursuant to the Offering;
- (k) **“Counsel”** means a barrister or solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust;
- (l) **“Date of Closing”** means the date on which Closing occurs; and **“Time of Closing”** means the time on the Date of Closing at which Closing occurs;
- (m) **“Depository”** has the meaning specified in Section 13.1(a);
- (n) **“Distribution Payment Dates”** in respect of a Distribution Period means on or about, but no later than, the date that is 30 days immediately following the end of the Distribution Period or, if such day is not a Business Day, the next following Business Day, or such other dates determined from time to time by the Trustees;
- (o) **“Distribution Period”** means each calendar month in each calendar year from and including the first day thereof and to and including the last day thereof;
- (p) **“Distribution Record Date”** means the last Business Day of each Distribution Period;
- (q) **“Exchange Agreement”** means the agreement between the Trust, MFOT, MFLP and the Vendors under which the Vendors will be entitled to require MFOT, MFLP and the Trust to directly or indirectly exchange Class B Exchangeable Units held by the Vendors into Trust Units (provided that a direct exchange would only be effected if under such exchange the Fund directs that the exchanged Class B Exchangeable Units be transferred to an affiliate of the Fund and not to the Fund);
- (r) **“Exchangeable Security”** means a unit, share or other security convertible into or exchangeable for Trust Unit(s) (directly or indirectly) without the payment of additional consideration therefor, whether or not issued by the Trust;
- (s) **“GenPar Shares”** means the common shares of Menu Foods GenPar;
- (t) **“Global Trust Unit Certificate”** has the meaning specified in Section 13.1(a);
- (u) **“Income of the Trust”** has the meaning ascribed thereto in Section 5.2(a);
- (v) **“Initial Contribution”** means the amount of \$10.00 paid by the Initial Unitholder to the Trustees on the date hereof for the purpose of settling the trust constituted by the Trust;
- (w) **“Initial Trustees”** means those persons named as the first trustees of the Trust in the Party of the First Part to this Declaration of Trust;
- (x) **“Issue Expenses”** means amounts payable by the Trust in respect of the Offering as contemplated by the Prospectus;

- (y) **“Menu”** means Menu Foods Limited;
- (z) **“Menu Entities”** means MFOT, MFLP, Menu Foods GenPar, MFOP, Menu or any other person controlled, directly or indirectly, from time to time by the Fund;
- (aa) **“Menu Foods GenPar”** means Menu Foods GenPar Limited, the general partner of MFLP;
- (bb) **“MFLP”** means Menu Foods Limited Partnership;
- (cc) **“MFOP”** means Menu Foods Operating Limited Partnership;
- (dd) **“MFOT”** means Menu Foods Operating Trust;
- (ee) **“MFOT Note Indenture”** means the agreement to be entered into between MFOT and a trust company pursuant to which the MFOT Notes will be issued and MFOT Note Indenture also means any subsequent agreement which may be entered into between a person and a trust company pursuant to which MFOT Notes are issued;
- (ff) **“MFOT Notes”** means the notes of MFOT issued pursuant to the MFOT Note Indenture to be designated as Series 1, Series 2 or Series 3 and MFOT Notes also means any unsecured subordinated notes of MFOT which may be subsequently issued by MFOT pursuant to the MFOT Note Indenture or otherwise; provided however, that for the purposes of determining the number of MFOT Notes which are to be distributed to Unitholders pursuant to Section 6.5, such number of notes having an aggregate principal amount equal to the amount of the Trust’s indebtedness on account of borrowed money shall be deemed not to be outstanding and shall not be distributed;
- (gg) **“MFOT Units”** means units of MFOT;
- (hh) **“Net Realized Capital Gains”** has the meaning ascribed thereto in Section 5.2(a);
- (ii) **“non-tendering offeree”** means, where a take-over bid is made for all of the Trust Units (including Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities) other than those held by or issuable to the offeror, a holder of Trust Units or Exchangeable Securities who does not accept the take-over bid and includes a subsequent holder of that Trust Unit or Exchangeable Security who acquires it from the first mentioned holder;
- (jj) **“Offering”** means the initial offering of Trust Units to the public pursuant to the Prospectus, as described under “Plan of Distribution” therein;
- (kk) **“offeror”** means a person other than an agent, who makes a take-over bid and includes two or more persons who, directly or indirectly;
 - (i) make a take-over bid jointly or in concert; or

- (ii) intend to exercise jointly or in concert voting rights attached to the securities for which a take-over bid is made;
- (ll) **“person”** means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks trust companies, pension funds, business trusts or other organizations, whether or not legal entities and government and agencies and political subdivisions thereof;
- (mm) **“Prospectus”** means the (final) prospectus of the Trust providing for the Offering and **“Preliminary Prospectus”** means the preliminary prospectus of the Trust with respect to the Offering, and in each case includes any amendment or amendments thereof;
- (nn) **“Redemption Price”** has the meaning ascribed thereto in Section 6.3(a);
- (oo) **“Special Resolution”** has the meaning ascribed thereto in Section 12.6;
- (pp) **“Special Trust Units”** means the units of the Fund referred to in Section 3.1(a) authorized and issued hereunder;
- (qq) **“Subordination Agreement”** has the meaning ascribed thereto in Section 2.7(1)(d);
- (rr) **“take-over bid”** has the meaning ascribed to such term in the *Securities Act* (Ontario), as amended from time to time;
- (ss) **“Tax Act”** means the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 and the regulations thereunder;
- (tt) **“this Declaration of Trust”, “this Declaration”, “hereto”, “herein”, “hereof”, “hereby”, “hereunder”** and similar expressions refer to this instrument and not to any particular Article, Section or portion hereof, and include any and every instrument supplemental or ancillary hereto;
- (uu) **“Transfer Agent”** means such company as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any sub-transfer agent duly appointed by the Transfer Agent;
- (vv) **“Trust”** means the trust constituted by this Declaration of Trust;
- (ww) **“Trust Assets”**, at any time, means such of the following monies, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust:
 - (i) the Initial Contribution;
 - (ii) all funds or property derived from the issuance or sale of Units or other cash received by the Trust;

- (iii) the MFOT Units and the MFOT Notes;
- (iv) any proceeds of disposition of any of the foregoing property;
- (v) any securities issued by MFOT on the maturity or redemption of any MFOT Notes; and
- (vi) all income, interest, profit, return of capital, gains and accretions and all substituted assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to such foregoing property or such proceeds of disposition;
- (xx) **“Trust Liabilities”** has the meaning ascribed thereto in Section 2.7(a);
- (yy) **“Trust Units”** means the units of the Trust referred to in Section 3.1(a) authorized and issued hereunder;
- (zz) **“Trustee”**, at any time, means an individual who is, in accordance with the provisions hereof, a trustee of the Trust at that time including, without limitation so long as they remain as trustees, each of the Initial Trustees and **“Trustees”** means, at any time, all of the individuals, each of whom is at that time a trustee;
- (aaa) **“Underwriting Agreement”** means an agreement to be entered into between the Vendors, the Trust and the underwriters noted therein;
- (bbb) **“Unit Certificate”** means a certificate, in the form approved by the Trustees, evidencing one or more Units, issued and certified in accordance with the provisions hereof, and **“Trust Unit Certificates”** means a certificate, in form approved by the Trustees, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof;
- (ccc) **“Unitholders”** means at any time the holders at that time of one or more Units, as shown on the register of such holders maintained by the Transfer Agent on behalf of the Trust;
- (ddd) **“Units”** means the Trust Units and the Special Trust Units;
- (eee) **“Vendors”** means Robert Bras, Debdonell Holdings Limited, Particicorp (Menu) Ltd. and other persons who, as of the date of this Declaration of Trust, own shares of Menu Foods Corporation, as listed on Schedule “A” hereto.

1.2 **References to Acts Performed by the Trust**

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

1.3 Tax Act

Any reference herein to a particular provision of the 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 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 Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

1.4 Number and Gender

In this Declaration of Trust, unless herein otherwise expressly provided or unless the context otherwise requires, words importing the singular number include the plural, and vice versa; and words importing a gender shall include the feminine, masculine and neuter genders.

1.5 Headings for Reference Only

The division of this Declaration of Trust into Articles and Sections, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Declaration of Trust.

1.6 Day Not a Business Day

In the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day. This Section is not applicable to Sections 5.1, 5.2, 5.3 and 5.4.

1.7 Time of the Essence

Time shall be of the essence in this Declaration of Trust.

1.8 Governing Law

This Declaration of Trust and the Unit Certificates shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as Ontario contracts. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.

ARTICLE 2 DECLARATION OF TRUST

2.1 Establishment of Trust

The Trustees hereby declare and agree to hold the Trust Assets in trust for the use and benefit of the holders of Trust Units, their successors, permitted assigns and personal representatives, and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

2.2 Initial Contribution

The Initial Unitholder hereby pays, concurrent with the execution of this Declaration of Trust, the Initial Contribution to the Trustees for the purpose of settling the Trust, and the Initial Unitholder is hereby issued one Trust Unit in the Trust. Receipt of the Initial Contribution is hereby acknowledged by the Initial Trustees.

2.3 Name of Trust

- (a) The Trust shall be known and designated as the “MENU FOODS INCOME FUND” and, whenever practicable, lawful and convenient, the property of the Trust shall be held and the affairs of the Trust shall be conducted and transacted under that name.
- (b) If the Trustees determine that the use of such name is not practicable, legal or convenient, the Trust may use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

2.4 Head Office

The head office of the Trust hereby created shall be located at 8 Falconer Drive, Mississauga, Ontario L5M 2C1 or such other place or places in Canada as the Trustees may from time to time designate.

2.5 Nature of the Trust

The Trust is a limited purpose trust, established for the purposes specified in Section 4.1. The Trust is not, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company, nor shall the Trustees or any individual Trustee or the Unitholders or any of them or any person be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. The Trustees are not and shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees shall be solely that of beneficiaries of the Trust and their rights shall be limited to those conferred upon them by this Declaration of Trust.

2.6 Rights of Unitholders

The rights of each Unitholder to call for a distribution or division of assets, monies, funds, income and capital gains held, received or realized by the Trustees are limited to those contained herein and, except as provided herein, no Unitholder shall be entitled to call for any partition or division of the Trust Assets or for a distribution of any particular asset forming part of the Trust Assets or of any particular monies or funds received by the Trustees. The legal ownership of the assets of the Trust and the right to conduct the activities of the Trust are vested exclusively in the Trustees, and no Unitholder has or is deemed to have any right of ownership in any of the assets of the Trust, except as specifically provided herein. Except as specifically provided herein, no Unitholder or Unitholders shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise

of any powers or authorities conferred upon the Trustees under this Declaration of Trust. The Units shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth in this Declaration of Trust.

