

---

**STONEHAM DRILLING TRUST**  
**DECLARATION OF TRUST**  
**Effective as of May 30, 2003**  
**(as amended and restated December 15, 2004)**

---

# TABLE OF CONTENTS

Page

## ARTICLE 1 INTERPRETATION

1.1	Definitions.....	2
1.2	References to Acts Performed by the Trust and Adminco .....	9
1.3	Interpretation.....	9
1.4	Tax Act.....	9
1.5	Headings for Reference Only.....	9
1.6	Day Not a Business Day .....	10
1.7	Time of the Essence .....	10
1.8	Governing Law .....	10

## ARTICLE 2 DECLARATION OF TRUST

2.1	Initial Contribution and Settlement of Trust.....	10
2.2	Declaration of Trust .....	10
2.3	Name of the Trust .....	10
2.4	Head Office.....	11
2.5	Nature of the Trust.....	11
2.6	Rights of Unitholders and Ownership of Assets of the Trust .....	11
2.7	Unitholders Bound .....	11

## ARTICLE 3 CREATION, ISSUE AND SALE OF TRUST UNITS

3.1	Nature of Trust Units .....	12
3.2	Special Voting Rights .....	12
3.3	Authorized Number of Trust Units and Other Trust Securities .....	12
3.4	Issue of Trust Units and Other Trust Securities.....	13
3.5	No Pre-Emptive Rights .....	13
3.6	Consolidation of Trust Units.....	13
3.7	Non-Resident Ownership Constraint .....	14
3.8	Trust Unit Certificates.....	15
3.9	Execution of Trust Unit Certificates .....	15
3.10	Certificate Fee .....	15
3.11	Form of Trust Unit Certificate .....	16
3.12	Fractional Trust Units .....	16
3.13	Trust Unit Register and Transfer Ledgers to be Maintained .....	16
3.14	Entry on Register .....	16
3.15	Transfer of Trust Units.....	17
3.16	Successors in Interest to Unitholders.....	17
3.17	Trust Units Held Jointly or in Fiduciary Capacity .....	17
3.18	Performance of Trusts.....	17
3.19	Lost Trust Unit Certificates .....	18

3.20	Death of Unitholders.....	18
3.21	Unclaimed Payments .....	18
3.22	Repurchase of Trust Units .....	19
3.23	Take-Over Bids.....	19
3.24	Power of Attorney.....	23

ARTICLE 4  
PURPOSE AND INVESTMENTS OF FUND

4.1	Purpose of the Trust.....	24
4.2	Other Investments .....	25
4.3	Investment Restrictions.....	26

ARTICLE 5  
DISTRIBUTIONS

5.1	Computation of Distributable Cash Flow of the Trust.....	27
5.2	Computation of Income and Net Realized Capital Gains.....	28
5.3	Monthly Distributions of Distributable Cash Flow .....	28
5.4	Other Distributions.....	28
5.5	Character of Distribution .....	30
5.6	Enforceability of Right to Receive Distributions.....	30
5.7	Designation of Taxable Capital Gains and Other Amounts.....	30
5.8	Method of Payment of Distributions.....	30
5.9	Withholding Taxes.....	31
5.10	Income Tax Matters .....	31
5.11	Distribution Reinvestment and Unit Purchase Plan.....	31

ARTICLE 6  
REDEMPTION

6.1	Right of Redemption.....	31
6.2	Exercise of Redemption Right.....	31
6.3	Calculation or Redemption Price Based on Market Price .....	32
6.4	Cash Payment of Market Redemption Price.....	33
6.5	Limitation Regarding Cash Payment of Market Redemption Price .....	33
6.6	Calculation or Redemption Price in Certain Other Circumstances .....	34
6.7	Cancellation of Certificates for all Redeemed Trust Units.....	34

ARTICLE 7  
TRUSTEE

7.1	Number and Term.....	34
7.2	Qualifications of the Trustee.....	35
7.3	Election of the Trustee .....	35
7.4	Resignation and Removal of the Trustee .....	36
7.5	Vacancies .....	37
7.6	Successor and Additional Trustee.....	37
7.7	Compensation and Other Remuneration.....	37

ARTICLE 8  
TRUSTEE'S POWERS AND DUTIES

8.1	General Powers .....	38
8.2	Specific Powers and Authorities .....	38
8.3	Further Powers of the Trustee .....	42
8.4	Standard of Care .....	42
8.5	Reliance Upon the Trustee .....	43
8.6	Determinations of the Trustee Binding .....	43
8.7	Restrictions on the Trustee's and Adminco's Powers and their Exercise .....	43
8.8	Banking .....	44
8.9	Payments to Unitholders .....	45
8.10	Notice to Unitholders of Non-Eligibility for Deferred Plans .....	46

ARTICLE 9  
AMENDMENTS TO THE TRUST INDENTURE

9.1	Amendment .....	46
9.2	Amendment without Approval .....	46
9.3	Further Restrictions on Amendments .....	47
9.4	Notification of Amendment .....	47
9.5	Further Acts Regarding Amendment .....	48

ARTICLE 10  
MEETINGS OF UNITHOLDERS

10.1	Annual Meeting .....	48
10.2	Other Meetings .....	48
10.3	Unitholder Proposals .....	50
10.4	Notice of Meeting of Unitholders .....	51
10.5	Quorum; Chairman .....	51
10.6	Voting .....	52
10.7	Record Dates ' .....	52
10.8	Proxies .....	53
10.9	Resolution in Lieu of Meeting .....	53
10.10	Materials Sent to Unitholders .....	53
10.11	Meetings of Holders of General Partner Shares and Adminco Shares .....	53
10.12	Resolutions Binding the Trustee .....	53

ARTICLE 11  
TERMINATION

11.1	Term of the Trust .....	54
11.2	Termination with the Approval of Unitholders .....	54
11.3	Procedure Upon Termination .....	55
11.4	Powers of the Trustee Upon Termination .....	55
11.5	Sale of Investments .....	55
11.6	Distribution of Proceeds .....	55
11.7	Further Notice to Unitholders .....	55
11.8	Responsibility of the Trustee after Sale and Conversion .....	56

ARTICLE 12  
LIABILITY OF TRUSTEE, STONEHAM, ADMINCO  
AND UNITHOLDERS AND OTHER MATTERS

12.1	General Limitation of Liability and Indemnification.....	56
12.2	Indemnification, of Trustee.....	59
12.3	Execution of Instruments and Apparent Authority.....	59
12.4	Reliance.....	60
12.5	Conditions Precedent to Trustee's Obligations to Act.....	60

ARTICLE 13  
RESPONSIBILITIES OF AND DELEGATION TO ADMINCO

13.1	Delegation Permitted to Adminco .....	61
13.2	General Delegation to Adminco .....	61
13.3	Responsibilities of Adminco.....	61
13.4	Services for which Adminco is not Responsible .....	64
13.5	Covenants of Adminco .....	65
13.6	Grant of Power and Authority Adminco.....	65
13.7	Determinations of Adminco Binding.....	66
13.8	Execution of Documents.....	66
13.9	Expense Reimbursement.....	66
13.10	Standard of Care of Adminco .....	66
13.11	Indemnification of Adminco and Stoneham .....	67
13.12	Reliance by Adminco.....	67
13.13	Sub-Delegation by Trustee and Adminco.....	68
13.14	Liability of Trustee in Respect of Adminco's Obligations .....	68
13.15	Adminco as Party to Declaration of Trust .....	68
13.16	No Partnership or Joint Venture .....	68
13.17	Absence of Adminco as a Party .....	68

ARTICLE 14  
SUPPLEMENTAL INDENTURES

14.1	Provision for Supplemental Indentures.....	69
------	--	----

ARTICLE 15  
GENERAL

15.1	Notices .....	69
15.2	Failure to Give Notice.....	70
15.3	Joint Holders .....	70
15.4	Service of Notice.....	70
15.5	Trust Records .....	70
15.6	Information Available to Unitholders .....	71
15.7	Fiscal Year .....	71
15.8	Financial Disclosure.....	71
15.9	Unitholder Meeting Information.....	71
15.10	Taxation Information .....	71
15.11	Income Tax: Obligations of the Trustee .....	72

15.12	Qualification of Auditors .....	72
15.13	Appointment of Auditors .....	72
15.14	Auditors Ceasing to Hold Office .....	72
15.15	Removal of Auditors.....	72
15.16	Filling Vacancy.....	72
15.17	Reports of Auditors.....	72
15.18	Trust Assets to be Kept Separate .....	72
15.19	Trustee May Not Hold Trust Units .....	73
15.20	Execution and Effect of Restated Declaration of Trust .....	73
15.21	Consolidations.....	73
15.22	Severability .....	73
15.23	Successors and Assigns.....	73
15.24	Counterparts.....	73

**THIS DECLARATION OF TRUST** is made as of the 30<sup>th</sup> day of May, 2003 and amended and restated as of the 15<sup>th</sup> day of December, 2004.

**BETWEEN:**

**VALIANT TRUST COMPANY**, a trust company incorporated under the laws of Alberta, having an office at Calgary, Alberta, (hereinafter called the "**Trustee**") which is the trustee of the trust constituted by this Declaration of Trust (the "**Trust**") and each person who after the date hereof becomes a trustee of the Trust as herein provided;

- and -

**BRUCE JONES**, an individual residing in the Province of Alberta (hereinafter called the "**Initial Unitholder**") which person is not a party to this Declaration of Trust and is named herein for the purposes of confirming the settlement of the Trust and all persons who after the date hereof become holders of Trust Units of the Trust as herein provided (collectively at any time, each person who is at that time a holder of a Trust Unit of the Trust as herein provided, hereinafter called the "**Unitholders** ").