2.7 Liability of Unitholders

- (a) No Unitholder, in its capacity as such, shall incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind to any person in connection with: (i) the Trust Assets or the ownership, use, operation, acquisition or disposition thereof or exercise or enjoyment of the rights, privileges, conditions or benefits attached thereto, associated therewith or derived therefrom; (ii) the obligations or the activities or affairs of the Trust; (iii) any actual or alleged act or omission of the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (iv) any act or omission of the Trustees or any other person in the performance or exercise, or purported or attempted performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustees or such other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); (v) any transaction entered into by the Trustees or by any other person in respect of the activities or affairs of the Trust (whether or not authorized by or pursuant to this Declaration of Trust); or (vi) any taxes, levies, imposts or charges or fines, penalties or interest in respect thereof payable by the Trust or by the Trustees or by any other person on behalf of or in connection with the activities or affairs of the Trust (collectively, “Trust Liabilities”).
- (b) No Unitholder in its capacity as a Unitholder shall be liable to indemnify the Trustees or any other person with respect to any Trust Liabilities.
- (c) To the extent that, notwithstanding the provisions of this Section 2.7, any Unitholder, in its capacity as such, may be determined by a judgment of a court of competent jurisdiction to be subject to or liable in respect of any Trust Liabilities, such judgment and any writ of execution or similar process in respect thereof, shall be enforceable only against, and shall be satisfied only out of, the Unitholder’s share of the Trust Assets represented by its Trust Unit Certificate(s).
- (d) If any Trust Asset should be distributed or declared to be distributable to Unitholders contrary to the provisions of any subordination agreement (each a “Subordination Agreement”) between the Trust and the persons entitled to enforce any of the indebtedness of an affiliate of the Trust, then the persons entitled to enforce such Subordination Agreements or subordination provisions shall be entitled to pursue whatever remedies may be available to them to enforce such Subordination Agreements or provisions and the limitations in Section 2.7(c) shall not apply to any judgment in respect of (and to the extent only based on) such contrary distribution and no Unitholder shall have the right to enforce any distribution contrary to such Subordination Agreements or provisions.

ARTICLE 3 ISSUE AND SALE OF UNITS

3.1 Nature of Units

- (a) The beneficial interests in the Trust shall be divided into interests of two classes, described and designated as “Trust Units” and “Special Trust Units”, respectively, 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 Trust Units and/or Special Trust Units registered in the name of the Unitholder.
- (b) Each Trust Unit represents an equal undivided beneficial interest in any distribution from the Trust (whether of Income of the Trust, Net Realized Capital Gains or other amounts) and in any net assets of the Trust in the event of termination or winding-up of the Trust. All Trust Units outstanding from time to time shall be entitled to equal shares in any distributions by the Trust and, in the event of termination or winding-up of the Trust, in the net assets of the Trust. All Trust Units shall rank among themselves equally and rateably without discrimination, preference or priority. Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders or in respect of any written resolution of Unitholders.
- (c) Each Special Trust Unit shall not be entitled to any interest or share in the distributions or net assets of the Trust. Special Trust Units may be issued in series and shall only be issued in connection with or in relation to Class B Exchange Units or, if the Trustees so determine, other Exchangeable Securities. A Special Trust Unit shall be issued in tandem with each Class B Exchangeable Unit issued and, if the Trustees so determine, other Exchangeable Securities issued. Each Special Trust Unit shall entitle the holder of record thereof to a number of votes at all meetings of Unitholders or in respect of any written resolution of Unitholders equal to the number of Trust Units into which the Exchangeable Security to which such Special Trust Unit relates is, directly or indirectly, exchangeable, or convertible (other than in respect of Exchangeable Securities which have been so exchanged or converted and are held by the Fund or an affiliate thereof) without taking account of any adjustment to adjustments to the exchange ratio pursuant to Section 13.12 hereof. Notwithstanding the foregoing the Special Trust Units shall not be entitled to vote in respect of a proposed settlement in cash of an exchange request made pursuant to the Exchange Agreement.
- (d) Concurrently with the issuance of any Exchangeable Securities and associated Special Trust Units, the Trust shall enter into such agreements, including voting and exchange trust agreements and exchangeable security support agreements, as may be necessary or desirable to properly provide for the terms of the Exchangeable Securities, including to provide for voting of such Special Trust Units.

3.2 Authorized Number of Units

The aggregate number of Trust Units and Special Trust Units which is authorized and may be issued hereunder is unlimited.

3.3 Issue of Units

- (a) Units may be issued by the Trust at the times, to the persons, for the consideration and on the terms and conditions that the Trustees determine and, without limiting the generality of the foregoing, the Trustees may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Units from the Trust or from any other person or procuring or agreeing to procure purchasers for Units. Without limitation of the foregoing, the Trustees may create and issue rights, warrants (including so-called “special warrants” which may be exercisable for no additional consideration) or options to subscribe for Units which rights, warrants or options may be exercisable at such subscription price or prices and at such time or times as the Trustees may determine. The rights, warrants or options so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant or option shall not be a Unit and the holder thereof shall not be a Unitholder.
- (b) Units are only to be issued as fully paid in money, property, including an obligation to pay consideration in instalments, or past services, and are not to be subject to future calls or assessments, except that Units to be issued under an offering may be issued for a consideration payable in instalments and the Trust may take a security interest over such Units for unpaid instalments.

3.4 No Fractional Units

Fractions of Units shall not be issued, except pursuant to distributions of additional Units to all Unitholders pursuant to Section 5.7.

3.5 Re-Purchase of Initial Trust Unit by Trust

Immediately after the Closing, the Trust will purchase the initial Trust Unit from the Initial Unitholder, and the Initial Unitholder shall sell the initial Trust Unit to the Trust, for a purchase price of \$10.00 and, upon the completion of such purchase and sale, the initial Trust Unit shall be cancelled and shall no longer be outstanding for any of the purposes of this Declaration of Trust.

3.6 Consolidation of Trust Units

Immediately after any *pro rata* distribution of additional Trust Units to all holders of Trust Units pursuant to Section 5.7, the number of the outstanding Trust Units will automatically be consolidated such that each such holder will hold after the consolidation the same number of Trust Units as such holder held before the distribution of additional Trust Units. In this case, each Trust Unit Certificate representing a number of Trust Units prior to the distribution of

additional Trust Units is deemed to represent the same number of Trust Units after the non-cash distribution of additional Trust Units and the consolidation.

3.7 No Pre-Emptive Rights

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

ARTICLE 4 INVESTMENTS OF TRUST

4.1 Purpose of the Trust

The Trust is a limited purpose trust and its operations and activities shall be restricted to:

- (a) acquiring, investing in, holding, transferring, disposing of and otherwise dealing with securities of MFOT and other corporations, partnerships, trusts or other persons involved in the manufacture and sale of pet food and such other investments as the Trustees may determine;
- (b) temporarily holding cash in interest bearing accounts, short-term government debt or investment grade corporate debt for the purposes of paying the expenses, if any, of the Trust, paying amounts payable by the Trust in connection with the redemption or repurchase of any Trust Units, and making distributions to holders of Trust Units;
- (c) issuing Units and other securities of the Trust (including Exchangeable Securities, or warrants, options or other rights to acquire Units or other securities of the Trust), for the purposes of:
 - (i) obtaining funds to conduct the activities described in paragraph (a), above, including raising funds for further acquisitions;
 - (ii) implementing unitholder rights plans, distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, incentive option plans or other compensation plans, if any, established by the Trust;
 - (iii) carrying out any of the transactions contemplated by the Prospectus (including satisfaction of exchange rights under the Exchange Agreement); and
 - (iv) making non-cash distributions to holders of Trust Units as contemplated by this Declaration of Trust including pursuant to distribution reinvestment plans, if any, established by the Trust;
- (d) guaranteeing the obligations of any of the Menu Entities pursuant to any good faith debt for borrowed money incurred by such entity for the purpose of carrying on its business, and pledging securities issued by such entity and owned by the Trust as security for such guarantee;

- (e) repurchasing and redeeming securities, including Units, of the Trust, subject to the provisions of this Declaration of Trust and applicable law; and
- (f) undertaking such other activities or taking such actions, including investing in securities as shall be approved by the Trustees from time to time,

provided that the Trust shall not undertake any activity, take any action, or make any investment which would result in the Trust not being considered a “unit trust” “mutual fund trust” or registered investment for purposes of the Tax Act.

4.2 Investment of Proceeds of Offering

At and immediately after the Time of Closing, the Trust shall use the proceeds from the sale of Trust Units issued on the Offering, net of expenses associated with the Offering, to subscribe for and acquire the MFOT Units and MFOT Notes, which proceeds will ultimately be applied to acquire all of the securities and assets of Menu and to repay certain existing indebtedness of Menu, all as more particularly described in the Prospectus.

4.3 Other Investments

To the extent that any monies or other property received by the Trust or the Trustees are not to be immediately used by the Trustees for the purpose of making distributions under Article 5 hereof, the Trustees are hereby authorized and, where prudent to do so, shall invest such monies in: (i) debt obligations of or guaranteed by the Government of Canada or a province of Canada; (ii) short term commercial paper obligations of a corporation whose short term commercial paper is rated R-1 or higher by Dominion Bond Rating Service Limited or A-1 or higher by Standard & Poor’s Corporation; or (iii) interest-bearing accounts and certificates of deposit issued or guaranteed by one of the six largest (in terms of total assets) Canadian chartered banks. The Trustees shall not purchase or authorize the purchase of any investment which is “foreign property” under subsection 206(1) of the Tax Act if such purchase would result in the Trust exceeding the foreign property limitations contained in the Tax Act. For the purpose hereof, “short term” shall mean having a date of maturity or call for payment not more than 60 days from the date on which the investment is made.

ARTICLE 5 DISTRIBUTIONS

5.1 Computation of Cash Flow of the Trust of the Trust

The Cash Flow of the Trust, for, or in respect of, any Distribution Period, shall be determined by adding:

- (i) all cash amounts which are received by the Trust for or in respect of the Distribution Period, including, without limitation, interest, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness; plus:

- (ii) the proceeds of any issuance of Units or any other securities of the Trust net of the expenses of distribution and, if applicable, the use of proceeds of any such issuance for the intended purpose; less:
- (iii) all amounts which relate to the redemption of Trust Units and which have become payable in cash by the Trust in such Distribution Period.

5.2 Computation of Income and Net Realized Capital Gains

- (a) The Income of the Trust for any taxation year of the Trust shall be the net income for the year determined pursuant to the provisions of the Tax Act having regard to the provisions thereof which relate to the calculation of income of a trust, and taking into account such adjustments thereto as are determined by the Trustees in respect of dividends received from taxable Canadian corporations, amounts paid or payable by the Trust to holders of Trust Units and such other amounts as may be determined in the discretion of the Trustees; provided, however, that capital gains and capital losses shall be excluded from the computation of net income.
- (b) The Net Realized Capital Gains of the Trust for any taxation year of the Trust shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds (i) the aggregate of the capital losses of the Trust in the year, (ii) any capital gains which are realized by the Trust as a result of a redemption of Trust Units pursuant to Article 6, and (iii) the amount determined by the Trustees in respect of any net capital losses for prior taxation years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year.

5.3 Distributions of Cash Flow of the Trust

The Trustees may, on or before each Distribution Record Date, declare payable to the holders of Trust Units on such Distribution Record Date, all or any part of the Cash Flow of the Trust for the Distribution Period which includes such Distribution Record Date. The proportionate share of each Trust Unit of the amount of such Cash Flow of the Trust shall be determined by dividing such amount by the number of issued and outstanding Trust Units on such Distribution Record Date. Each holder of Trust Units' share of such Cash Flow of the Trust shall be an amount equal to the proportionate share of each Trust Unit of such Cash Flow of the Trust multiplied by the number of Trust Units owned of record by each such holder of Trust Units on such Distribution Record Date. Subject to Section 5.7, Cash Flow of the Trust which has been declared to be payable to holders of Trust Units in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date in respect of such Distribution Period.

5.4 Other Distributions

- (a) In addition to the distributions which are made payable to holders of Trust Units pursuant to Section 5.3, the Trustees may declare to be payable and make distributions to holders of Trust Units, from time to time, out of Income of the Trust, Net Realized Capital Gains, the capital of the Trust or otherwise, in any year, in such amount or amounts, and on such dates as the Trustees may determine.