**WHEREAS** the Initial Unitholder desired to create a trust for the purpose of acquiring and holding the Initial Permitted Securities and such other securities or investments as may be determined by the Initial Trustees (as defined herein) to be advisable provided the ownership thereof will permit the Trust to qualify as a "unit trust" and as a "mutual fund trust" pursuant to paragraph 108(2) and subsection 132(6) of the Tax Act;

**AND WHEREAS**, for the purpose of settling the trust constituted hereunder, on May 30, 2003, the Initial Unitholder paid to the Initial Trustees the amount of \$1.50 in lawful money of Canada (the "**Initial Contribution**") upon certain trusts declared by the Initial Trustees;

**AND WHEREAS** it is intended that the Trust Units be offered for sale to the public pursuant to the Prospectus (as defined herein);

**AND WHEREAS** effective December 15, 2004, by resolution in writing executed by Unitholders holding, in aggregate, greater than 66 2/3 % of the outstanding Trust Units, the Unitholders resolved to remove the Initial Trustees and appoint Valiant Trust Company as the Trustee (as defined herein);

**AND WHEREAS**, coincident with the appointment of the Trustee, the Unitholders resolved to make certain amendments to this Declaration of Trust incidental to the filing of the Prospectus;

**AND WHEREAS** the Initial Unitholder and the Trustee desire that the beneficiaries of the Trust, including the Initial Unitholder, shall be the holders of Trust Units evidenced by

certificates therefor as hereinafter provided, each of which shall rank equally in all respects with every other Trust Unit except as expressly provided herein;

**AND WHEREAS** the Trustee has 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 trust in accordance with the provisions hereinafter set forth;

**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 and to amend and restate this Declaration of Trust to give effect to the amendments described above and to update certain provisions of the Declaration of Trust;

**NOW THEREFORE THIS INDENTURE WITNESSETH THAT**, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustee declares, and covenants and agrees with the Unitholders, and the Unitholders covenant and agree with the Trustee as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Declaration of Trust and in the Trust Unit Certificates, unless the context otherwise requires, the following shall have the following meanings:

- (a) "**Adminco**" means Stoneham Administration Inc. or such other person who may be appointed as successor from time to time.
- (b) "**Adminco Board**" means the board of directors of Adminco as constituted from time to time; provided that, a majority of the directors on each of the Stoneham Board and the Adminco Board must not be individuals common to both boards.
- (c) "**Adminco Shares**" means the common shares of Adminco.
- (d) "**affiliate**" has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time.
- (e) "**annuitant**" means the annuitant of a registered retirement savings plan, a registered retirement income fund, a registered education savings plan or a deferred profit sharing plan, all as defined in the Tax Act, or any other plan of which a Unitholder acts as trustee or carrier:
- (f) "**Appraised Redemption Price**" has the meaning ascribed thereto in Section 6.6.
- (g) "**associate**" has the meaning ascribed thereto in the *Securities Act* (Alberta), as amended from time to time.

- (h) "**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 Roberts & Company, Chartered Accountants.
- (i) "**Business Day**" means a day other than a Saturday, Sunday or a day on which the principal chartered banks located at Calgary, Alberta are not open for business during normal banking hours.
- (j) "**Counsel**" means a barrister and solicitor or firm of barristers and solicitors or other lawyers in an appropriate jurisdiction retained by the Trust.
- (k) "**Deferred Plans**" means, collectively, RRSPs, RRIFs, DPSPs and RESPs.
- (l) "**Distributable Cash Flow**" has the meaning ascribed thereto in Section 5.1.
- (m) "**Distribution Payment Dates**" means the 15<sup>th</sup> day of the month following each Distribution Record Date or, if any such day is not a Business Day, the next following Business Day or such other dates determined from time to time by Adminco and, in the case of the Distribution Record Date which falls on December 31 in each year, on or before February 15 of the following year; and "**Distribution Payment Date**" means one of such dates.
- (n) "**Distribution Period**" means, in respect of a Distribution Record Date, the period commencing immediately following the preceding Distribution Record Date and ending on such Distribution Record Date or such other period as may be hereinafter determined from time to time by Adminco.
- (o) "**Distribution Record Date**" means the date or dates as may be determined from time to time by Adminco, except that December 31 of each year shall in all cases be a Distribution Record Date.
- (p) "**DPSPs**" means deferred profit sharing plans as defined in the Tax Act.
- (q) "**Eligible Investments**" has the meaning ascribed thereto in Subsection 4.2(b).
- (r) "**Exchangeable Security**" or "**Exchangeable Securities**" means a unit or units, a share or shares or other security or securities which are 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) "**Experts**" means any auditor (including the Auditors), legal counsel (including Counsel), valuator, engineer, surveyor, appraiser or other expert whose profession gives authority to a statement made by them on the subject in question.
- (t) "**Fixed Notes**" means the issued and outstanding secured, subordinated, non-interest bearing (until after demand) promissory notes issued by Stoneham L.P.
- (u) "**General Partner Shares**" means the common shares of Stoneham.

- (v) "**Governmental Authority**" means any court or governmental department, commission, board, bureau, agency, or instrumentality of Canada, or of any state, province, territory, county, municipality, city, town or other political jurisdiction whether domestic or foreign and whether now or in the future constituted or existing.
- (w) "**Income of the Trust**" has the meaning ascribed thereto in Subsection 5.2(a).
- (x) "**Indenture Conferred Duties**" means all rights, powers and duties conferred upon, granted, allocated and delegated to Adminco pursuant to the terms of this Declaration of Trust.
- (y) "**Initial Contribution**" means the amount of \$1.50 paid by the Initial Unitholder to the Initial Trustees on May 30, 2003 for the purpose of settling the trust constituted hereby.
- (z) "**Initial Permitted Securities**" means any equity or debt securities, or rights thereto, authorized or issued from time to time by Stoneham L.P. and any successor to Stoneham L.P. including, without limitation, the Limited Partnership Units.
- (aa) "**Investments**" has the meaning ascribed thereto in Subsection 6.5(a).
- (bb) "**Initial Trustees**" means Grant Gunderson, Wayne Thomas and Perry Jasson, individuals residing in the Province of Alberta, all of whom were the first trustees of the Trust and who have been replaced in such role by Valiant Trust Company.
- (cc) "**Issue Expenses**" means all expenses of an Offering payable by the Trust including legal fees, accounting fees and printing expenses and all other fees and expenses which may be described, whether generally or specifically, in the offering document relating to the Offering, but excluding Underwriters' Fees.
- (dd) "**Limited Partnership Agreement**" means the limited partnership agreement dated May 30, 2003, as amended June 27, 2003, as further amended and restated December 15, 2004, between Stoneham and Seamans Drilling Inc., and currently between Stoneham and the Trust, providing for the creation of Stoneham L.P., as such agreement may be amended, supplemented and restated from time to time.
- (ee) "**Limited Partnership Units**" means the limited partnership units of Stoneham L.P.
- (ff) "**Material Contracts**" means the Notes and the Limited Partnership Agreements.
- (gg) "**Market Redemption Price**" has the meaning ascribed thereto in Section 6.3.
- (hh) "**meeting of the Unitholders**" shall mean and include, as the circumstances require, both an annual meeting of Unitholders and any other meeting of Unitholders.

- (ii) "**Net Proceeds**" means the proceeds of an Offering after deduction of Underwriters' Fees and Issue Expenses.
- (jj) "**Net Realized Capital Gains**" has the meaning ascribed thereto in Subsection 5.2(b).
- (kk) "**Non-Resident**" means: (i) a person who is not a resident of Canada for the purposes of the Tax Act; or (ii) a partnership that is not a Canadian partnership for the purposes of the Tax Act.
- (ll) "**Notes**" means the Fixed Notes and the Partnership Notes and any other notes or evidence of indebtedness which may, from time to time, be issued to and held, directly or indirectly, by the Trust.
- (mm) "**Offering**" means any issuance or offering of Trust Units or Other Trust Securities.
- (nn) "**Ordinary Resolution**" means:
  - (i) a resolution passed by more than 50% of the votes cast in respect of the resolution by or on behalf of the Unitholders and Special Rights Holders, either in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
  - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 50% of the votes represented by the Trust Units and Special Voting Rights entitled to be voted on such resolution.

For the purpose of determining such percentage, the holders of any issued Special Voting Rights who are present at the meeting or represented by proxy at the meeting shall be regarded as representing outstanding Trust Units equivalent in number to the votes attaching to such Special Voting Rights.

- (oo) "**Other Trust Securities**" means any Special Voting Rights or any other securities of the Trust (other than Trust Units), including securities convertible into or exercisable for Trust Units or other securities of the Trust (including convertible debt securities, subscription receipts and installment receipts), options, rights, warrants or similar rights to acquire Trust Units or other securities of the Trust.
- (pp) "**Partnership Notes**" means the unsecured, subordinated, non-interest bearing promissory notes issued from time to time by Stoneham L.P.
- (qq) "**Permitted Investments**" means the Initial Permitted Securities and any other securities or investments which may be acquired by the Trust as permitted hereby.

- (rr) "**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 and other organizations, whether or not legal entities and governments and agencies and political subdivisions thereof.
- (ss) "**Prospectus**" means the prospectus of the Trust, relating to an initial public offering of Trust Units filed with various securities commissions or similar authorities in Canada to qualify the issue and distribution of the Trust Units.
- (tt) "**Redemption Gains**" has the meaning ascribed thereto in Subsection 5.2(c).
- (uu) "**Redemption Income**" has the meaning ascribed thereto in Subsection 5.2(c).
- (vv) "**Redemption Notes**" has the meaning ascribed thereto in Subsection 6.5(b).
- (ww) "**Registers**" has the meaning ascribed thereto in Section 3.13.
- (xx) "**RESPs**" means registered education savings plans as defined in the Tax Act.
- (yy) "**RRIFs**" means registered retirement income funds as defined in the Tax Act.
- (zz) "**RRSPs**" means registered retirement savings plans as defined in the Tax Act.
- (aaa) "**Securities**" include: (i) any documents, instruments or writings commonly known as securities; (ii) any documents constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person; (iii) any documents constituting evidence of an option, subscription or other interest in or to securities; (iv) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate or certificate of share or interest; (v) any certificate of share or interest in a trust, estate or association; (vi) any profit sharing agreement or certificate; and (vii) any investment contract.
- (bbb) "**Special Resolution**" means:
  - (i) a resolution passed by more than 66 2/3% of the votes cast in respect of the resolution by or on behalf of the Unitholders and Special Rights Holders, either in person or by proxy, at a meeting of Unitholders, at which a quorum was present, called (at least in part) for the purpose of approving such resolution, or
  - (ii) a resolution approved in writing, in one or more counterparts, by holders of more than 66 2/3% of the votes represented by the Trust Units and Special Voting Rights entitled to be voted on such resolution.

For the purpose of determining such percentage, the holders of any issued Special Voting Rights who are present or represented by proxy at the meeting shall be

regarded as representing outstanding Trust Units equivalent in number to the votes attaching to such Special Voting Rights.