- (b) Having regard to the present intention of the Trustees to allocate, distribute and make payable to holders of Trust Units all of the Income of the Trust, Net Realized Capital Gains and any other applicable amounts so that the Trust will not have any liability for tax under Part I of the Tax Act in any taxation year, the following amounts shall, without any further actions on the part of the Trustees, be due and payable to holders of Trust Units of record on December 31 in each such year:
 - (i) an amount equal to the amount, if any, by which the Income of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Income of the Trust for such year; and
 - (ii) an amount equal to the amount, if any, by which the Net Realized Capital Gains of the Trust for such year exceeds the aggregate of the portions, if any, of each distribution made by the Trust pursuant to Section 5.3 and Section 5.4(a) which have been determined by the Trustees, pursuant to Section 5.5, to have been payable by the Trust out of Net Realized Capital Gains for such year.
- (c) The proportionate share of each Trust Unit of the amount of any distribution made pursuant to either or both of Sections 5.4(a) and (b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units on the applicable record date in respect of a distribution pursuant to Section 5.4(a) and on December 31 in respect of a distribution pursuant to Section 5.4(b). Each holder of Trust Units' share of the amount of any such distribution shall be an amount equal to the proportionate share of each Trust Unit of such amount multiplied by the number of Trust Units owned of record by each such holder of Trust Units on such applicable record date or December 31 in the year of such distribution, as the case may be. Subject to Section 5.7, amounts which have been declared to be payable to holders of Trust Units pursuant to either Section 5.4(a) or (b) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable record date in respect of a distribution pursuant to Section 5.4(a) or December 31 in the applicable year in respect of a distribution pursuant to Section 5.4(b).
- (d) In addition to the distributions which are made payable to holders of Trust Units, the Trustees may designate any capital gain realized by the Trust as a result of the redemption of Trust Units pursuant to Section 6.5 to the redeeming holders of Trust Units in accordance with that Section.

5.5 Character of Distributions and Designations

In accordance with and to the extent permitted by the Tax Act, the Trustees in each year shall make designations in respect of the amounts payable to holders of Trust Units for such amounts that the Trustees consider to be reasonable in all of the circumstances, including, without limitation, designations relating to taxable dividends received by the Trust in the year on

shares of taxable Canadian corporations, net capital gains realized by the Trust in the year and foreign source income of the Trust for the year, as well as elect under subsections 104(13.1) and/or (13.2) of the Tax Act that income be taxed to the Trust, rather than to such Unitholders. Distributions payable to holders of Trust Units pursuant to this Article 5 shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as the Trustees shall, in their absolute discretion, determine. For greater certainty, it is hereby declared that any distribution of Net Realized Capital Gains shall include the non-taxable portion of the capital gains of the Trust which are encompassed in such distribution.

5.6 Enforceability of Right to Receive Distributions

Subject to Section 2.7(d), for greater certainty, it is hereby declared that each holder of Trust Units shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution which is declared payable to such Unitholder pursuant to this Article.

5.7 Method of Payment of Distributions

- (a) Where the Trustees determine that the Trust does not have available cash in an amount sufficient to make payment of the full amount of any distribution which has been declared to be payable pursuant to this Article on the due date for such payment, the payment may, at the option of the Trustees, include the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.
- (b) The value of each Trust Unit which is issued pursuant to Section 5.7(a) shall be the market price (as defined in Section 6.3) of the Trust Units on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, on the applicable Distribution Record Date in respect of a distribution under Section 5.4(a) or December 31 in respect of a distribution under Section 5.4(b), provided that if the particular date is not a Business Day then the market price (as defined in Section 6.3) shall be determined on the last Business Day which precedes such particular date.

5.8 Withholding Taxes

The Trustees may deduct or withhold from distributions payable to any Unitholder all amounts required by law to be withheld from such distribution.

5.9 Definitions

Unless otherwise specified or the context otherwise requires, any term in this Article 5 which is defined in the Tax Act shall have for the purposes of this Article 5 the meaning that it has in the Tax Act.

5.10 Distribution Reinvestment and Unit Purchase Plan

Subject to any required regulatory approvals (and any Unitholder approval imposed by regulatory requirements), the Trustees may, acting in their sole discretion, establish one or more unitholder rights plans distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans, Trust Unit option plans or other compensation plans at any time and from time to time.

ARTICLE 6 REDEMPTION OF TRUST UNITS

6.1 Right of Redemption

Each holder of Trust Units shall be entitled to require the Trust to redeem at any time or from time to time at the demand of such Unitholder all or any part of the Trust Units registered in the name of such Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.

6.2 Exercise of Redemption Right

- (a) To exercise a holder of Trust Units' right to require redemption under this Article 6, a duly completed and properly executed notice requiring the Trust to redeem Trust Units, in a form approved by the Trustees, specifying the number of Trust Units to be so redeemed, shall be sent to the Trust at the head office of the Trust and to CDS. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to the Trustees and CDS and is accompanied by any further evidence that the Trustees or CDS may reasonably require with respect to the identity, capacity or authority of the person giving such notice.
- (b) Upon receipt by the Trust of the notice to redeem Trust Units, the holder of Trust Units shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor unless the redemption payment is not made as provided for herein) including the right to receive any distributions thereon which are declared payable to the holders of Trust Units of record on a date which is subsequent to the day of receipt by the Trust of such notice. Trust Units shall be considered to be tendered for redemption on the later of the date that the Trust and CDS have, to their satisfaction, received the notice and other required documents or evidence as aforesaid.

6.3 Cash Redemption

- (a) Upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the holder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "Redemption Price") equal to the lesser of:

- (i) 90% of the weighted average price per Trust Unit at which the Trust Units have traded on the principal stock exchange on which the Trust Units are listed (or, if the Trust Units are not listed on any such exchange, on the principal market on which the Trust Units are quoted for trading) during the period of the last 10 trading days during which the Trust Units traded on such exchange or market immediately prior to the date on which the Trust Units were tendered for redemption; and
- (ii) 100% of the “closing market price” on the principal stock exchange on which the Trust Units are listed (or, if the Trust Units are not listed on any such exchange, on the principal market on which the Trust Units are quoted for trading) on the date that the Trust Units were tendered for redemption.

For the purposes of Section 6.3(a)(ii), the “closing market price” shall be: an amount equal to the closing price of the Trust Units if there was a trade on the date and the exchange or market provides a closing price; an amount equal to the average of the highest and lowest prices of Trust Units on the date if there was trading and the exchange or other market provides only the highest and lowest trading prices of Trust Units traded on a particular day; or the average of the last bid and last asking prices on the date if there was no trading on the date.

- (b) Subject to Sections 6.4 and 6.5, the Redemption Price payable in respect of the Trust Units surrendered for redemption during any calendar month shall be satisfied by way of cash payment within five days after the end of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former holder of Trust Units unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former holders of Trust Units in respect of the Trust Units so redeemed.

6.4 No Cash Redemption in Certain Circumstances

Section 6.3(b) shall not be applicable to Trust Units tendered for redemption by a holder of Trust Units, if:

- (a) the total amount payable by the Trust pursuant to Section 6.3 in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month exceeds \$50,000 (the “Monthly Limit”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Trust Units tendered for redemption in any calendar month. Trust Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to Section 6.3(b) exceeds the Monthly Limit will be redeemed for cash pursuant to Section 6.3(b) and, unless any applicable regulatory approvals are required, by a distribution in specie of securities of MFOT under Section 6.5 on a *pro rata* basis;

- (b) at the time such Trust Units are tendered for redemption, the outstanding Trust Units are not listed for trading on The Toronto Stock Exchange or traded or quoted on any stock exchange or market which the Trustees consider, in their sole opinion, provides representative fair market value prices for the Trust Units; or
- (c) the normal trading of the outstanding Trust Units is suspended or halted on any stock exchange on which the Trust Units are listed for trading or, if not so listed, on any market on which the Trust Units are quoted for trading, on the date that such Trust Units tendered for redemption were tendered to the Trust for redemption or for more than five trading days during the 10-day trading period prior to the date on which such Trust Units tendered for redemption were tendered for redemption; and
- (d) the redemption of Trust Units will result in the delisting of the Trust Units on the principal stock exchange on which the Trust Units are listed.

6.5 In Specie Redemption

If, pursuant to Section 6.4, Section 6.3(b) is not applicable to Trust Units tendered for redemption by a holder of Trust Units, the Redemption Price per Trust Unit specified in Section 6.3 to which the holder of Trust Units would otherwise be entitled shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution in specie to such holder of Trust Units of assets held by the Trust. In such circumstances, the Trust shall redeem that number of MFOT Units and Series 1 MFOT Notes equal to the product of (i) the number of Trust Units tendered for redemption divided by the total number of Trust Units outstanding on the date on which the Trust Units were tendered for redemption, and (ii) the number of MFOT Units and Series 1 MFOT Notes (in the principal amount of \$100.00) held by the Trust on the date the Trust Units were tendered for redemption, for redemption proceeds consisting of Series 2 MFOT Notes and Series 3 MFOT Notes, respectively. For greater certainty, the principal amount of the Series 3 MFOT Notes received on redemption of Series 1 MFOT Notes shall be in the same aggregate principal amount as the redeemed Series 1 MFOT Notes, and the aggregate principal amount of the Series 2 MFOT Notes shall be in the aggregate principal amount of the balance of the aggregate Redemption Price payable in connection with the redemption contemplated hereby. The Redemption Price payable pursuant to this Section 6.5 in respect of Trust Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the holder of Trust Units who exercised the right of redemption, on the last day (the "Transfer Date") of the calendar month following the month in which the Trust Units were tendered for redemption, of the number of Series 2 MFOT Notes and Series 3 MFOT Notes determined as aforesaid. Payments by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of certificates representing the Series 2 MFOT Notes and Series 3 MFOT Notes by registered mail in a postage prepaid envelope addressed to the former holder of Trust Units and/or any party having a security interest. Upon such payment, the Trust shall be discharged from all liability to such former Unitholder and any party having a security interest in respect of the Trust Units so redeemed. Where the Trust makes a distribution in specie of a *pro rata* number of securities of MFOT on a redemption of Trust Units pursuant to this Section, the Trustees may, in their sole discretion,

designate to the redeeming Unitholders any capital gain realized by the Trust as a result of the distribution of such securities to the Unitholder.

6.6 Cancellation of all Redeemed Trust Units

All Trust Units which are redeemed under this Article 6 shall be cancelled and such Trust Units shall no longer be outstanding and shall not be reissued.

6.7 Retraction of Special Trust Units

At such time as no Exchangeable Securities (other than Exchangeable Securities owned by the Trust and its affiliates) relating to a Special Trust Unit are outstanding, and no shares of stock, debt, options or other securities or agreements which could give rise to the issuance of any such Exchangeable Securities to any person (other than the Trust and its affiliates) exist, the applicable Special Trust Unit shall automatically be redeemed by the Trust and cancelled. Upon any such redemption or other purchase or acquisition of a Special Trust Unit by the Trust, such Special Trust Unit shall be deemed retired and cancelled and may not be reissued.

**ARTICLE 7
TRUSTEES**

7.1 Number of Trustees

The Trustees shall consist of not less than three and no more than ten Trustees, with the number of Trustees from time to time within such range being fixed by resolution of the Trustees; provided that until otherwise so determined by resolution, the number of Trustees shall be five.