- (ccc) "**Special Rights Holders**" means the holders from time to time of one or more Special Voting Rights.
- (ddd) "**Special Voting Rights**" means special voting rights of the Trust, issued and certified hereunder for the time being outstanding and entitled to the benefits and subject to the limitations set forth in Section 3.2.
- (eee) "**Stoneham**" means Stoneham Drilling Inc.
- (fff) "**Stoneham Board**" means the board of directors of Stoneham as constituted from time to time; provided that, a majority of the directors on each of the Stoneham Board and the Adminco Board must not be individuals common to both boards.
- (ggg) "**Stoneham L.P.**" means Stoneham Drilling Limited Partnership, an Alberta limited partnership.
- (hhh) "**Subordination Agreements**" has the meaning ascribed thereto in Subsection 12.1(e).
- (iii) "**Subsequent Investments**" means any assets, securities (whether debt or equity), notes, royalties, properties or interests of whatever nature or kind as Adminco may determine that may be acquired, directly or indirectly, by the Trust, subject to the restrictions in Section 4.3.
- (jjj) "**take-over bid**" has the meaning ascribed to such term in the *Securities Act* (Alberta), as amended from time to time.
- (kkk) "**Tax Act**" means the *Income Tax Act* (Canada) R.S.C. 1985, Chapter 1 (5th Supplement) and the regulations thereunder as amended from time to time.
- (lll) "**this Declaration of Trust**", "**this Indenture**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "hereunder" and similar expressions refer to this instrument and, unless otherwise specified, not to any particular Article, Section or portion hereof, and include any and every amendment hereto and instrument supplemental or ancillary hereto.
- (mmm) "**Transfer Agent**" means such company, initially to be the Trustee, as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Trust Units together with any sub-transfer agent duly appointed by the Transfer Agent.
- (nnn) "**Trust**" means the trust originally constituted by this Declaration of Trust as at May 30, 2003 and continued pursuant to this Amended and Restated Declaration of Trust.

- (ooo) "**Trust Assets**" means, at any time, all of the monies, properties and other assets of any nature or kind whatsoever as are, at such time, held by the Trust or by the Trustee on behalf of the Trust, including:
- (i) the Initial Contribution;
  - (ii) all funds realized from the sale of, or Permitted Investments obtained in exchange for, Trust Units from time to time;
  - (iii) Permitted Investments;
  - (iv) any proceeds of disposition of any of the foregoing property but not Trust Units in the case of a redemption thereof to which Section 6.1 applies; and
  - (v) all income, interest, dividends, return of capital, profit, gains and accretions and additional assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accretions to or accruals in respect of any of the foregoing property or such proceeds of disposition from time to time.
- (ppp) "**Trustee**" means at any time, a person who is, in accordance with the provisions hereof, a trustee of the Trust at that time including, so long as it remains a trustee, Valiant Trust Company.
- (qqq) "**Trustee's Regulations**" has the meaning ascribed thereto in Section 8.3.
- (rrr) "**Trust Unit Certificate**" means a certificate, in the form approved by Adminco, evidencing one or more Trust Units, issued and certified in accordance with the provisions hereof.
- (sss) "**Trust Units**" means the Class A trust units of the Trust authorized and issued hereunder as such and for the time being outstanding and entitled to the benefits hereof and such trust units of the Trust as may be issued from time to time in the future.
- (ttt) "**Underwriters' Fees**" means the underwriters' or agents' fees so designated in any Underwriting Agreement.
- (uuu) "**Underwriting Agreement**" means any underwriting, agency or similar agreement entered into by or on behalf of the Trust and investment dealers, and such other persons as may be party thereto, relating to an Offering.
- (vvv) "**Unitholders**" means at any time the holders at that time of one or more Trust Units, as shown on the register of such holders maintained by the Trust or by the Transfer Agent on behalf of the Trust.
- (www) any reference to "**property**" or "**property of the Trust**" or "**assets**" or "**assets of the Trust**" includes, in each case, the Trust Assets.

## **1.2 References to Acts Performed by the Trust and Adminco**

For greater certainty, where any reference is made in this Declaration of Trust to:

- (a) an act to be performed by the Trust or to rights of the Trust, such reference shall be construed and applied for all purposes to refer to: (i) an act to be performed by the Trustee on behalf of the Trust or by some other person duly authorized to do so by the Trustee or pursuant to the provisions hereof; or (ii) rights of the Trustee, in its capacity as Trustee of the Trust, as the case may be;
- (b) actions, rights or obligations of the Trustee, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustee in its capacity as trustee of the Trust, and not in its other capacities, unless the context clearly requires otherwise; and
- (c) an act to be performed by Adminco; such reference shall be construed and applied for all purposes to refer to an act to be performed by the Adminco Board, or any person that the Adminco Board have duly authorized or permitted to take such action on behalf of Adminco and, unless the context requires otherwise, all acts to be performed hereunder by Adminco shall be construed to be performed by Adminco on behalf of the Trust.

## **1.3 Interpretation**

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. Where the word "**including**" or "**includes**" is used in this Declaration of Trust it means "including without limitation" or "includes without limitation", respectively.

## **1.4 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 Trustee and Adminco may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force.

## **1.5 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**

Except as otherwise set out herein, in the event that any day on which any amount is to be determined or any other determination is to be made or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined, or such other determination shall be made, 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 1.6 is not applicable to Sections 5.1, 5.2, 5.3, 5.4 and 5.8 and to defined terms used in such Sections and the definition of Distribution Record Date (except with respect to the definition of, and action to be taken on, any Distribution Payment Date in Section 5.3 and Subsection 5.4(c)).

## **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 Trust Unit Certificates shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The parties hereto hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Alberta.

# **ARTICLE 2 DECLARATION OF TRUST**

## **2.1 Initial Contribution and Settlement of Trust**

The Initial Unitholder paid, concurrent with the execution of this Declaration of Trust on May 30, 2003, the Initial Contribution to the Initial Trustees for the purpose of creating and settling the Trust, and in consideration therefor one Trust Unit was issued to the Initial Unitholder. Receipt of the Initial Contribution is hereby acknowledged by the Trustee.

## **2.2 Declaration of Trust**

The Trustee hereby agrees to hold legal title to, use and administer the Trust Assets in trust for the benefit of the Unitholders, their permitted assigns and personal representatives in accordance with and subject to the terms and conditions hereinafter declared and set forth, such trust to constitute the Trust hereunder.

## **2.3 Name of the Trust**

The Trust shall be known and designated as "Stoneham Drilling Trust" and, whenever 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. The Trust may use such other designation or may adopt such other name as Adminco deems 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 shall be located at Calgary, Alberta, or such other place or places in Canada as Adminco may from time to time designate and will initially be located at 312, 407 – 2nd Street S.W., Calgary, Alberta, T2P 2Y3.

## **2.5 Nature of the Trust**

The Trust is a trust that is an unincorporated open-ended mutual fund trust, established for the purposes specified in Section 4.1. The Trust is not, is not intended to be, shall not be deemed to be and shall not be treated as, a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company; further, none of the Trustee, Adminco or the Unitholders, nor any of them, shall be, or be deemed to be, treated in any way whatsoever as liable or responsible hereunder as partners or joint venturers. Neither the Trustee nor Adminco shall be, or be deemed to be, an agent of the Unitholders. The relationship of the Unitholders to the Trustee shall be solely that of beneficiaries of the Trust, and their rights shall be limited to those expressly conferred upon them by this Declaration of Trust.

## **2.6 Rights of Unitholders and Ownership of Assets of the Trust**

- (a) Except as otherwise expressly provided for herein, no Unitholder shall be entitled to interfere with, or give any direction to, the Trustee or Adminco with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustee or Adminco under this Declaration of Trust.
- (b) The legal ownership of the Trust Assets is vested exclusively in the Trustee and the right to conduct the affairs of the Trust is, subject to the Indenture Confirmed Duties to be conducted by Adminco, vested exclusively in the Trustee, or such other persons as the Trustee may determine or as are permitted in accordance with the terms hereof, and the Unitholders shall have no interest therein other than the interest specifically set forth in this Declaration of Trust and they shall have no right to compel or call for any redemption of Trust Units or any partition, division, dividend or distribution of the Trust Assets or any of the other assets of the Trust, except as specifically provided herein.
- (c) The Trust Units shall be personal property and shall confer upon the Unitholders only the interest and rights attributable to such Trust Units as specifically set forth in this Declaration of Trust.

## **2.7 Unitholders Bound**

This Declaration of Trust shall be binding upon all persons who become Unitholders from time to time. By acceptance of a Trust Unit Certificate representing any Trust Units, the Unitholder thereof shall be deemed to agree to be bound, and shall be so bound, by this Declaration of Trust.

**ARTICLE 3  
CREATION, ISSUE AND SALE OF TRUST UNITS**

**3.1 Nature of Trust Units**

- (a) The beneficial interests in the Trust shall be represented and constituted by a single class of units described and designated as "Class A Units"(the "**Class A Units**"), which shall be entitled to the rights and subject to the limitations, restrictions and conditions ascribed thereto herein; provided, however, that the Trust Units may be issued and sold on an installment basis, and in such case the Trust may take a security interest in any Trust Unit so issued as security for unpaid installments, and the interest of each Unitholder shall be determined by the number of Trust Units registered in the name of the Unitholder.
- (b) Each Trust Unit represents an equal fractional undivided beneficial interest in any distributions from the Trust (whether of net income, 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 shall rank among themselves equally and ratably without discrimination, preference or priority. Each Trust Unit shall entitle the holder of record thereof to one vote at all meetings of Unitholders.
- (c) The issued and outstanding Trust Units may be subdivided or consolidated from time to time, as determined in the discretion of Adminco.

**3.2 Special Voting Rights**

In addition to Trust Units, there may be issued Special Voting Rights entitling the holders thereof to attend at meetings of Unitholders and to such number of votes at such meetings as may be prescribed by Adminco. Except for the right to attend and vote at meetings of the Unitholders, and exercising rights in connection with voting at meetings of Unitholders (such as requisitioning meetings and submitting proposals), the Special Voting Rights shall not confer upon the holders thereof any other rights; and for greater certainty, the holders of Special Voting Rights shall not be entitled to any distributions of any nature whatsoever from the Trust or have any beneficial interest in any assets of the Trust on termination or winding-up of the Trust. Any matter in this Declaration of Trust which requires the approval of Unitholders shall be construed to require the approval of Unitholders and Special Rights Holders, voting together as a single class, at a single meeting of both Unitholders and Special Rights Holders held in the manner contemplated in Article 10, and in each case subject to the voting rights attached to the Special Voting Rights then outstanding. Any provision in this Declaration of Trust regarding notice to be provided to Unitholders, including Article 15, shall apply equally to Special Rights Holders.

**3.3 Authorized Number of Trust Units and Other Trust Securities**

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

### **3.4 Issue of Trust Units and Other Trust Securities**

- (a) Trust Units or Other Trust Securities may be created, issued, sold and delivered at the times, to the persons, for the consideration and on the terms and conditions that Adminco determines, including pursuant to a unitholder rights plan, distribution reinvestment plan or Trust Unit purchase plan or any incentive option or other compensation plan, and, without limiting the generality of the foregoing, Adminco may authorize the Trust to pay a reasonable commission to any person in consideration of such person purchasing or agreeing to purchase Trust Units or Other Trust Securities from the Trust or from any other person or procuring or agreeing to procure purchasers for Trust Units or Other Trust Securities or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Trust Units or Other Trust Securities or of their agreeing to produce or obtain subscriptions therefor, whether absolute or conditional.
- (b) Subject to allowable discounts (if any) provided, to persons as consideration for purchasing or agreeing to procure subscriptions for Trust Units, Trust Units are only to be issued as fully paid and are not to be subject to future calls or assessments; provided however, that Trust Units issued under any Offering may be issued for a consideration payable in installments and that the Trust may take security over any Trust Units issued under any such Offering as security for unpaid installments and assign the benefit of all or part of such security.
- (c) The consideration for any Trust Unit shall be paid in money or in property (including a promissory note) or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Trust Unit had been issued for money.

### **3.5 No Pre-Emptive Rights**

There are no pre-emptive rights attaching to the Trust Units or the Special Voting Rights.

### **3.6 Consolidation of Trust Units**

Immediately after any *pro rata* distribution of additional Trust Units to Unitholders pursuant to Section 5.8, the number of the outstanding Trust Units will be consolidated such that each Unitholder will hold after the consolidation the same number of Trust Units as the Unitholder 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 distribution of additional Trust Units and the consolidation. Notwithstanding the foregoing, where tax is required to be withheld in respect of a Unitholder's share of the distribution, the Trust shall withhold from the cash portion of such distribution, if any, or the Unitholder shall make a cash payment to the Trust, of an amount equal to the amount of tax required to be remitted to the appropriate taxation authority by the Trust, or, if such withholding cannot be made by the Trust or such payment is not made by the Unitholder: (a) the consolidation of the Trust Units held by such Unitholder will result in

such Unitholder holding that number of Trust Units equal to the number of Trust Units held by such Unitholder prior to the distribution minus the number of Trust Units withheld on account of withholding taxes payable by the Unitholder in respect of the distribution; and (b) the consolidation shall not apply to any Trust Units so withheld. Any Trust Units so withheld shall either be delivered to the appropriate taxation authority or sold, in which case the net proceeds shall be remitted to the appropriate taxation authority. Such Unitholder will be required to surrender the Trust Unit Certificates, if any, representing such Unitholder's original Trust Units, in-exchange for a Trust Unit Certificate representing such Unitholder's post-consolidation Trust Units.

### **3.7 Non-Resident Ownership Constraint**

- (a) At no time may Non-Residents be the beneficial owners of more than 49 percent of the Trust Units then outstanding and Adminco shall inform the Transfer Agent of this restriction. Adminco or the Transfer Agent may require declarations as to the jurisdictions in which beneficial owners of Trust Units are resident. If Adminco becomes aware that the beneficial owners of 45 percent or more of the Trust Units then outstanding are, or may be, Non-Residents or that such a situation is imminent, Adminco will advise the Trustee and Adminco may, or upon receiving a direction from Adminco the Transfer Agent may, make a public announcement thereof and neither the Trust (through Adminco) nor the Transfer Agent (upon receipt of a direction from Adminco) shall accept a subscription for Trust Units from or issue or register a transfer of Trust Units to a person unless such person provides a declaration that such person is not a Non-Resident.
- (b) If, notwithstanding the foregoing, Adminco determines that 45 percent or more of the Trust Units are held by Non-Residents, Adminco may, or the Transfer Agent may upon receiving a direction from Adminco and suitable indemnity from the Trust, send a notice to such Unitholders, as applicable, chosen in inverse order to the order of acquisition or registration or in such other manner as Adminco may consider equitable and practicable, requiring such Non-Residents to sell their Trust Units or a specified 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 Trust Units or provided Adminco with satisfactory evidence that they are not Non-Residents within such period, Adminco (or the Transfer Agent on the direction of Adminco) may on behalf of such Unitholders sell such Trust Units and, in the interim, shall suspend the voting and distribution rights attached to such Trust Units and make any distribution in respect of such Trust Units by depositing such amount in a separate bank account in a Canadian chartered bank. Any sale shall be made on any stock exchange on which the Trust Units are then listed and, upon such sale the Unitholders thereby affected shall cease to be holders of Trust Units and their rights shall be limited to receiving the net proceeds of sale of such Trust Units (and for greater certainty, any distributions that have been deposited in a bank account pending any such sale on behalf of a Non-Resident or pending delivery of the Trust Unit Certificate(s) evidencing such Trust Units, together with any interest earned thereon, shall be for the account of the purchaser of such Trust Units).

- (c) No liability shall accrue to the Trust or the Trustee if the Trust Units of Non-Residents are sold at a loss to such Unitholder. Unless and until the Trustee shall be required to do so under the terms hereof, the Trustee shall not be bound to do or take any proceedings or action with respect to this Section 3.7 by virtue of the powers conferred on it hereby. The Trustee shall not be deemed to have notice of any violation of this Section 3.7 unless and until it has been given written notice of such violation by Adminco and shall act only as required by this Declaration of Trust once an indemnity is provided. The Trustee shall not be required to actively monitor the foreign holdings of the Trust, unless requested to do so in writing by Adminco. It is acknowledged that the Trustee cannot monitor Non-Residents if the Trust Units are registered in the name of the Canadian Depository for Securities Limited or the Depository Trust Company. The Trustee shall not be liable for any violation of the Non-Resident ownership restriction which may occur during the term of the Trust. ,
- (d) Notwithstanding the foregoing, the Trustee, upon direction of Adminco and once an indemnity is provided, may take such other actions as specified by Adminco to ensure compliance with the Tax Act.
- (e) Notwithstanding any other provision of this Declaration of Trust, Non-Residents shall not be entitled to vote in respect of any Special Resolution to amend this Section 3.7.

### **3.8 Trust Unit Certificates**

Each holder of Trust Units or its duly authorized agent shall be entitled to a Trust Unit Certificate bearing an identifying serial number in respect of the Trust Units held by it, signed in the manner hereinafter prescribed. The Trust is not bound to issue more than one Trust Unit Certificate in respect of a Trust Unit or Trust Units held jointly or in common by two or more persons and delivery of a Trust Unit Certificate to one of them registered in joint names shall be sufficient delivery to all.

### **3.9 Execution of Trust Unit Certificates**

Trust Unit Certificates shall be signed by Adminco and the Transfer Agent. The signatures by Adminco required on Trust Unit Certificates may be printed or otherwise mechanically reproduced thereon and Trust Unit Certificates so signed are as valid as if they had been signed manually. If a Trust Unit Certificate contains a printed or mechanically reproduced signature of a person, then the Trust may issue the Trust Unit Certificate even though the person has ceased to be an authorized representative of Adminco and such Trust Unit Certificate is as valid as if the person continued to be an authorized representative of Adminco at the date of its issue.

### **3.10 Certificate Fee**

Adminco may establish a reasonable fee to be charged for every Trust Unit Certificate issued.

### **3.11 Form of Trust Unit Certificate**

Trust Unit Certificates shall be in such form as is from time to time authorized by Adminco. The definitive form(s) of the Trust Unit Certificates for Trust Units may be in English only or, in the discretion of Adminco, in the English and French languages. The Trust Unit Certificates may be engraved, printed or lithographed, or partly in one form and partly in another, as Adminco may determine.

### **3.12 Fractional Trust Units**

If as a result of any act of the Trustee or Adminco hereunder any person becomes entitled to a fraction of a Trust Unit, such person shall not be entitled to receive a Trust Unit Certificate therefor. Fractional Trust Units shall not, except to the extent that they may represent in the aggregate one or more whole Trust Units held by the same holder, entitle the holders thereof to notice of, or to attend or to vote at, meetings of Unitholders. Subject to the foregoing, such fractional Trust Units shall have attached thereto the rights, restrictions, conditions and limitations attaching to whole Trust Units in the proportion that they bear to a whole Trust Unit.

### **3.13 Trust Unit Register and Transfer Ledgers to be Maintained**

One or more registers (the "**Registers**") shall be kept by, or on behalf and under the direction of, Adminco, which Registers shall contain the names and addresses of Unitholders, the respective numbers of Trust Units held by them, the certificate numbers of any Trust Unit Certificates held by them and a record of all transfers thereof. Adminco shall promptly appoint the Transfer Agent to act as transfer agent and to act as registrar for the Trust Units and to provide for the transfer of Trust Units in Alberta and Ontario and at such other places in Canada as Adminco may request and the Transfer Agent has offices. Adminco shall designate which branch registers will be maintained, if any.

The Transfer Agent shall keep all necessary registers and other books (which may be kept in a bound or loose-leaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device) for recording original issues and registering and transferring Trust Units. No Trust Unit Certificates representing Trust Units shall be valid unless countersigned manually by or on behalf of the Transfer Agent. Subject to the further provisions of this Declaration of Trust concerning record dates and otherwise, only persons whose Trust Units are recorded on the Registers shall be entitled to vote or to receive distributions or otherwise exercise or enjoy the rights of Unitholders.

The Transfer Agent shall similarly keep a register of Special Rights Holders.

### **3.14 Entry on Register**

Upon any issue of Trust Units, the name of the subscriber or other person entitled to such Trust Units shall be promptly entered on the Registers as the owner of the number of Trust Units issued to such subscriber or other person, or if the subscriber is already a Unitholder, the Register(s) shall be amended to include its additional Trust Units.

### **3.15 Transfer of Trust Units**

Trust Units shall be transferable at any time and from time to time by the Unitholder by endorsement and delivery of the Trust Unit Certificates representing the Trust Units (or delivery of an executed instrument of transfer and the Trust Unit Certificates representing the Trust Units) subject to such provisions and conditions as may be prescribed by Adminco from time to time. No such transfer shall be recorded on the Registers unless the transferee has delivered to the Transfer Agent, if requested by the Transfer Agent or Adminco, on behalf of the Transfer Agent, a declaration as to resident status under the Tax Act. Subject to the foregoing, such transfers shall be recorded on the Registers and a new Trust Unit Certificate for the Trust Units so transferred shall be issued to the transferee and, in case of a transfer of only part of the Trust Units represented by any Trust Unit Certificate, a new Trust Unit Certificate for the remaining Trust Units shall be issued to the transferor.

### **3.16 Successors in Interest to Unitholders**

Upon a person becoming entitled to any Trust Units as a consequence of the death, bankruptcy or incapacity of any Unitholder or otherwise by operation of law, and upon production by such person of such documentation as the Trustee, Adminco or the Transfer Agent may reasonably require in order to evidence such entitlement of such person, such person shall be recorded in the Registers as the holder of such Trust Units and shall receive a new Trust Unit Certificate therefor upon production of evidence of such entitlement satisfactory to the Transfer Agent and delivery of the existing Trust Unit Certificate to the Transfer Agent, but until such record is made, the Unitholder of record shall continue to be and be deemed to be the holder of such Trust Units for all purposes whether or not the Trust, the Trustee, Adminco or the Transfer Agent shall have actual or other notice of such death, bankruptcy, incapacity or other event.