7.2 Calling and Notice of Meetings

Meetings of the Trustees shall be called and held at such time and at such place as the Trustees, the Chair of the Trustees or any two Trustees may determine, and any one Trustee or officer of the Trust may give notice of meetings when directed or authorized by such persons. Notice of each meeting of the Trustees shall be given to each Trustee not less than 48 hours before the time when the meeting is to be held, provided that if a quorum of Trustees is present, the Trustees may without notice hold a meeting immediately following an annual meeting of Unitholders. Notice of a meeting of the Trustees may be given verbally, in writing or by telephone, fax or other means of communication. A notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. Notwithstanding the foregoing, the Trustees may by resolution from time to time fix a day or days in any month or months for regular meetings of the Trustees at a place and hour to be named, in which case, provided that a copy of such resolution is sent to each Trustee forthwith after being passed and forthwith after each Trustee's appointment, no other notice shall be required for any such regular meeting.

7.3 Place of Meetings

Meetings of the Trustees may be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone, is deemed to have consented to the location of

the meeting except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

7.4 Meetings by Telephone

With the consent of the chair of the meeting or a majority of the other Trustees present at the meeting, a Trustee may participate in a meeting of the Trustees or of a committee of the Trustees by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other. A Trustee participating in such a meeting in such manner shall be considered present at the meeting and at the place of the meeting.

7.5 Quorum

The quorum for the transaction of business at any meeting of the Trustees shall consist of the greater of two Trustees or a majority of the number of Trustees then holding office, and, notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees.

7.6 Chair

The chair of any meeting of the Trustees shall be the Trustee present at the meeting who holds the office of Chair of the Trustees or if such person is not present, the Trustees present shall choose one of their number to be chair.

7.7 Action by the Trustees

At all meetings of the Trustees every question shall be decided by a majority of the votes cast on the question. In the case of equality of votes, the chair of the meeting shall not be entitled to a second or casting vote. The powers of the Trustees may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all Trustees who would be entitled to vote on that resolution at a meeting of the Trustees. Resolutions in writing may be signed in counterparts, including by facsimile, each of which shall be deemed to be an original and all originals together shall be deemed to be one and the same instrument.

7.8 Adjourned Meeting

Any meeting of Trustees may be adjourned from time to time by the chair of the meeting with the consent of the meeting to a fixed time and place. Further notice of the adjourned meeting need not be given. The adjourned meeting shall be duly constituted if a quorum is present and if it is held in accordance with the terms of the adjournment. If there is not a quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated upon its adjournment.

7.9 Remuneration and Expenses

The Trustees shall be paid such remuneration for their services as the Trustees may from time to time determine. Until otherwise determined, such compensation shall be \$30,000 per year for each Trustee plus \$1,500 per meeting of the Trustees (or committee of the Trustees). The

Trustees shall also be entitled to be reimbursed for reasonable travelling and other expenses properly incurred by them in attending meetings of the Trustees or any committee thereof or in connection with their services as Trustees. Nothing herein contained shall preclude any Trustee from serving the Trust in any other capacity and receiving remuneration therefor.

7.10 Officers

The Trustees from time to time may appoint one or more officers of the Trust, including without limitation a Chair of the Trustees, and, without prejudice to rights under any employment contract, may remove any officer of the Trust. The powers and duties of each officer of the Trust shall be those determined from time to time by the Trustees and, in the absence of such determination, shall be those usually applicable to the office held.

ARTICLE 8 APPOINTMENT, RESIGNATION AND REMOVAL OF THE TRUSTEES

8.1 Qualification of Trustees

The following persons are disqualified from being a Trustee of the Trust:

- (a) anyone who is less than eighteen years of age;
- (b) anyone 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;
- (d) a person who is a non-resident of Canada as defined in the Tax Act; and
- (e) a person who has the status of bankrupt.

8.2 Appointment of Trustees

The Initial Trustees are hereby appointed as the initial Trustees of the Trust for an initial term of office which, subject to Section 8.5, shall expire (subject to further appointment) at the close of the first annual meeting of Unitholders. Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders, and may be appointed at a special meeting of Unitholders, in each case to hold office, subject to Section 8.5, for a term expiring at the close of the next annual meeting of Unitholders following such an appointment. Any such appointment (other than by the Initial Trustees) shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in the manner set out in Section 12.10. Notwithstanding the foregoing:

- (a) if no Trustees are appointed at the annual meeting of Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Declaration of Trust until successors have been appointed or they cease to hold office; and

- (b) the Trustees may, between annual meetings of the Unitholders, appoint one or more additional Trustees for a term to expire (subject to further appointment) at the close of the next annual meeting of Unitholders, but the number of additional Trustees so appointed shall not at any time exceed one-third of the number of Trustees who held office immediately at the expiration of the immediately preceding annual meeting of Unitholders.

8.3 Consent to Act

- (a) A person who is appointed a Trustee hereunder, other than the Initial Trustees whose consent to act is given by the signatures hereto, shall not become a Trustee until the person has, either before or after such appointment, executed and delivered to the Trust a consent substantially as follows:

“To: Menu Foods Income Fund (the “Trust”)

And to: The Trustees thereof

The undersigned hereby consents to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this consent and the date of the undersigned’s appointment as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Declaration of Trust dated as of the 25th day of March, 2002, as amended from time to time, constituting the Trust.

Dated: _____

[Signature]

[Print Name]”

- (b) Upon the later of a person being appointed a Trustee hereunder and executing and delivering to the Trust a consent substantially as set forth in Section 8.3(a), such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time.

8.4 Failure to Elect Minimum Number of Trustees

If a meeting of Unitholders fails to elect the minimum number of Trustees required by this Declaration of Trust by reason of the disqualification or death of any nominee, the Trustees elected at the meeting may exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

8.5 Ceasing to Hold Office

A Trustee ceases to hold office when:

- (a) he or she dies or resigns;
- (b) he or she is removed in accordance with Section 8.6; or
- (c) he or she ceases to be duly qualified to act as a Trustee as provided under Section 8.1.

A resignation of a Trustee becomes effective 30 days from the time a written resignation is sent to the Trust, or at the time specified in the resignation, whichever is later, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation is not effective until the resigning Trustee's successor is duly appointed as a Trustee.

Upon a Trustee ceasing to hold office as such hereunder, such Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust, as amended from time to time; provided, however, that such Trustee shall continue to be entitled to be paid any amounts owing by the Trust to the Trustee and to the benefits of the indemnity provided in Section 9.8.

8.6 Removal of Trustees

The Unitholders may remove any Trustee or Trustees from office, by resolution approved by a majority of the votes cast at a meeting of Unitholders called for that purpose. A vacancy created by the removal of a Trustee may be filled at the meeting of Unitholders at which the Trustee is removed or, if not so filled, may be filled as set forth in Section 8.7.

8.7 Filling Vacancies

A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees (provided that the Trustees may appoint one or more additional Trustees to fill a vacancy only if, after such appointment(s), the total number of Trustees would not be greater than one and one-third times the number of Trustees immediately following the last annual meeting of Unitholders) or from a failure to elect the minimum number of Trustees fixed by or pursuant to this Declaration of Trust. If there is not a quorum of Trustees, or if there has been a failure to elect the minimum number of Trustees required by or pursuant to this Declaration of Trust, the Trustees then in office shall promptly call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to Section 8.5, until the close of the next annual meeting of the Unitholders.

8.8 Validity of Acts

Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or a defect in the qualifications of the Trustees.

ARTICLE 9 CONCERNING THE TRUSTEES

9.1 Powers of the Trustees

The Trustees, subject to the specific limitations contained in this Declaration of Trust, shall have, without further or other action or consent, and free from any power or control on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Trust Assets and over the affairs of the Trust to the same extent as if the Trustees were the sole and absolute beneficial owners of the Trust Assets in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, carrying out the trust created hereunder. In construing the provisions of this Declaration of Trust, presumption shall be in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein (including pursuant to Section 9.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. To the maximum extent permitted by law, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

9.2 Specific Powers and Authorities

Subject only to the express limitations contained in this Declaration of Trust and in addition to any other powers and authorities conferred by this Declaration of Trust or which the Trustees may have by virtue of any present or future statute or rule of law, the Trustees without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by the Trustees in such manner and upon such terms and conditions as it may from time to time determine proper including the powers and authorities to do the following or to cause the same to be done:

- (a) supervise the activities and manage the investments and affairs of the Trust;
- (b) maintain records and provide reports to Unitholders;
- (c) collect, sue for and receive all sums of money due to the Trust;
- (d) effect payment of distributions to the holders of Trust Units as provided in Article 5 but not contrary to any provisions of any Subordination Agreement;
- (e) invest funds of the Trust as provided in Article 4;
- (f) if the Trustees become aware by written notice that the beneficial owners of 49% of the Units then outstanding are, or may be, Non-residents (as defined in Section 13.5) or that such situation is imminent, the Trustees shall ensure that the limitations on non-resident ownership as provided in Section 13.5 are met;
- (g) possess and exercise all the rights, powers and privileges pertaining to the ownership of the MFOT Units and the MFOT Notes subject to the MFOT Note Indenture, to the same extent that an individual might, unless otherwise limited

herein, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally or for any particular meeting or action and may include the exercise of discretionary power;

- (h) where reasonably required, engage or employ on behalf of the Trust any persons as agents, representatives, administrators, employees or independent contractors (including, without limitation, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (i) except as prohibited by law, delegate any of the powers and duties of the Trustees to any one or more agents, representatives, administrators, officers, employees, independent contractors or other persons without liability to the Trustees, except as provided in this Declaration of Trust;
- (j) engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, disputes, claims, demands or other litigation or proceedings, regulatory or judicial, relating to the Trust, the assets of the Trust or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and, in advance of any controversy, to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (k) arrange for insurance contracts and policies insuring the Trust, its assets, the business of Menu Entities and/or any or all of the Trustees or the Unitholders, including against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees or Unitholders;
- (l) cause legal title to any of the assets of the Trust to be held by and/or in the name of a Trustee, or except as prohibited by law, by and/or in the name of the Trust or any other custodian or person, on such terms, in such manner, with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or the Trustee is interested therein; provided, however, that should legal title to any of the Trust Assets be held by and/or in the name of any person or persons other than a Trustee or the Trust, the Trustees shall require such person or persons to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (m) issue Units, Exchangeable Securities or other rights, warrants or options convertible into or exchangeable for Units, for such consideration as the Trustees may deem appropriate in their sole discretion, such issuance to be subject to the terms and conditions of the Declaration of Trust;
- (n) enter into or perform the obligations of the Trust under the Underwriting Agreement;

- (o) do all such other acts and things as are incidental to the foregoing, and to exercise all powers which are necessary or useful to carry on the purpose and activities of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Declaration of Trust;
- (p) the Trustees shall use their commercially reasonable efforts to ensure that the Trust qualifies at all times as a “mutual fund trust” pursuant to subsection 132(6) of the Tax Act;
- (q) in addition to the mandatory indemnification provided for in Section 9.8 to the extent permitted by law to indemnify, or enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including, without limitation, the Trustees, the Depository, registrar and transfer agent or escrow agent, to such extent as the Trustees shall determine;
- (r) with the approval or confirmation of Unitholders, enact and from time to time (or amend or repeal) by-laws consistent with this Declaration of Trust containing provisions relating to the Trust, the Trust Assets and the conduct of the affairs of the Trust;
- (s) pay all taxes or assessments, of whatever kind or nature, whether within or outside Canada, imposed upon or against the Trustees in connection with the Trust Assets, undertaking or income of the Trust, or imposed upon or against the Trust Assets, undertaking or income of the Trust, or any part thereof and to settle or compromise disputed tax liabilities and for the foregoing purposes to make such returns, take such deductions, and make such designations, elections and determinations in respect of Income of the Trust or Net Realized Capital Gains distributed to Unitholders in the year and any other matter as shall be permitted under the Tax Act (provided that to the extent necessary the Trustees will seek the advice of the Trust’s counsel or the Auditor), and do all such other acts and things as may be deemed by the Trustees in their sole discretion to be necessary, desirable or convenient; and
- (t) guarantee the obligations of any of the Menu Entities pursuant to any good faith debt for borrowed money incurred by such entity for the purpose of carrying on its business, and pledging securities issued by such entity and owned by the Trust as security for such guarantee.