### **3.17 Trust Units Held Jointly or in Fiduciary Capacity**

The Trust may treat two or more persons holding any Trust Unit as joint owners of the entire interest therein unless the ownership is expressly otherwise recorded on the Registers, but no entry shall be made in the Registers or on any Trust Unit Certificate that any person is in any other manner entitled to any future, limited or contingent interest in any Trust Unit; provided, however, that any person recorded in the Registers as a Unitholder may, subject to the provisions herein contained, be described in the Registers or on any Trust Unit 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; provided further that none of the Trust, the Trustee, Adminco or the Transfer Agent shall be required to recognize a person as having any interest in the Trust Unit, other than the person recorded in the Registers as the holder of such Trust Unit.

### **3.18 Performance of Trusts**

None of the Trustee, Adminco, the Unitholders, the Transfer Agent or other agent of the Trust shall have a duty to inquire into any claim that a transfer of a Trust Unit was or would be wrongful or that a particular adverse person is the owner of or has an interest in a Trust Unit or any other adverse claim, or be bound to see to the performance of any trust, express or implied or of any charge, pledge or equity to which any of the Trust Units or any interest therein are or may

be subject, or to ascertain or inquire whether any sale or transfer of any such Trust Units or interest therein by any Unitholder or their personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder of such Trust Unit.

### **3.19 Lost Trust Unit Certificates**

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

### **3.20 Death of Unitholders**

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 the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustee, Adminco or the property of the Trust, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder, in accordance and upon compliance with the provisions of Section 3.16, to succeed to all rights of the deceased Unitholder under this Declaration of Trust.

### **3.21 Unclaimed Payments**

- (a) In the event that the Trustee holds any amounts to be paid to Unitholders under Section 3.22, Article 5, Article 6 or Article 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustee nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and they shall only be obligated to hold the same in a current or other non-interest bearing account with a Canadian chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustee shall, as

and when required by law (and may, pursuant to Section 11.7), pay all or part of such amounts so held to a court in the province where the Trust has its head office (or to such other suitable government official or agency in the province where the Trust has its head office) whose receipt shall be a good release, acquittance and discharge of the obligations of the Trustee with respect thereto.

- (b) Subject to the applicable laws and regulations and Subsection 3.21(a), any monies set aside under Subsection 3.21(a) and not claimed by and paid or delivered to Unitholders under Section 3.22, Article 5, Article 6 or Article 11 or otherwise within seven years after the date of such setting aside shall be repaid or returned to the Trust by the Trustee on demand and thereupon the Trustee shall be released from all further liability with respect to such monies and thereafter the Unitholders with respect to which such monies were so repaid to the Trust shall have no rights with respect thereto except to obtain payment or delivery of the monies due from the Trust up to such time as the right to proceed against the Trust for recovery of such monies has become statute barred under applicable laws. Such monies set aside under Subsection 3.21(a) may be returned by the Trustee to the Trust prior to seven years of such monies being unclaimed if the Trust provides the Trustee with an irrevocable bank letter of credit equal to the amount of such unclaimed funds.

### **3.22 Repurchase of Trust Units**

The Trust shall be entitled to purchase, for cancellation or otherwise, at any time the whole or from time to time any part of the outstanding Trust Unit, at a price per Trust Unit and on a basis determined by Adminco in its discretion but in compliance with all applicable securities laws, rules, regulations or policies or the policies of any applicable stock exchange, including purchases as may be necessitated as a result of subscribers in an Offering exercising their statutory rights of withdrawal or rescission in respect of Trust Units acquired by them pursuant to any document relating to an Offering.

### **3.23 Take-Over Bids**

- (a) In this Section 3.23:
  - (i) "**Dissenting Unitholder**" means a holder of Trust Units or Exchangeable Securities who does not accept an Offer referred to in Subsection 3.23(c) and includes any assignee of the Trust Unit or the Exchangeable Security of such holder to whom such an Offer is made, whether or not such assignee is recognized under this Indenture;
  - (ii) "**Offer**" means an offer to acquire outstanding Trust Units or Exchangeable Securities where, as of the date of the offer to acquire, the Trust Units and Exchangeable Securities that are subject to the offer to acquire, together with the Offeror's Trust Units and Exchangeable Securities, constitute in the aggregate 20% or more of all outstanding

Trust Units and the Trust Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities;

- (iii) "**offer to acquire**" includes an acceptance of an offer to sell;
  - (iv) "**Offeror**" means a person, or two or more persons acting jointly or in concert, who make an Offer;
  - (v) "**Offeror's Notice**" means the notice described in Subsection 3.23(d); and
  - (vi) "**Offeror's Units**" means Trust Units and the Trust Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities beneficially owned, or over which control or direction is exercised, on the date of an Offer by the Offeror, any affiliate or associate of the Offeror or any person or company acting jointly or in concert with the Offeror.
- (b) If an Offer is made, any holder of Exchangeable Securities may, unless prohibited by the terms and conditions of the Exchangeable Security, convert, exercise or exchange such Exchangeable Security, as applicable, for the purpose of tendering Trust Units to such Offer on the condition that such Trust Units are taken up under such Offer, 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. In the event that a holder of Exchangeable Securities elects to conditionally convert, exercise or exchange such Exchangeable Securities for the purpose of tendering Trust Units to such Offer, the tendering of a certificate issued by the Trust indicating that the Trust Units are issuable upon and subject to completion of the Offer shall be good delivery under such bid and after payment of the consideration therefor to the former holder of the Exchangeable Security such holder shall cease to have any rights as holder of Exchangeable Securities or Trust Units to the extent that the Trust Units issuable upon the conversion, exercise or exchange of such Exchangeable Securities have been taken up.
- (c) If an Offer for all of the outstanding Trust Units, Exchangeable Securities and/or Trust Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities (other than such securities held by or on behalf of the Offeror or an affiliate or associate of the Offeror) is made and:
- (i) within the time provided in the Offer for its acceptance or within 120 days after the date the Offer is made, whichever period is the shorter, the Offer is accepted by offerees representing at least 90% of the outstanding Trust

Units and the Trust Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities, other than the Offeror's Units;

- (ii) the Offeror is bound to take up and pay for, or has taken up and paid for the Trust Units and the Exchangeable Securities of the offerees who accepted the Offer; and
- (iii) the Offeror complies with Subsections 3.23(d) and (f);

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

- (d) Where an Offeror is entitled to acquire Trust Units and Exchangeable Securities held by Dissenting Unitholders pursuant to Subsection 3.23(c), and the Offeror wishes to exercise such right, the Offeror shall send by registered mail within 30 days after the date of termination of the Offer a notice (the "**Offeror's Notice**") to each Dissenting Unitholder stating that:
  - (i) offerees holding at least 90% of the outstanding Trust Units and the Trust Units issuable upon the conversion, exercise or exchange of the Exchangeable Securities, other than Offeror's Units, have accepted the Offer;
  - (ii) the Offeror is bound to take up and pay for, or has taken up and paid for, the Trust Units and the Exchangeable Securities of the offerees who accepted the Offer;
  - (iii) Dissenting Unitholders must transfer their respective Trust Units and/or Exchangeable Securities to the Offeror on the terms on which the Offeror acquired the Trust Units and the Exchangeable Securities of the offerees who accepted the Offer within 21 days after the date of the sending of the Offeror's Notice; and
  - (iv) Dissenting Unitholders must send their respective Trust Unit Certificate(s) and/or certificate(s) evidencing the Exchangeable Securities to the Trust within 21 days after the date of the sending of the Offeror's Notice.
- (e) A Dissenting Unitholder to whom an Offeror's Notice is sent pursuant to Subsection 3.23(d) shall, within 21 days after the sending of the Offeror's Notice, send his or her Trust Unit Certificate(s) and/or certificate(s) evidencing the Exchangeable Securities to the Trust, duly endorsed for transfer.
- (f) Within 21 days after the Offeror sends an Offeror's Notice pursuant to Subsection 3.23(d), the Offeror shall pay or transfer to the Trustee, or to such other person as the Trustee may direct, the cash or other consideration that is payable to Dissenting Unitholders pursuant to Subsection 3.23(c).

- (g) The Trustee, or the person directed by the Trustee, shall hold in trust for the Dissenting Unitholders the cash or other consideration it receives under Subsection 3.23(f). The Trustee, or such person, shall deposit cash in a separate account in a Canadian chartered bank, and shall place other consideration in the custody of a Canadian chartered bank or similar institution for safekeeping.
- (h) Within 30 days after the date of the sending of an Offeror's Notice pursuant to Subsection 3.23(d), the Trustee, if the Offeror has complied with Subsection 3.23(f), shall:
  - (i) do all acts and things and execute and cause to be executed all instruments as in the Trustee's opinion may be necessary or desirable to cause the transfer of the Trust Units and the Exchangeable Securities of the Dissenting Unitholders to the Offeror;
  - (ii) send to each Dissenting Unitholder who has complied with Subsection 3.23(e) the consideration to which such Dissenting Unitholder is entitled under this Section 3.23; and
  - (iii) send to each Dissenting Unitholder who has not complied with Subsection 3.23(e) a notice stating that:
    - (A) his or her Trust Units and Exchangeable Securities have been transferred to the Offeror;
    - (B) the Trustee or some other person designated in such notice are holding in trust the consideration for such Trust Units and Exchangeable Securities; and
    - (C) the Trustee, or such other person, will send the consideration to such Dissenting Unitholder as soon as practicable after receiving such Dissenting Unitholder's Trust Unit Certificate(s) and/or certificate(s) evidencing the Exchangeable Securities or such other documents as the Trustee, or such other person may require in lieu thereof;

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

- (i) An Offeror cannot make an Offer for the Trust Units and/or the Exchangeable Securities unless, concurrent with the communication of the Offer to any holder thereof, a copy of the Offer is provided to the Trust.
- (j) The Trust shall cause the terms, conditions, restrictions, rights and obligations of Exchangeable Securities to contain corresponding provisions as may be reasonably necessary or desirable to give effect to this Section 3.23, including provisions to effect the automatic conversion, exercise or exchange of Exchangeable Securities by a non-tendering holder thereof.

### 3.24 Power of Attorney

Each Unitholder hereby grants to each of the Trustee and Adminco and their respective successors and assigns, a power of attorney constituting the Trustee and Adminco, as applicable, 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, to execute, under seal or otherwise, swear to, acknowledge, deliver, make, file or record (and to take all requisite actions in connection with such matters), 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 in all jurisdictions that the Trustee or Adminco deems appropriate;
- (b) any instrument, deed, agreement or document in connection with carrying on the affairs of the Trust as authorized in this Declaration of Trust, including all conveyances, transfers and other documents required in connection with any disposition of Trust Units required under Sections 3.6 and 3.7;
- (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 instrument, certificate and other documents necessary or appropriate to reflect and give effect to any amendment to this Declaration of Trust which is authorized from time to time as contemplated by this Declaration of Trust; 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 3.23.