The Trustees shall, except as may be prohibited by law, have the right to delegate authority for the above-referenced matters to a manager or administrator where the Trustees determine in their sole discretion that such delegation is desirable to effect the administration of the duties of the Trustees under the Declaration of Trust. The Trustees may also delegate to officers of the Menu Entities certain powers for management of the day-to-day affairs of the Trust, provided such delegation is not inconsistent with this Declaration of Trust.

9.3 Units and Notes Held by the Trust

Subject to the provisions hereof, the MFOT Units and the MFOT Notes held from time to time by the Trustees as part of the Trust Assets may be voted by the Trustees at any and all

meetings of unitholders or noteholders of MFOT at which the holders of such MFOT Units or the MFOT Notes are entitled to vote provided that the MFOT Units held by the Trust shall be voted to cause the election of the Trustees as trustees of MFOT.

9.4 Restrictions on Trustee's Powers

- (a) Notwithstanding Section 9.3, the Trustees may not under any circumstances whatsoever vote the MFOT Units or, where applicable, the MFOT Notes, nor will it permit MFOT to vote its securities of Menu Foods GenPar or MFLP, to authorize:
 - (i) any sale, lease or other disposition of all or substantially all of the assets of MFOT or MFLP, except in conjunction with an internal reorganization or a pledge in accordance with Section 9.2(t);
 - (ii) any amalgamation, arrangement or other merger or combination of MFOT, Menu Foods GenPar or MFLP with any other entity, except in conjunction with an internal reorganization;
 - (iii) any material amendment to the MFOT Note Indenture, other than in contemplation of a future issuance of MFOT Notes (excluding issuances made on redemption of Units);
 - (iv) the winding-up or dissolution of MFOT, Menu Foods GenPar, MFLP, MFOP or Menu prior to the end of the term of the Trust; or
 - (v) any material amendment to the MFOT trust indenture, the limited partnership agreement of MFLP or the articles of Menu Foods GenPar or Menu in a manner which may be prejudicial to the Trust,without the approval of the Unitholders by Special Resolution at a meeting of Unitholders called for that purpose.
- (b) Except pursuant to a pledge in accordance with Section 9.2(t) hereof, the Trustees shall have no power to sell or otherwise dispose of any MFOT Units or MFOT Notes (except pursuant to an in specie redemption under Section 6.5), or to sell all or substantially all of the Trust Assets or cause MFOT to sell all or substantially all of its assets, except with the approval of the Unitholders by Special Resolution at a meeting of Unitholders called for that purpose or except as part of an internal reorganization of the direct or indirect assets of the Trust as a result of which the Trust has the same interest, whether direct or indirect, in the assets as the interest, whether direct or indirect, that it had prior to the reorganization.
- (c) The Trustees shall only vote the MFOT Units and exercise the rights under the MFOT Notes in the manner provided for herein or permitted under the MFOT Note Indenture, as the case may be, on the conditions contained therein.

9.5 Banking

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

9.6 Standard of Care and Duties

The Trustees shall act honestly and in good faith with a view to the best interests of the Trust and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Trustees shall not be liable in carrying out their duties under this Declaration of Trust except in cases where the Trustees fail to act honestly and in good faith with a view to the best interests of the Trust or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on a director of a corporation governed by the *Business Corporations Act* (Ontario). Unless otherwise required by law, the Trustees shall not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees shall not be required to devote their entire time to the investments or business or affairs of the Trust.

9.7 Limitations on Liability of Trustees

- (a) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor the officers shall be liable to any Unitholder for any action taken in good faith in reliance on any documents that are, prima facie, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; or for any other action or failure to act including, without limitation, the failure to compel in any way any former trustee to redress any breach of trust or any failure by MFOT to perform obligations or pay monies owed to the Trust, except for a breach of the standard of care, diligence and skill as set out in Section 9.6 or a breach of Section 9.4. If the Trustees have retained an appropriate expert or advisor with respect to any matter connected with their duties under this Declaration of Trust, the Trustees may act or refuse to act based on the advice of such expert or advisor and, notwithstanding any provision of this Declaration of Trust, including, without limitation, the standard of care, diligence and skill set out in Section 9.6 hereof, the Trustees shall not be liable for any action or refusal to act based on the advice

of any such expert or advisor which it is reasonable to conclude is within the expertise of such expert or advisor to give.

- (b) Subject to the standard of care set forth in Section 9.6, none of the Trustees nor any officer, director, employee or agent thereof shall be subject to any liability whatsoever in tort, contract or otherwise, in connection with Trust Assets or the affairs of the Trust, including, without limitation, in respect of any loss or diminution in value of any Trust Assets, to the Trust or to the Unitholders or to any other person for anything done or permitted to be done by the Trustees. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Declaration of Trust or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity. The Trust shall be solely liable therefor and resort shall be had solely to the Trust Assets for payment or performance thereof.

9.8 Indemnification of Trustees

Each Trustee, each former Trustee, each officer of the Trust and each former officer of the Trust shall be entitled to be and shall be indemnified and reimbursed out of the Trust Assets in respect of any and all taxes, penalties or interest in respect of unpaid taxes or other governmental charges imposed upon the Trustee or officer in consequence of his or her performance of his or her duties hereunder and in respect of any and all costs, charges and expenses, including amounts paid to settle an action or satisfy a judgment, reasonably incurred in respect of any civil, criminal or administrative action or proceeding to which the Trustee, former Trustee, officer or former officer is made a party by reason of being or having been a Trustee or officer of the Trust or, at the request of the Trust, a trustee, director or officer of any Menu Entity; provided that a Trustee, former Trustee, officer or former officer shall not be indemnified out of the Trust Assets in respect of unpaid taxes or other governmental charges, in respect of such costs, charges and expenses that arise out of or as a result or in the course of his or her failure to act honestly and in good faith with a view to the best interests of the Unitholders or, in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, where the Trustee did not have reasonable grounds for believing his or her conduct was lawful. A Trustee, former Trustee, officer or former officer shall not be entitled to satisfy any right of indemnity or reimbursement granted herein, or otherwise existing under law, except out of the Trust Assets, and no Unitholder or other Trustee or officer shall be personally liable to any person with respect to any claim for such indemnity or reimbursement as aforesaid.

9.9 Contractual Obligations of Trust

In respect of any obligations or liabilities being incurred by the Trust or the Trustees on behalf of the Trust, the Trustees and the Trust shall make all reasonable efforts to include as a specific term of such obligations or liabilities a contractual provision to the effect that neither the

Unitholders nor shall the Trustees have any personal liability or obligations in respect thereof. The omission of such statement from any such document or instrument shall not render the Trustees or the Unitholders liable to any person, nor shall the Trustees or the Unitholders be liable for such omission. If, notwithstanding this provision, the Trustees or any Unitholder shall be held liable to any person by reason of the omission of such statement from any such agreement, undertaking or obligation such Trustee or Unitholder shall be entitled to indemnity and reimbursement out of the Trust Assets to the full extent of such liability.

9.10 Conflicts of Interest

If a Trustee or an officer of the Trust is a party to a material contract or transaction or proposed material contract or transaction with the Trust, or is a director or officer or employee of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust, such Trustee or officer of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of such interest.

- (a) The disclosure required in the case of a Trustee or officer shall be made,
 - (i) at the meeting of Trustees at which a proposed contract or transaction is first considered;
 - (ii) if the Trustee or officer was not then interested in a proposed contract or transaction, at the first such meeting after he or she becomes so interested;
 - (iii) if the Trustee or officer becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
 - (iv) if a person who is interested in a contract or transaction later becomes a Trustee or officer, at the first such meeting of Trustees after he or she assumes that capacity.
- (b) Notwithstanding paragraph (a), where this section applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of business of the Trust, would not require approval by the Trustees or Unitholders, such person shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of Trustees the nature and extent of his or her interest forthwith after that person becomes aware of the contract or transaction or proposed contract or transaction.
- (c) A Trustee referred to in this section shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,
 - (i) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust; or
 - (ii) one for indemnity under this Declaration of Trust or for the purchase of liability insurance.

- (d) For the purposes hereof, a general notice to the Trustees by a Trustee or an officer of the Trust or any other person referred to in this Section 9.11 disclosing that he or she is a director, officer or employee of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into.
- (e) Where a material contract is made or a material transaction is entered into between the Trust and any one or more of its Trustees or officers, or between the Trust and another person of which a Trustee or officer of the Trust is a director or officer or employee or in which he has a material interest,
 - (i) the Trustee or officer, as applicable, is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
 - (ii) the contract or transaction is neither void nor voidable;by reason only of that relationship or by reason only that the Trustee is present at or is counted to determine the presence of a quorum at the meeting of Trustees or committee of Trustees that authorized the contract or transaction, if the Trustee disclosed his interest in accordance with this Section 9.11 and the contract or transaction was reasonable and fair to the Trust at the time it was so approved.
- (f) Notwithstanding anything in this section, but without limiting the effect of paragraph (e) hereof, a Trustee or officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, and is not by reason only of the Trustee's or officer's interest therein void or voidable, where,
 - (i) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
 - (ii) the nature and extent of the Trustee's or officer's interest in such contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Declaration of Trust or by law.
- (g) Subject to paragraphs (e) and (f) hereof, where any Trustee or officer of the Trust fails to disclose his interest in a material contract or transaction in accordance with this Declaration of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law or in equity, may apply to a court for an order setting aside the contract or transaction and directing that the Trustee or officer account to the Trust for any profit or gain realized.
- (h) Subject to Section 9.11(a), each Trustee, in its personal capacity or any other capacity, may buy, lend upon and deal in securities of the Trust and generally may

contract and enter into any financial transactions with the Trust without being liable to account for any profit made thereby.

9.11 Conditions Precedent

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

ARTICLE 10 COMMITTEES OF TRUSTEES

10.1 Delegation

Except as prohibited by law, the Trustees may appoint from their number a committee of Trustees and may delegate to the committee of Trustees such authority as the Trustees may in their sole discretion deem necessary or desirable to effect the administration of the duties of the Trustees under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by Trustees.

10.2 Procedure

Unless otherwise determined by the Trustees, a quorum for meetings of any committee shall be a majority of its members, each committee shall have the power to appoint its chairman and the rules for calling, holding, conducting and adjourning meetings of the committee shall be the same as those governing the Trustees. Each member of a committee shall serve during the pleasure of the Trustees and, in any event, only so long as he or she shall be a Trustee. The Trustees may fill vacancies in a committee by appointment from among their members. Provided that a quorum is maintained, the committee may continue to exercise its powers notwithstanding any vacancy among its members.