The power of attorney granted herein is, to the extent permitted by applicable law, irrevocable, is a power coupled with an interest, and shall survive the death, mental incompetence, disability and any subsequent legal incapacity of the Unitholder and shall 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. This power of attorney shall continue in respect of the Trustee so long as it is the trustee of the Trust, and shall also continue in respect of a new Trustee as if the new Trustee, and in respect of Adminco, so long as it (or its successor or assigns) is party to and has responsibilities under this Declaration of Trust.

**ARTICLE 4**  
**PURPOSE AND INVESTMENTS OF FUND**

**4.1 Purpose of the Trust.**

The purposes and activities of the Trust are restricted to:

- (a) acquiring, holding, transferring, disposing of, investing in, and otherwise dealing with securities (whether debt or equity), royalties and notes of whatever nature or kind of or issued by Stoneham, Adminco or Stoneham L.P. or any associate or affiliate thereof (including the Initial Permitted Securities, the Limited Partnership Units and the Notes), or any other entity in which Stoneham L.P. has an interest, direct or indirect, or any other business' entity involved, directly or indirectly, in the business of providing contract drilling or related services;
- (b) acquiring, holding, transferring, disposing of, investing in, and otherwise dealing with Eligible Investments and Subsequent Investments;
- (c) temporarily holding cash and other short term investments in connection with and for the purposes of the Trust's activities, including paying administration and trust expenses, paying any amounts required in connection with the redemption of Trust Units and making distributions to Unitholders or, payments to other securityholders of the Trust;
- (d) issuing Trust Units and Other Trust Securities for the purposes of:
  - (i) obtaining funds to conduct the activities described above, whether directly or indirectly by the Trust, Stoneham, Adminco, Stoneham L.P. or any affiliate or associate thereof, including raising funds for further acquisitions;
  - (ii) repayment of any indebtedness or borrowings of the Trust or its affiliates;
  - (iii) satisfying obligations to deliver Trust Units or Other Trust Securities pursuant to the terms of securities which are directly or indirectly convertible into or exchangeable for such securities;
  - (iv) repurchasing or redeeming Trust Units or Other Trust Securities, subject to this Declaration of Trust and applicable law;
  - (v) establishing and implementing unitholder rights plans, distribution reinvestment plans, Trust Unit purchase plans, and incentive option and other compensation plans, if any, established by the Trust or its affiliates; and
  - (vi) making non-cash distributions to Unitholders as contemplated by this Declaration of Trust including *in specie* redemptions pursuant to Article 6;

- (e) repurchasing or redeeming Trust Units or other securities of the Trust, subject to the provisions of this Declaration of Trust and applicable law;
- (f) borrowing funds, issuing debt securities or guaranteeing the debts or liabilities of any person for the purposes, directly or indirectly, set forth in Subsections 4.1(a) through 4.1(e) and entering into hedging arrangements in relation thereto; and
- (g) engaging in all activities ancillary or incidental to any of those activities set forth in Subsections 4.1(a) through 4.1(f).

## 4.2 Other Investments

- (a) Monies or other property received by the Trust or the Trustee on behalf of the Trust, including the Net Proceeds of Offerings, may be used for any purpose not inconsistent with this Declaration of Trust, including to make Subsequent Investments, to make distributions and redemptions under Article 5 and Article 6, respectively, to make payments to other securityholders of the Trust, and to pay costs, fees and expenses associated therewith.
- (b) To the extent that any monies or other property received by the Trust or the Trustee is not to be immediately used by the Trust in accordance with the terms hereof, the Trustee is hereby authorized to, and where directed by Adminco to do so, the Trustee shall, place such monies in an account with a trust company or Schedule I chartered bank incorporated under the laws of Canada, or to invest such monies or property, at the direction of Adminco, in book-based securities, negotiable instruments, or securities ("**Eligible Investments**") represented by instruments in bearer or registered form, payable in Canadian dollars, having (in the case of Subsections 4.2(b)(i) to 4.2(b)(vi)) original or remaining maturities of one year or less, and which evidence:
  - (i) direct obligations of, and obligations fully guaranteed as to timely payment by, the Government of Canada, any province of Canada or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the Government of Canada or any province thereof;
  - (ii) demand deposits, time deposits or certificates of deposit of any chartered bank or trust company or credit union or co-operative credit society incorporated under the laws of Canada or any province thereof and subject to supervision and examination by federal banking or depository institution authorities; provided, however, that at the time of the investment or contractual commitment to invest therein, the commercial paper or other short-term unsecured debt obligations (other than such obligations the rating of which is based on the credit of a person other than such depository institution or trust company) of such bank, trust company, credit union or co-operative society shall have a credit rating of R-1 (low) or better from Dominion Bond Rating Service ("**DBRS**") and provided

that the long-term debt rating of the applicable bank, trust company, credit union or co-operative society is A or better from Standard & Poor's ("S&P");

- (iii) call loans to and notes or bankers' acceptances issued or accepted by any bank, trust company, credit union or co-operative society described in Subsection 4.2(b)(ii);
- (iv) commercial paper having, at the time of the investment or contractual commitment to invest therein, a rating of R-1 (low) or better from DBRS provided that the long-term debt of the entity issuing the commercial paper is rated A or better by S&P;
- (v) investments in money market funds having a rating of A or better by DBRS and S&P when purchased;
- (vi) demand deposits, term deposits and certificates of deposit which when purchased are issued by an entity, the commercial paper of which is rated R-1 (low) or better by DBRS, provided that the long-term debt of the entity is rated A or better from S&P; or
- (vii) any other investment in which written confirmation from S&P has been obtained at the time of the investment therein or contractual commitment to invest therein confirming that the proposed action will not result in a reduction or withdrawal of the then current rating of the Trust Units immediately before the taking of such action.

### **4.3 Investment Restrictions**

Adminco shall exercise commercially reasonable efforts to ensure that the Trust complies at all times with the requirements of paragraph 108(2)(a) and subsection 132(6) of the Tax Act, and that under no circumstances shall the Trust acquire or retain any investment that: (a) would result in the cost amount to the Trust of all "foreign property" (as defined in the Tax Act) which is held by the Trust exceeding the amount prescribed by section 5000 of the regulations to the Tax Act; or (b) would result in the Trust not being considered either a "unit trust" or a "mutual fund trust" for purposes of the Tax Act. Adminco shall provide written notice to the Trustee if there is a reasonable probability that: (i) the Trust Units will become "foreign property"; or (ii) the Trust will cease to be a "unit trust" and a "mutual fund trust", each for purposes of the Tax Act. For greater certainty, the Trust shall also comply with the provisions of Section 8.10 with respect to the matters described therein.

**ARTICLE 5  
DISTRIBUTIONS**

**5.1 Computation of Distributable Cash Flow of the Trust**

The "**Distributable Cash Flow**" for or in respect of a Distribution Period shall be equal to:

- (a) all cash amounts which are received by the Trust for and in respect of such Distribution Period including interest, distributions, dividends, proceeds from the disposition of securities, returns of capital and repayments of indebtedness and such other amounts as may be determined from time to time by the Trustee or Adminco to be included in "Distributable Cash Flow"; provided that, for greater certainty, the proceeds of any issuance of Trust Units or any other securities of the Trust, and the expenses of such distributions of securities of the Trust, shall not be included in the calculations of Distributable Cash Flow in respect of any Distribution Period;

less:

- (b) all expenses, liabilities or other amounts which, in the opinion of the Trustee or Adminco, may reasonably be considered to have accrued and be owing or payable by the Trust in respect of, or which relate to, such Distribution Period or a prior Distribution Period if not accrued in such prior period including any interest payable by the Trust on any indebtedness of the Trust;
- (c) all amounts relating to the redemption of Trust Units and have become payable in cash during such Distribution Period;
- (d) all amounts which relate to the repayment of the principal amount of any indebtedness of the Trust during such Distribution Period (net of any such amounts that have been refinanced during such Distribution Period);
- (e) any amount, in addition to those amounts set forth in Subsections 5.1(b), 5.1(c) and 5.1(d), which the Trustee or Adminco may reasonably consider to be necessary to provide for the payment of any liabilities which have been or will be incurred by the Trust, including any tax liability of the Trust (to the extent that such liabilities have not otherwise been taken into account in determining the Distributable Cash Flow hereunder); and
- (f) an amount as determined in the discretion of the Trustee or Adminco, for reasonable reserves, provided that, unless the consent of the Adminco Board is obtained, reserves shall not be maintained by the Trust except for the purpose of satisfying payment of any of the amounts or liabilities referred to in Subsections 5.1(b), 5.1(c), 5.1(d) and 5.1(e).

## 5.2 Computation of Income and Net Realized Capital Gains

- (a) The "**Income of the Trust**" for any year shall be the income of the Trust for the year computed in accordance with the provisions of the Tax Act; provided, however, that capital gains and capital losses shall be excluded and provided further that:
  - (i) the portion of the Trust's income comprised of taxable dividends received from corporations resident in Canada shall be calculated on the basis that the amount included in the Trust's income is the actual amount of the dividend received, which excludes the gross-up adjustment provided in paragraph 82(l)(b) of the Tax Act; and
  - (ii) no amount is deductible in respect of amounts paid or payable to Unitholders.
- (b) The "**Net Realized Capital Gains**" of the Trust for any year shall be determined as the amount, if any, by which the aggregate of the capital gains of the Trust in the year exceeds the aggregate of the capital losses of the Trust in the year and the amount of any net capital losses for prior years which the Trust is permitted by the Tax Act to deduct in computing the taxable income of the Trust for the year.
- (c) Notwithstanding Subsections 5.2(a) and 5.2(b), Income of the Trust and Net Realized Capital Gains shall not include any income ("**Redemption Income**") or capital gains ("**Redemption Gains**"), respectively, which are realized by the Trust, in accordance with the Tax Act, on a distribution of Trust Assets to a Unitholder pursuant to an in specie redemption of the Unitholder's Trust Units under Section 6.5.

## 5.3 Monthly Distributions of Distributable Cash Flow

Adminco shall, in respect of each Distribution Period, declare payable to the Unitholders of record as at the close of business on the Distribution Record Date for such Distribution Period, all or any part of the Distributable Cash Flow for such Distribution Period. Each Trust Unit's proportionate share of the amount of such Distributable Cash Flow which is declared payable to Unitholders shall be determined by dividing the amount of such Distributable Cash Flow by the number of issued and outstanding Trust Units on such Distribution Record Date. The share of such Distributable Cash Flow distributable to each Unitholder shall be an amount equal to each Trust Unit's proportionate share of such Distributable Cash Flow multiplied by the number of Trust Units owned of record by such Unitholder on such Distribution Record Date. Subject to Section 5.8, Distributable Cash Flow which has been declared to be payable to Unitholders in respect of a Distribution Period shall be paid in cash on the Distribution Payment Date which immediately follows such Distribution Record Date.

## 5.4 Other Distributions

- (a) In addition to the distributions which are made payable to Unitholders pursuant to Section 5.3, Adminco may, in its sole discretion, in respect of a Distribution

Period, declare a distribution to be payable to Unitholders of record as at the close of business on the Distribution Record Date for such Distribution Period, 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 Adminco may determine.

- (b) So as to ensure the allocation and distribution, to Unitholders, of 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 the Tax Act in any year, the amount, if any, by which the Income of the Trust and Net Realized Capital Gains exceed the aggregate of:
  - (i) such part of the taxable capital gains of the Trust for the calendar year required to be retained by the Trust to maximize its capital gains refund for such year, unless Adminco determines, and has given written notice to the Trustee, that this Subsection 5.4(b)(i) is not to apply to the Trust for that year by the end of the year; and
  - (ii) any amount that became payable by the Trust during the calendar year to Unitholders on the Trust Units (other than amounts that became payable to Unitholders on the redemption of their Trust Units),

shall, without any further actions on the part of the Trustee or Adminco, be payable to Unitholders of record as of the close of business on the last Distribution Record Date in such year.

- (c) Each Trust Unit's proportionate share of the amount of any distribution made pursuant to either or both of Subsections 5.4(a) or 5.4(b) shall be determined by dividing such amount by the number of issued and outstanding Trust Units as at the close of business on the applicable Distribution Record Date in respect of a distribution pursuant to Subsection 5.4(a) and as at the close of business on the last Distribution Record Date in the year in respect of a distribution pursuant to Subsection 5.4(b). The share of the amount of any such distribution distributable to each Unitholder shall be an amount equal to each Trust Unit's proportionate share of such amount multiplied by the number of Trust Units owned of record by each such Unitholder on such applicable Distribution Record Date. Subject to Section 5.8, amounts which have been declared to be payable to Unitholders pursuant to either or both of Subsections 5.4(a) or 5.4(b) shall be paid in cash on the Distribution Payment Date which immediately follows the applicable Distribution Record Date in respect of a distribution pursuant to Subsection 5.4(a) or Subsection 5.4(b).
- (d) In addition to the distributions which are made payable to Unitholders under Sections 5.3 and 5.4, Adminco may, in its sole discretion, allocate any Redemption Income and Redemption Gains realized by the Trust in connection with the redemption of Trust Units of a particular Unitholder pursuant to Section 6.5, to that Unitholder. In addition, one-half (or any other proportion that may be

provided for from time to time under section 38 of the Tax Act) of such Redemption Gains may be designated as taxable capital gains of that Unitholder under subsection 104(21) of the Tax Act, and any portion of the Redemption Income and Redemption Gains in respect of that Unitholder as may be income from a source in a country other than Canada, within the meaning of subsection 104(22) of the Tax Act, may be designated as that Unitholder's income from that source in accordance with that subsection.

## **5.5 Character of Distribution**

In accordance with and to the extent permitted by the Tax Act, Adminco shall, in its sole discretion, in each year make designations in respect of the amounts payable to Unitholders for such amounts that Adminco considers to be reasonable in all of the circumstances, including, without limitation, designations relating to the taxable dividends received by the Trust in the year on shares of taxable Canadian corporations (or designated in respect of the Trust where the Trust is a beneficiary of another trust), net capital gains realized by the Trust in the year (or designated in respect of the Trust where the Trust is a beneficiary of another trust) and foreign source income of the Trust for the year. Distributions or amounts payable to Unitholders pursuant to this Article 5 or Article 6 shall be deemed to be distributions of Income of the Trust, Net Realized Capital Gains, trust capital or other items in such amounts as Adminco shall, in its sole 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 comprised in such distribution.

## **5.6 Enforceability of Right to Receive Distributions**

For greater certainty, it is hereby declared that each Unitholder shall have the legal right to enforce payment of any amount payable to such Unitholder as a result of any distribution or amount which becomes payable to such Unitholder pursuant to this Article 5 or pursuant to Article 6.

## **5.7 Designation of Taxable Capital Gains and Other Amounts**

In accordance with and to the extent permitted by the Tax Act, Adminco in each year shall make designations in respect of the amounts payable to Unitholders in such amounts that Adminco, in its discretion, considers to be reasonable in all of the circumstances, including taxable capital gains realized by the Trust in the year and taxable dividends received by the Trust on shares of taxable Canadian corporations.

## **5.8 Method of Payment of Distributions**

- (a) The Trust shall make payment, in cash, of distributions which have been declared to be payable pursuant to this Article 5, provided that where Adminco determines that the Trust does not have 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 5 on the due date for such payment, the payment may, at the option of Adminco, include the issuance of additional Trust Units, or fractions of Trust Units, if necessary, having an aggregate value equal to the difference between the

amount of such distribution and the amount of cash which has been determined by Adminco to be available for the payment of such distribution.

- (b) The value of each Trust Unit which is issued pursuant to Subsection 5.8(a) shall be the "closing market price" (as defined in Section 6.3) of the Trust Unit on the applicable Distribution Record Date in respect of a distribution pursuant to Section 5.3, Subsection 5.4(a) or Subsection 5.4(b), provided that if the particular date is not a Business Day then the "closing market price" (as defined in Section 6.3) shall be determined on the last Business Day which precedes such particular date.

## **5.9 Withholding Taxes**

The Trustee shall deduct or withhold from distributions payable to any Unitholder (including, any amounts which Adminco directs the Trustee to so deduct or withhold) all amounts required by law to be withheld from such distributions.

## **5.10 Income Tax Matters**

In reporting income for income tax purposes the Trust shall claim the maximum amount available to it as deductions under the relevant law, unless Adminco determines otherwise.

## **5.11 Distribution Reinvestment and Unit Purchase Plan**

Subject to any required regulatory approvals, Adminco may, acting in its sole discretion, establish one or more distribution reinvestment plans, distribution reinvestment and Trust Unit purchase plans or Trust Unit option or incentive plans of the Trust at any time and from time to time.

# **ARTICLE 6 REDEMPTION**

## **6.1 Right of Redemption**

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

## **6.2 Exercise of Redemption Right**

To exercise a Unitholder's 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 Adminco, shall be sent to the Trust at the head office of the Trust, together with the Trust Unit Certificate or Trust Unit Certificates representing the Trust Units to be redeemed. No form or manner of completion or execution shall be sufficient unless the same is in all respects satisfactory to Adminco and is accompanied by any further evidence that Adminco may

reasonably require with respect to the identity, capacity or authority of the person giving such notice.

Upon receipt by the Trust of the notice to redeem Trust Units, the Unitholder shall thereafter cease to have any rights with respect to the Trust Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon (unless the right to receive payment of such distribution accrued prior to the date on which such Trust Units were tendered for redemption). Trust Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of Adminco, received the notice, Trust Unit Certificates and other required documents or evidence as aforesaid.

### **6.3 Calculation or Redemption Price Based on Market Price**

Subject to Section 6.6, upon receipt by the Trust of the notice to redeem Trust Units in accordance with Section 6.2, the Unitholder of the Trust Units tendered for redemption shall be entitled to receive a price per Trust Unit (hereinafter called the "**Market Redemption Price**") equal to the lesser of:

- (a) 90% of the market price of the Trust Units on the principal market on which the Trust Units are quoted for trading during the ten day trading period commencing immediately prior to the date on which the Trust Units were tendered to the Trust for redemption; and
- (b) the closing market price on the principal market on which the Trust Units are quoted for trading, on the date that the Trust Units were so tendered for redemption.

For the purposes of Subsection 6.3(a), the "**market price**" shall be an amount equal to the simple average of the closing price of the Trust Units for each of the trading days on which there was a closing price; provided that if the applicable exchange or market does not provide a closing price but only provides the highest and lowest prices of the Trust Units traded on a particular day, the market price shall be an amount equal to the simple average of the average of the highest and lowest prices for each of the trading days on which there was a trade; and provided further that if there was trading on the applicable exchange or market for fewer than five of the ten trading days, the market price shall be the simple average of the following prices established for each of the ten trading days: the average of the last bid and last ask prices for each day on which there was no trading; the closing price of the Trust Units for each day that there was trading if the exchange or market provides a closing price; and the average of the highest and lowest prices of the Trust Units for each day that there was trading, if the market provides only the highest and lowest prices of Trust Units traded on a particular day.

For the purposes of Subsection 6.3(b), 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; an amount equal to the average of the highest and lowest prices of Trust Units if there was trading and the exchange or other market provides only the highest and lowest prices of Trust Units traded on a particular day; and the average of the last bid and last ask prices if there was no trading on the date.

#### **6.4 Cash Payment of Market Redemption Price**

Subject to Section 6.5, the Market Redemption Price payable in respect of the Trust Units tendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to or to the order of the Unitholder who exercised the right of redemption, sent on the last day of the calendar month following the month in which the Trust Units were tendered for redemption. Payments made by the Trust of the Market Redemption Price are conclusively deemed to have been made upon compliance with the payment procedures outlined in Section 8.9.

#### **6.5 Limitation Regarding Cash Payment of Market Redemption Price**

Section 6.4 shall not be applicable to Trust Units tendered for redemption by a Unitholder if the total amount payable by the Trust pursuant to Section 6.4 in respect of such Trust Units and all other Trust Units tendered for redemption in the same calendar month and in any preceding calendar month during the same fiscal year exceeds \$250,000 provided that Adminco may, in its sole discretion, waive such limitation in respect of any calendar month. If this limitation is not so waived for such calendar month, the Market Redemption Price payable in respect of the Trust Units tendered for redemption in such calendar month shall be paid on the last day of the calendar month following such month by:

- (a) the Trust distributing Notes, General Partner Shares, Adminco Shares, Limited Partnership Units, Eligible Investments or Subsequent Investments (in this Section 6.5 hereinafter referred to as "**Investments**") having an aggregate principal amount or fair market value, as applicable, equal to the aggregate Market Redemption Price of the Trust Units tendered for redemption; or
- (b) if so directed by Adminco or if the Trust does not hold Investments having a sufficient principal amount or fair market value, as applicable, outstanding to effect such payment, by the Trust issuing its own promissory notes to the Unitholders who exercised the right of redemption having an aggregate principal amount equal to the aggregate Market Redemption Price of the Trust Units tendered for redemption, which promissory notes, (herein referred to as "Redemption Notes") shall bear interest at a rate greater than the prime lending rate of Stoneham L.P.'s primary bank on the date the Trust Units are surrendered for redemption, as determined by Adminco; or
- (c) any combination thereof at the discretion of Adminco, except as otherwise provided herein.