ARTICLE 11 AMENDMENT

11.1 Amendment

The provisions of this Declaration of Trust, except where specifically provided otherwise, may only be amended by Special Resolution; provided that the provisions of this Declaration of Trust may be amended by the Trustees without the consent, approval or ratification of the Unitholders or any other person:

- (a) prior to Closing, provided such amendments do not conflict or are not inconsistent with the description of the Trust in the Prospectus; or
- (b) at any time for the purpose of:
 - (i) ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or the Trust;
 - (ii) providing additional protection, in the opinion of counsel to the Trustees, for the Unitholders;
 - (iii) removing any conflicts or inconsistencies in this Declaration of Trust or making minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders; or
 - (iv) making amendments which, in the opinion of the Trustees, are necessary or desirable as a result of changes in Canadian taxation laws,

but notwithstanding the foregoing, no such amendment shall modify the voting rights of any Unit or reduce the fractional undivided interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Unit or Trust Unit, as applicable, and no amendment shall reduce the percentage of votes required to be cast at a meeting of the Unitholders for the purpose of this Section 11.1 without the consent of the holders of all of the Units then outstanding.

11.2 Notification of Amendment

As soon as shall be practicable after the making of any amendment pursuant to this Article 11, the Trustees shall furnish written notification of the substance of such amendment to each Unitholder.

ARTICLE 12 MEETINGS OF UNITHOLDERS

12.1 Annual and Special Meetings of Unitholders

Annual meetings of the Unitholders shall be called, commencing in 2003, on a day on or before June 30 in each year, at a time and at a place in Canada set by the Trustees. The business transacted at such meetings shall include the presentation of the audited financial statements of the Trust for the immediately preceding fiscal year, the appointment of the Trustees for the ensuing year in accordance with Article 8, the appointment of Auditors for the ensuing year in accordance with Article 17, and the transaction of such other business as Unitholders may be entitled to vote upon as hereinafter provided in this Article 12 or as the Trustees may determine or as may be properly brought before the meeting. Special meetings of the Unitholders may be called at any time by the Trustees and shall be called by the Trustees upon a written request of Unitholders holding in the aggregate Units then outstanding carrying not less than 10% of the votes, such request specifying in reasonable detail the business proposed to be transacted at the meeting. The chair of any annual or special meeting shall be the Chair of the Trustees or any

other Trustees specified by resolutions of the Trustees or, in the absence of any Trustee, any person appointed as chair of the meeting by the Unitholders present. The Trustees, the officers of the Trust, the Auditors and any other person approved by the Trustees, the chair of the meeting or by resolution passed by a majority of the votes cast by Unitholders represented at the meeting may attend meetings of the Unitholders.

12.2 Notice of Meetings

Notice of all meetings of Unitholders shall be given by unregistered mail, postage prepaid, addressed to each Unitholder at his or her last address on the books of the Trust, mailed at least 21 days and not more than 50 days before the meeting. Such notice shall specify the time when, and the place where, such meeting is to be held and shall specify the nature of the business to be transacted at such meeting in sufficient detail to permit a Unitholder to form a reasoned judgment thereon, together with the text of any Special Resolution, at the time of mailing of the notice, proposed to be passed. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 12.3, may be held as adjourned without further notice. The accidental omission to give notice or the nonreceipt of such notice by a Unitholder shall not invalidate any resolution passed at any 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 a duly appointed proxy of a Unitholder) may waive any notice required to be given under the provisions of this Section, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice.

12.3 Quorum

At any meeting of the Unitholders, subject as hereinafter provided, a quorum shall consist of two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to all outstanding Units. In the event of such quorum not being present at the appointed place on the date for which the meeting is called within 30 minutes after the time fixed for the holding of such meeting, the meeting, if called by request of Unitholders, shall be terminated and, if otherwise called, shall stand adjourned to such day being not less than 7 days later and to such place and time as may be appointed by the chair of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

12.4 Voting Rights of Unitholders

Only Unitholders of record shall be entitled to vote and each Unit shall entitle the holder or holders of that Unit on a poll vote at any meeting of Unitholders to the voting rights set out herein. Every question submitted to a meeting, other than a Special Resolution, shall, unless a poll vote is demanded, be decided by a show of hands vote, on which every person present and entitled to vote shall be entitled to one vote. At any meeting of Unitholders, any holder of Units entitled to vote thereat may vote by proxy and a proxyholder need not be a Unitholder, provided that no proxy shall be voted at any meeting unless it shall have been received by the Transfer Agent for verification at least 24 hours prior to the commencement of such meeting. 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 purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

12.5 Resolutions Binding the Trustees

Unitholders shall be entitled to pass resolutions that will bind the Trust only with respect to the following matters:

- (a) the election or removal of a Trustee as provided in Article 8;
- (b) the appointment or removal of Auditors as provided in Article 17;
- (c) the appointment of an inspector as provided in Section 12.9;
- (d) amendments of this Declaration of Trust as provided in Section 11.1;
- (e) the termination of the Trust as provided in Section 14.2;
- (f) the sale of all or substantially all of the Trust Assets;
- (g) the exercise of certain voting rights attached to the voting securities of MFOT held by the Trust as provided in Section 9.3;
- (h) the dissolution of the Trust prior to the end of its term;
- (i) the ratification of any unitholder rights plan, distribution reinvestment plan, distribution reinvestment and Trust Unit purchase plan, Trust Unit option plan or other compensation plan contemplated by Section 5.10 requiring Unitholder approval; and
- (j) the appointment or removal of the Trustees to serve as trustees of MFOT as provided in Section 9.3.

Except with respect to the above matters set out in this Section 12.5, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trustees. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Special Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust and except for the matters set out in Sections 12.5(a), 12.5(b) and 12.5(g) above which matters may be dealt with by a resolution passed by a majority of the votes cast by Unitholders represented at the meeting.

12.6 Meaning of “Special Resolution”

- (a) The expression “Special Resolution” when used in this Declaration of Trust means, subject to this Article 12, a resolution proposed to be passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this

Article (i) subject to Section 12.3, at which two or more individuals are present in person either holding personally or representing as proxies not less in aggregate than 10% of the votes attached to Units then outstanding, and (ii) passed by the affirmative votes of the holders of votes attached to more than 66 2/3% of the Units represented at the meeting and voted on a poll upon such resolution.

- (b) Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

12.7 Meaning of “Outstanding”

Every Unit issued, certified and delivered hereunder shall be deemed to be outstanding until it shall be cancelled or delivered to the Trustees or Transfer Agent for cancellation provided that:

- (a) when a new certificate has been issued in substitution for a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding;
- (b) for the purpose of any provision of this Declaration of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Declaration of Trust, Units owned directly or indirectly, legally or equitably, by the Trust or any Menu Entity shall be disregarded, except that:
 - (i) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustees know are so owned shall be so disregarded; and
 - (ii) Units so owned which have been pledged in good faith other than to the Trust or any Menu Entity shall not be so disregarded if the pledgee shall establish to the satisfaction of the Trustees the pledgee's right to vote such Units in his or her discretion free from the control of the Trust or any Menu Entity; and
- (c) for the purposes of Section 12.7(b), the Transfer Agent shall provide a certificate which will state the number of Units and the certificate numbers of certificates, if certificates are issued, held by the Trust or any Menu Entity. The Trustees shall be entitled to rely on such certificate in order to disregard the votes of any of the parties mentioned above.

12.8 Record Date for Voting

For the purpose of determining the Unitholders who are entitled to vote or act at any meeting or any adjournment thereof, the Trustees may fix a date not more than 60 days and not less than 21 days prior to the date of any meeting of Unitholders as a record date for the determination of Unitholders entitled to vote at such meeting or any adjournment thereof, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to vote at such

meeting or any adjournment thereof even though the Unitholder has since that time disposed of his or her Units, and no Unitholder becoming such after that time shall be so entitled to vote at such meeting or any adjournment thereof. In the event that the Trustees do not fix a record date for any meeting of Unitholders, the record date for such meeting shall be the date upon which notice of the meeting is given as provided under Section 12.2.

12.9 Appointment of Inspector

The Trustees shall call a meeting of Unitholders upon the written request of Unitholders holding in the aggregate not less than 25% of the votes attached to Units then outstanding for the purpose of considering the appointment of an inspector to investigate the performance by the Trustees of their responsibilities and duties in respect of the Trust. An inspector may be appointed for such purpose, at the expense of the Trust, at such meeting by a resolution approved by a majority of the votes cast at the meeting.

12.10 Resolutions in Writing

Notwithstanding any other provision of this Declaration of Trust, a resolution in writing executed by Unitholders holding more than 66 2/3% votes attached to outstanding Units at any time shall be as valid and binding for all purposes of this Declaration of Trust as if such Unitholders had exercised at that time all of the voting rights to which they were then entitled under Section 12.5 or 12.6 in favour of such resolution at a meeting of Unitholders duly called for the purpose.

ARTICLE 13 CERTIFICATES, REGISTRATION AND TRANSFER OF UNITS

13.1 Nature of Units

- (a) The provisions of this Article 13 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees 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 Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons. The Trust Units shall be issued in the form of the Trust Unit Certificate. A Global Trust Unit Certificate (a "Global Trust Unit Certificate") may be issued in the name of, or the name of the nominee of, and deposited by the Transfer Agent with, or on behalf of, CDS or a successor (collectively, the "Depository"), as custodian of such Global Trust Unit Certificate and registered by the Transfer Agent in the name of the Depository or its nominee. No purchaser of Trust Units represented by a Global Trust Unit Certificate will be entitled to a certificate or other instrument from the Trust or the Depository evidencing that purchaser's ownership thereof except in the circumstances described in Section 13.1(d). Beneficial interests in a Global Trust Unit Certificate will be represented only through the Book-Entry System. Transfers of Trust Units between CDS Participants shall occur in accordance with the Depository's rules and procedures.

- (b) All references herein to actions by, notices given or payments made to holders of Trust Units shall, where such Trust Units are held through the Depository, refer to actions taken by, or notices given or payments made to, the Depository upon instruction from the CDS Participants in accordance with the Depository's rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given, subject to the voting rights of the holders of Special Voting Units, by holders of Trust Units acting through the Depository and the CDS Participants. The rights of a holder of Trust Units whose Trust Units are held through the Depository shall be exercised only through the Depository and the CDS Participants and shall be limited to those established by law and agreements between such holders of Trust Units and the Depository and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustee may deal with the Depository for all purposes (including the making of payments) as the authorized representative of the respective holders of Trust Units and such dealing with the Depository shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.
- (c) For so long as Trust Units are held through the Depository, if any notice or other communication is required to be given to holders of Trust Units, the Trustees and the Transfer Agent will give all such notices and communications to the Depository.
- (d) If (i) the Trust determines that the Depository is no longer willing or able to discharge properly its responsibilities as depository with respect to the Units and the Trust is unable to locate a qualified successor, (ii) the Trust at its option elects, or is required by law, to terminate the Book-Entry System with respect to the Trust Units, or (iii) Unitholders determine by Special Resolution that the continuation of the Book-Entry System with respect to the Trust Units is no longer in the best interests of the Unitholders, then the Depository shall surrender the Global Trust Unit Certificate to the Transfer Agent with instructions from the Depository for registration of Trust Units in the name and in the amounts specified by the Depository and the Trust shall issue and the Trustees and Transfer Agent shall execute and deliver the aggregate number of Trust Units then outstanding in the form of definitive Trust Unit Certificates representing such Trust Units.

13.2 Unit Certificates

- (a) Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- (b) If issued, Unit Certificates are issuable only in fully registered form.
- (c) The definitive form of the Unit Certificates shall:
 - (i) be in the English language;

- (ii) be dated as of the date of issue thereof;
 - (iii) contain the CUSIP number (if any) for the Units; and
 - (iv) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- (d) In the event that any Unit Certificate is translated into the French language and any provision of any Unit Certificates in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- (e) Each Unit Certificate shall be signed on behalf of the Trustees and the Transfer Agent of such Units. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains a printed or mechanically produced signature of any person, then the Trust may issue the Unit Certificate even though the person has ceased to be a Trustee and such Unit Certificate is as valid as if the person continued to be a Trustee at the date of its issue.

13.3 Contents of Unit Certificates

- (a) Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, *inter alia*, the following:
- (i) the name of the Trust and the words “A trust created under the laws of the Province of Ontario by a Declaration of Trust dated as of the 25th day of March, 2002” or words of like effect;
 - (ii) the name of the person to whom the Unit Certificate is issued as Unitholder;
 - (iii) the number and class of Units represented thereby and whether or not the Units represented thereby are fully paid;
 - (iv) that the Units represented thereby are transferable;
 - (v) “The Units represented by this certificate are issued upon the terms and subject to the conditions of the Declaration of Trust, which Declaration of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Declaration of Trust. A copy of the Declaration of Trust pursuant to which this certificate and the Units represented thereby are issued may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and

- (vi) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.
- (b) Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the face or the reverse side thereof, *inter alia*, the following:
 - (i) “The Declaration of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
 - (ii) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units.

The Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as the Trustees may determine.

13.4 Register of Unitholders

If the Book Entry System is discontinued in accordance with Section 13.1(d), a register may be kept at the principal stock transfer office in Toronto, Ontario of the Transfer Agent, which register, if maintained, shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of certificates representing such Units and a record of all transfers and redemptions thereof. Branch transfer registers shall be maintained at such other offices of the Transfer Agent as the Trustees may from time to time designate. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the register of the Trust as the owner of such Units 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.

13.5 Limitation of Non-Resident Ownership

At no time may non-residents of Canada within the meaning of the Tax Act (“Non-residents”) be the beneficial owners of more than 49% of the Units then outstanding. The Trustees may require declarations as to the jurisdictions in which beneficial owners of Units are resident. If the Trustees become aware that the beneficial owners of 49% of the Units then outstanding are, or may be, Non-residents or that such a situation is imminent, the Transfer Agent or registrar shall make a public announcement thereof and shall not accept a subscription for Units from or issue or register a transfer of Units to a person unless the person provides a declaration in form and content satisfactory to the Trustees that the person is not a Non-resident. If notwithstanding the foregoing, the Trustees determine that 49% or more of the Units are held by Non-residents, the Trustees may send a notice to Non-resident holders of Units, chosen in inverse order to the order of acquisition or registration or in such other manner as the Trustees may consider equitable and practicable, requiring them to sell their Units or a portion thereof within a specified period of not less than 60 days. If the Unitholders receiving such notice have

not sold the specified number of Units or provided the Trustees with satisfactory evidence that they are not Non-residents within such period, the Trustees may, on behalf of such Unitholders, sell such Units and, in the interim, shall suspend the voting and distribution rights, if any, attached to such Units. Upon such sale the affected holders shall cease to be holders of Units and their rights shall be limited to receiving the net proceeds of sale upon surrender of the certificates representing such Units. Subject to Section 9.6, unless and until the Trustees shall have been required to do so under the terms hereof, the Trustees shall not be bound to do or take any proceeding or action with respect to this Section 13.5 by virtue of the powers conferred on it hereby. The Trustees shall not be deemed to have notice of any violation of this Section 13.5 unless and until they have been given written notice of such violation and shall act only as required by this Declaration of Trust once an indemnity is provided. The Trustees shall not be required to actively monitor the foreign holdings of the Trust. It is acknowledged that the Trustees cannot monitor the Non-resident holders of the Trust Units given that the Trust Units are registered in the name of CDS. The Trustees shall not be liable for any violation of the non-resident ownership restriction which may occur during the term of the Trust.

13.6 Transfer of Units

- (a) For so long as the Book Entry System is in effect, transfers of ownership of Units may be effected only through the records maintained by the Depository with respect to interests of CDS Participants, and on the records of CDS Participants with respect to interests of persons other than CDS Participants.
- (b) Trust Units shall not be transferable under any circumstances without the contemporaneous transfer of the associated Special Trust Units, and Special Trust Units shall not be transferable independently of the associated Trust Units.
- (c) Subject to the provisions of this Article 13, the Units shall be fully transferable as between persons.
- (d) If the Book Entry System is discontinued in accordance with subsection 13.1(d) then, subject to the provisions of this Article 13, Units shall be transferable on the register or one of the branch transfer registers only by the Unitholders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent, and no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the register or one of the branch transfer registers maintained by the Trustees, the Trust or the Transfer Agent. Upon such delivery the transfer shall be recorded on the register or branch transfer registers and a new certificate for the Units shall be issued to the transferee and a new certificate for the balance of Units not transferred shall be issued to the transferor.

- (e) Any person becoming entitled to any Units as a consequence of the death, bankruptcy or mental incompetence of any Unitholder, or otherwise by operation of law, shall be recorded as the holder of such Units (and, if the Book Entry System has been duly discontinued, shall receive a new certificate therefor upon submission of the existing certificate for cancellation) only upon production of satisfactory evidence, but until such record is made the Unitholder of record shall continue to be and be deemed to be the holder of such Units for all purposes whether or not notice of such death or other event has been given.
- (f) If the Book Entry System has been duly discontinued, Unit Certificates representing any number or class of Units may be exchanged without charge for Unit Certificates representing an equivalent number and class of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this Article 13. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

13.7 Units Held Jointly or in a Fiduciary Capacity

Except as herein provided, the Trustees may treat two or more persons holding any Units as joint owners of the entire interest therein unless their ownership is expressly otherwise recorded on the register of the Trust, but no entry shall be made in the register or on any certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Units; provided, however, that any person recorded as a Unitholder may, subject to the provisions hereinafter 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.

13.8 Performance of Trust

The Trustees and the Transfer Agent shall not be bound to be responsible for or otherwise inquire into or ensure the performance of any trust, express, implied or constructive, or of any pledge or equity to which any of the Units or any interest therein are or may be subject, or to ascertain or enquire whether any transfer of any such Units or interests therein by any such Unitholder or by his or her personal representatives is authorized by such trust, pledge, or equity, or to recognize any person as having any interest therein except for the person recorded as Unitholder.

13.9 Lost Certificates

In the event that any Unit Certificate is lost, stolen, destroyed or mutilated, the Trustees may authorize the issuance of a new certificate for the same number and class of Units in lieu thereof. The Trustees may in their sole discretion, before the issuance of such new certificate, require the owner of the lost, stolen, destroyed or mutilated certificate, or the legal representative of the owner, to make an affidavit or statutory declaration setting forth such facts as to the loss, theft, destruction or mutilation as the Trustees may deem necessary, to surrender any mutilated certificate and may require the applicant to supply to the Trust a "lost certificate bond" or a

similar bond in such reasonable sum as the Trustees or the Transfer Agent may direct indemnifying the Trust for so doing.

13.10 Death of a Unitholder

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or any of the mutual or respective rights and obligations created by or arising under this Declaration of Trust nor give such Unitholder's personal representatives a right to an accounting or take any action in court or otherwise against other Unitholders or the Trustees or the Trust Assets, but shall merely entitle the personal representatives of the deceased Unitholder to demand and receive, pursuant to the provisions hereof, a new certificate for Units in place of the certificate held by the deceased Unitholder, if any, and upon the acceptance thereof such personal representatives shall succeed to all rights of the deceased Unitholder under this Declaration of Trust.

13.11 Unclaimed Distribution

In the event that the Trustees shall hold any distributable amount which is unclaimed or which cannot be paid for any reason, the Trustees shall be under no obligation to invest or reinvest the same but shall only be obliged to hold the same in a current interest bearing account pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such distributable amount so held to the Public Guardian and Trustee (or other appropriate government official or agency) whose receipt shall be a good discharge and release of the Trustees.

13.12 Take-Over Bids

- (a) In the event of a non-exempt take-over bid from a person acting at arm's length to holders of Exchangeable Securities for Trust Units, unless an identical offer (in terms of price per Trust Unit issuable upon the conversion, exercise or exchange of the Exchangeable Security and percentage of outstanding securities to be taken up exclusive of securities owned immediately prior to the offer by the offeror, or associates or affiliates of the offeror and in all other material respects) is made concurrently by the offeror to purchase the Exchangeable Securities, which identical offer has no condition attached other than the right not to take up and pay for securities tendered if no securities are purchased pursuant to the offer for Trust Units, then, from and after the first take-up of Trust Units under the said take-over bid (provided that not less than 25% of the Trust Units other than Trust Units held at the date of the take-over bid by the offeror or associates or affiliates of the offeror) are so taken up any holder of Exchangeable Securities may, notwithstanding the terms and conditions of the Exchangeable Security and any other provision hereof, convert, exercise or exchange all of such holder's Exchangeable Securities, as applicable, at an exchange ratio equal to 110% of the exchange ratio then in effect under the Exchange Agreement (such that on conversion, exercise or exchange the holder shall receive 1.1 Trust Units for each Trust Unit that the holder would otherwise have received). For greater certainty, notwithstanding any adjustment contemplated by this section, the holders of such Exchangeable Securities shall not be entitled to any adjustment to their

entitlement to distributions until such time as such Exchangeable Securities are exchanged for Trust Units.

- (b) If, within 120 days after the date of a take-over bid for all of the outstanding Trust Units (including Trust Units issuable upon conversion, exercise or exchange of Exchangeable Securities), the bid is accepted by the holders of not less than 90 percent of the outstanding Trust Units and not less than 90 percent of the outstanding Exchangeable Securities, other than outstanding Trust Units and Exchangeable Securities held by or on behalf of, or issuable to, the offeror or an affiliate or associate of the offeror on the date of the take-over-bid, the offeror is entitled, on complying with this Section 13.12, to acquire the Trust Units and Exchangeable Securities held by the non-tendering offerees.
- (c) An offeror may acquire Trust Units and Exchangeable Securities held by a non-tendering offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each non-tendering offeree stating that:
 - (i) offerees holding not less than 90% of the outstanding Trust Units and not less than 90 percent of the Exchangeable Securities to which the bid relates accepted the take-over bid;
 - (ii) the offeror has taken up and paid for the Trust Units and Exchangeable Securities of the offerees who accepted the take-over bid;
 - (iii) a non-tendering offeree is required to transfer its Trust Units and/or Exchangeable Securities to the offeror on the terms on which the offeror acquired the Trust Units and Exchangeable Securities of the offerees who accepted the take-over bid; and
 - (iv) a non-tendering offeree which does not transfer its Trust Units and/or Exchangeable Securities in accordance with Section 13.2(b) within 20 days after it receives the offeror's notice is deemed to have elected to transfer, and to have transferred, its Trust Units on the same terms that the offeror acquired the Trust Units and/or Exchangeable Securities from the offerees who accepted the take-over bid.
- (d) Concurrently with sending the offeror's notice under Section 13.12(c), the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the non-tendering offeree with respect to each Trust Unit and/or Exchangeable Security held by a non-tendering offeree.
- (e) A non-tendering offeree to whom an offeror's notice is sent under Section 13.12(c) shall, within 20 days after it receives that notice, instruct its CDS Participant to cause its Trust Units and/or Exchangeable Securities to be sent to the Trust, or, if Unit Certificates have been issued to the non-tendering offeree, send the certificates representing such securities, duly endorsed for transfer, to the Trust.

- (f) Within 20 days after the offeror sends an offeror's notice under Section 13.12(c), the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a non-tendering offeree if the non-tendering offeree had tendered under the take-over bid.
- (g) The Trust is deemed to hold on behalf of the non-tendering offeree the money or other consideration it receives under Section 13.12(f), and the Trust shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation (or any successor thereof), and shall place the other consideration in the custody of a bank or such other body corporate for safekeeping. No such monies or other consideration shall form any part of the Trust Assets.

13.13 Power of Attorney

Each Unitholder hereby grants to the Trustee, its successors and assigns, a power of attorney constituting the Trustee with full power of substitution, as his true and lawful attorney to act on his behalf, with full power and authority in his name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required:

- (a) this Declaration of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a mutual fund trust;
- (b) any instrument, deed, agreement or document in connection with carrying on the affairs of the Trust as authorized in this Declaration of Trust;
- (c) all conveyances, transfers and other documents required in connection with the dissolution, liquidation or termination of the Trust in accordance with the terms of this Declaration of Trust;
- (d) any and all elections, determinations or designations whether jointly with third parties or otherwise, under the Tax Act or any other taxation or other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Unitholder's interest in the Trust;
- (e) any amendment to this Trust Indenture which is authorized from time to time as contemplated by Article 11; and
- (f) all transfers, conveyances and other documents required to facilitate the acquisition of Trust Units and/or Exchangeable Securities of non-tendering offerees pursuant to Section 13.12.

The Power of Attorney granted herein is, to the extent permitted by applicable law, irrevocable and will survive the assignment by the Unitholder of all or part of the Unitholder's interest in the Trust and will extend to and bind the heirs, executors, administrators and other legal representatives and successors and assigns of the Unitholder.

ARTICLE 14

TERMINATION

14.1 Term of Trust

Subject to the other provisions of this Declaration of Trust, the Trust shall continue for a term ending 21 years after the date of death of the last surviving issue of Her Majesty, Queen Elizabeth II, alive on March 25, 2002. For the purpose of terminating the Trust by such date, the Trustees shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustees, being not more than two years prior to the end of the term of the Trust.

14.2 Termination with the Approval of Unitholders

The Unitholders may vote by Special Resolution to terminate the Trust at any meeting of Unitholders duly called by the Trustees for the purpose of considering termination of the Trust, following which the Trustees shall commence to wind up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustees as the Unitholders determine, including a direction to distribute the MFOT Units and the MFOT Notes, in specie to holders of Trust Units.

14.3 Procedure Upon Termination

Forthwith upon being required to commence to wind up the affairs of the Trust, the Trustees shall give notice thereof to the Unitholders, which notice shall designate the time or times at which Unitholders may surrender their Units for cancellation and the date at which the registers of Units of the Trust shall be closed.

14.4 Powers of the Trustees Upon Termination

After the date on which the Trustees are required to commence to wind up the affairs of the Trust, the Trustees shall undertake no activities except for the purpose of winding-up the affairs of the Trust as hereinafter provided and, for this purpose, the Trustees shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustees under this Declaration of Trust.

14.5 Sale of Investments

After the date referred to in Section 14.3, the Trustees shall proceed to wind up the affairs of the Trust as soon as may be reasonably practicable and for such purpose shall, subject to any direction to the contrary in respect of a termination authorized under Section 14.2, sell and convert into money the MFOT Units and the MFOT Notes and all other assets comprising the Trust in one transaction or in a series of transactions at public or private sales and do all other acts appropriate to liquidate the Trust, and shall in all respects act in accordance with the directions, if any, of the Unitholders (in respect of a termination authorized under Section 14.2). If the Trustees are unable to sell all or any of the MFOT Units or the MFOT Notes or other assets which comprise part of the Trust by the date set for termination, the Trustees may, subject to obtaining all necessary regulatory approvals, distribute the remaining shares or other assets directly to the holders of Trust Units in accordance with their *pro rata* interests.

14.6 Distribution of Proceeds or Assets

After paying, retiring or discharging or making provision for the payment, retirement or discharge of all known liabilities and obligations of the Trust and providing for indemnity against any other outstanding liabilities and obligations, the Trustees shall, subject to obtaining all necessary regulatory approvals, distribute the remaining part of the proceeds of the sale of the MFOT Units and the MFOT Notes and other assets together with any cash forming part of the Trust Assets among the holders of Trust Units in accordance with their *pro rata* interests.

14.7 Further Notice to Unitholders

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 14.3, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of Trust Units comprising such Units to receive their *pro rata* share of the remaining Trust Assets, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into court.

14.8 Responsibility of the Trustees after Sale and Conversion

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Assets after the date referred to in Section 14.3 and, after such sale, the sole obligation of the Trustees under this Declaration of Trust shall be to hold such proceeds or assets in trust for distribution under Section 14.6.

ARTICLE 15 SUPPLEMENTAL INDENTURES

15.1 Provision for Supplemental Indentures for Certain Purposes

The Trustees may, without approval of the Unitholders and subject to the provisions hereof, and it 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 or all of the following purposes:

- (a) modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Section 11.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- (b) modifying or amending any provisions of this Declaration of Trust where the modification or amendment has been approved by Special Resolution or, if required, with the consent of the holders of all of the Units.

ARTICLE 16

GENERAL

16.1 Notices

- (a) Any notice or other document required to be given or sent to Unitholders under this Declaration of Trust shall be given or sent through ordinary post addressed to each registered holder at his or her last address appearing on the register; provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication twice in the Report on Business section of the National Edition of The Globe and Mail or similar section of any other newspaper having national circulation in Canada; provided further that if there is no newspaper having national circulation, then by publishing twice in the business section of a newspaper in each city where the register or a branch register is maintained. Any notice so given shall be deemed to have been given on the day following that on which the letter or circular was posted or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice was posted, it shall be sufficient to prove that such letter or circular was properly addressed, stamped and posted.
- (b) Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the head office of the Trust, and shall be deemed to have been given on the date of delivery or, if mailed, five days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by cable, telegram, telex, facsimile or other means of prepaid, transmitted or recorded communication.

16.2 Failure to Give Notice

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

16.3 Joint Holders

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

16.4 Service of Notice

Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Article shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or

not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

16.5 Information Available to Unitholders

Each Unitholder shall have the right to obtain, on demand and without fee, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Units held by that Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor and after delivering to the Trustees a statutory declaration stating the name and address of the person requiring the Trustees to furnish the list of Unitholders and, if the person is a body corporate, the address for service thereof, and that the list will not be used except in connection with (a) an effort to influence the voting of the holders of Units, (b) an offer to acquire Units, or (c) any other matter relating to the Units or the affairs of the Trust, obtain a list of the Unitholders for the aforesaid purposes.

16.6 Fiscal Year

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

16.7 Financial Disclosure

The Trust will furnish, in accordance with and subject to applicable securities law to Unitholders, such consolidated financial statements of the Trust and other reports as are from time to time required by applicable law, including prescribed forms needed for the completion of Unitholders' tax returns. Without limiting the generality of the foregoing, the Trust will send to Unitholders:

- (a) at least 21 days prior to the date of each annual meeting of Unitholders, the annual financial statements of the Trust for the fiscal year ended immediately prior to such annual meeting, together with comparative financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon referred to in Section 17.4; and
- (b) within 60 days after the end of each fiscal quarter of the Trust (other than the fourth quarter of each year), unaudited quarterly financial statements of the Trust for such fiscal quarter, together with comparative financial statements for the same fiscal quarter in the preceding fiscal year, if any.

Such financial statements shall be prepared in accordance with generally accepted accounting principles in Canada as recommended from time to time in the Handbook of the Canadian Institute of Chartered Accountants; provided that such statements and the obligations to deliver such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities.

16.8 Unitholder Meeting Information

Prior to each meeting of Unitholders, the Trustees will provide to each Unitholder, together with the notice of the meeting:

- (a) a form of proxy which can be used by a Unitholder to appoint a proxy, who need not be a Unitholder, to attend and act at the meeting on behalf of the Unitholder, in the manner and to the extent authorized by the proxy; and
- (b) all information required by applicable law and this Declaration of Trust.

16.9 Taxation Information

On or before March 15 in each year, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information regarding the Trust required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of the prior calendar year.

16.10 Power of Attorney

The Trustees hereby grant to Menu Foods Corporation a power of attorney constituting Menu Foods Corporation, with full power of substitution, as their true and lawful attorney to act on behalf of the Trust with full power and authority in their name, place and stead, and to execute, under seal or otherwise, swear to, acknowledge, deliver, make or file or record when, as and where required, any instrument, deed, agreement or document in connection with carrying out the activities of the Trust in connection with the Offering including, without limitation, to execute on the Trust's behalf, the Preliminary Prospectus, the Prospectus and the Underwriting Agreement.

ARTICLE 17 AUDITORS

17.1 Qualification of Auditors

The Auditors shall be an independent recognized firm of chartered accountants which has an office in Canada.

17.2 Appointment of Auditors

PricewaterhouseCoopers LLP are appointed as the auditors of the Trust, to hold such office until the first annual meeting of the Unitholders. The Auditors will be selected at each succeeding annual meeting of Unitholders. The Auditors will receive such remuneration as may be approved by the Trustees.

17.3 Change of Auditors

The Auditors may at any time be removed by the Trustees with the approval of a majority of the votes cast by Unitholders at a meeting of Unitholders duly called for the purpose and, upon the resignation or the removal of Auditors as aforesaid, new auditors may be appointed by

a majority of votes cast by Unitholders at a meeting duly called for the purpose or, in the absence of such meeting, by the Trustees.

17.4 Report of Auditors

The Auditors shall audit the accounts of the Trust at least once in each year and a report of the Auditors with respect to the annual financial statements of the Trust shall be provided to each Unitholder with the annual financial statements referred to in Section 16.7.

ARTICLE 18 MISCELLANEOUS

18.1 Counterparts

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

18.2 Severability

If any provision 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.

18.3 Language

Les parties aux présentes ont exigés que la présente convention ainsi que tous les documents et avis qui s'y rattachent et/ou qui en découleront soient rédigés en la langue anglaise. The parties hereto have required that this Declaration of Trust and all documents and notices resulting herefrom be drawn up in English.

IN WITNESS WHEREOF each of the parties has caused these presents to be executed the 25th day of March, 2002.

"Paul Henderson"

PAUL HENDERSON

"Serge Darkazanli"

SERGE DARKAZANLI

"Thomas Di Giacomo"

THOMAS DI GIACOMO

"Robert Luba"

ROBERT W. LUBA

SCHEDULE “A”

VENDORS

Brian Fisher
Douglas Haslam
Torbay & Co.
William F. Grant
Michael Stephens
John Hay
Diana Flynn
William Hay
Jack Moss
Steve Lindsay
Robert Haynes
Donald R. Green, Jr.
Randall C. Copeland
Nick Iwanisziw
Sean M. Conklin
Jeffrey Gibbs
Larry Whetung
Paul Henderson
Jeff David
Jeanette Zubko
Simon Baril
Lorri Crowe
Kelli Willis
Jamie Bras
Richard G. Shields, Jr.
William J. McKee
Robert Langmuir
Jeffrey Reid
Tom Stebbins
Dennis W. Murnane