Upon such distribution of Investments or issuance of Redemption Notes, the Trust shall be discharged from all liability to the former Unitholder in respect of the Trust Units so redeemed. For greater certainty, the Trust shall be entitled to all interest accrued and unpaid on the Investments so distributed to and including the date upon which such Investments are required to be distributed.

## **6.6 Calculation or Redemption Price in Certain Other Circumstances**

Section 6.3 shall not be applicable to Trust Units tendered for redemption by a Unitholder if:

- (a) at the time the Trust Units are tendered for redemption, the outstanding Trust Units are not listed for trading on the Toronto Stock Exchange and are not traded or quoted on any other stock exchange or market which Adminco considers, in its sole discretion, provides representative fair market value prices for the Units; or
- (b) 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 were tendered for redemption or for more than five trading days during the ten day trading period commencing immediately prior to the date on which such Trust Units were tendered for redemption,

and in either such case, such Unitholder shall, instead of the Market Redemption Price, be entitled to receive a price per Trust Unit (herein referred to as the "**Appraised Redemption Price**") equal to 90% of the fair market value thereof as determined by Adminco as at the date on which the Trust Units were tendered for redemption. The Appraised Redemption Price payable in respect of Trust Units tendered for redemption in any calendar month shall be paid on the last day of the third calendar month following the month in which such Trust Units were tendered for redemption, by at the option of the Trust:

- (c) cash payment, in which case the provisions of Section 6.4 shall apply *mutatis mutandis*; or
- (d) in the manner provided for in Section 6.5, in which case the provisions of Section 6.5 shall apply *mutatis mutandis*.

## **6.7 Cancellation of Certificates for all Redeemed Trust Units**

All certificates representing 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.

## **ARTICLE 7 TRUSTEE**

### **7.1 Number and Term**

There shall be one trustee of the Trust. Valiant Trust Company was appointed as the Trustee by resolution of the Unitholders coincident with the execution of this Amended and Restated Declaration of Trust. The term of office of the Trustee commences from the date on which its election or appointment becomes effective and shall continue until the earlier of the date of the termination of the Trust and the effective date of the Trustee's resignation or removal in accordance with Section 7.4.

## 7.2 Qualifications of the Trustee

The Trustee shall be a body corporate which shall at all times during which it is the Trustee:

- (a) be incorporated under the laws of Canada or of a province thereof;
- (b) be resident in Canada for the purposes of the Tax Act; and
- (c) be authorized and registered under the laws of the Province of Alberta to carry on the business of a trust company.

## 7.3 Election of the Trustee

The Trustee shall be elected by Ordinary Resolution (other than the appointment of Valiant Trust Company as Trustee upon the execution of this Declaration of Trust who shall remain the Trustee unless it resigns or is removed in accordance with Section 7.4). The election or appointment of a Trustee (other than the appointment of Valiant Trust Company as Trustee upon the execution of this Declaration of Trust) shall not become effective unless and until such person has, either before or after such election or appointment, executed and delivered to the Trust an acceptance substantially as follows:

"To: Stoneham Drilling Trust (the "Trust")

And to: Stoneham Administration Inc.

The undersigned hereby accepts its election or appointment as the Trustee of the Trust and hereby agrees, upon the later of the date of this acceptance and the date of the undersigned's election or appointment as the Trustee of the Trust, to thereby become a party, as the Trustee, to the Declaration of Trust made as of May 30, 2003 as amended and restated December 15, 2004, as amended from time to time, constituting the Trust and to act as Trustee of the Trust pursuant thereto.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Signature]"

Upon the later of a person being elected or appointed as the Trustee hereunder and executing and delivering to the Trust an acceptance substantially as set forth above, such person shall become the Trustee hereunder and shall be deemed to be a party (as the Trustee) to this Declaration of Trust, as amended from time to time.

An act of the Trustee is valid notwithstanding an irregularity in the election or appointment of the Trustee or a defect in the qualifications thereof.

#### **7.4 Resignation and Removal of the Trustee**

- (a) The Trustee may resign its trust hereunder by giving to Adminco not less than 60 days' prior written notice-of such resignation.
- (b) The Trustee may be removed at any time with or without cause by Ordinary Resolution passed in favour of the removal of the Trustee. The Trustee may also be removed at any time by Adminco by notice in writing to the Trustee if, at any time:
  - (i) the Trustee no longer satisfies all the requirements of Section 7.2;
  - (ii) the Trustee shall be declared bankrupt or insolvent or shall enter into liquidation, whether compulsory or voluntary, to wind up its affairs;
  - (iii) all of the assets of the Trustee, or a substantial part thereof, shall become subject to seizure or confiscation; or
  - (iv) the Trustee shall otherwise become incapable of performing its responsibilities under this Declaration of Trust.
- (c) Any resignation or removal pursuant to Subsections 7.4(a) or 7.4(b) shall take effect on the earlier of: (i) 60 days after the date notice of such resignation is duly given, such Ordinary Resolution is approved, or such notice of Adminco is given, as the case may be; and (ii) the date a successor Trustee is appointed or elected and such successor Trustee has legally and validly assumed all obligations of the Trustee related hereto in the same capacities as the resigning Trustee.
- (d) If no successor Trustee has been appointed or elected within 60 days of: (i) the Trustee's notice of resignation under Subsection 7.4(a); (ii) the approval of the Ordinary Resolution referred to in Subsection 7.4(b); or (iii) the giving of notice by Adminco to remove the Trustee under Subsection 7.4(b), as the case may be, any Unitholder, the Trustee, Adminco or any other interested person may apply to a court of competent jurisdiction for the appointment of a successor trustee. The Trustee shall be reimbursed by the Trust for all reasonable costs and expenses of the Trustee relating to obtaining court approval of a successor. The appointment of such successor by the court shall not require the approval of Unitholders.
- (e) Upon the resignation or removal of the Trustee becoming effective, or the Trustee otherwise ceasing to be the Trustee, the Trustee shall:
  - (i) cease to have rights, privileges, powers and authorities of a Trustee hereunder and be released from the performance of its duties and obligations as Trustee hereunder and any liabilities for ceasing such performance;

- (ii) execute and deliver such documents as Adminco shall reasonably require for the conveyance, to a successor Trustee, of any Trust Assets held in the Trustee's name, and shall provide for or facilitate the transition of the Trust's activities and affairs to such successor Trustee; and
  - (iii) account to Adminco as Adminco may require for all property, including the Trust Assets, which the Trustee held or then holds as Trustee.
- (f) Upon the Trustee ceasing to hold office as such hereunder, the Trustee shall cease to be a party (as a Trustee) to this Declaration of Trust; provided however, that such Trustee shall continue to be entitled to payment of any amounts owing by the Trust to the Trustee which accrued prior to its vacating of the office of Trustee; and provided further that such Trustee and each of its directors, officers, employees, shareholders and agents shall continue to be entitled to the benefit of any indemnity and limitation of liability provisions which are expressly set out herein and by their terms are for the benefit of the Trustee and its directors, officers, employees, shareholders and agents (as the case may be).
- (g) The resignation or removal of the Trustee, or the Trustee otherwise ceasing to be the Trustee, shall not affect any obligations or liabilities of the Trustee in respect of or in any way arising under or out of the Declaration of Trust which have accrued prior to the taking effect of any such resignation, removal or termination.

## **7.5 Vacancies**

No vacancy of the office of the Trustee shall operate to annul this Declaration of Trust or affect the continuity of the Trust.

## **7.6 Successor and Additional Trustee**

The rights of the Trustee, subject to the terms hereof, to control and exclusively administer the Trust (subject to the Indenture Conferred Duties) and to have the title to the Trust Assets drawn up in its name and all other rights of the Trustee at law shall vest automatically in any person who may hereafter become the Trustee upon its due election or appointment and qualification, in accordance with the terms hereof, without any further act and it shall thereupon have all the rights, privileges, powers, authorities, obligations and immunities of the Trustee hereunder. Such rights shall vest in the Trustee whether or not conveyancing or transfer documents have been executed and delivered pursuant to Section 7.4 or otherwise.

## **7.7 Compensation and Other Remuneration**

The Trustee shall be paid by the Trust such reasonable fees as may be agreed upon from time to time by Adminco and the Trustee and if such fees are not paid within 30 days after the date of any invoice in respect thereof, the Trustee shall be entitled to have such fees paid by the Trust out of the Trust Assets. The Trustee may pay or cause to be paid reasonable fees, costs, charges and expenses incurred in connection with the administration and management of the Trust, including (without limitation) fees of auditors, lawyers, appraisers and other agents, consultants and professional advisers employed by or on behalf of the Trust and the cost of

reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustee on behalf of the Trust (including any amounts payable to the Trustee under Section 12.2) shall be payable by the Trust and if any such costs, charges and expenses are not paid by Adminco within 30 days after the date of any invoice in respect thereof, the Trustee shall be entitled to have such costs, charges and expenses paid by the Trust out of the Trust Assets. The Trustee shall have a lien on the Trust Assts (which shall have priority over the interests of the Unitholders pursuant hereto) to enforce payment of the fees, costs, charges, expenses and other amounts payable or reimbursable by the Trust to the Trustee.

The Trustee shall, in respect of amounts payable or reimbursable to the Trustee pursuant to this Section 7.7 or Section 12.2, have a priority over distributions to Unitholders pursuant to Article 5 or Section 11.6.

## **ARTICLE 8 TRUSTEE'S POWERS AND DUTIES**

### **8.1 General Powers**

The Trustee, subject only to the specific limitations and grant of powers to Adminco contained in this Declaration of Trust, shall have, without further or other action or consent, and free from any power of control on the part of the Unitholders, except as provided herein, 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 Trustee were the sole and absolute beneficial owner of the Trust Assets in its own right, to do all such acts and things as in its sole judgement 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 Trustee. The enumeration of any specific power or authority herein (including pursuant to Section 8.2) shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustee.

To the maximum extent permitted by law, the Trustee 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.

### **8.2 Specific Powers and Authorities**

In addition to any and all other power and authority conferred on the Trustee by this Declaration of Trust (including Section 8.1), or which the Trustee may have by virtue of any present or future law, or which may be authorized by Ordinary Resolution or Special Resolution from time to time, but subject to Section 8.7, any other express limitations contained in this Declaration of Trust, and the grant of powers and authorities to Adminco in this Declaration of Trust (including pursuant to Article 13), the Trustee without any action or consent by the Unitholders shall have and may exercise at any time and from time to time the following powers and authorities which may be exercised by it or delegated by it, as herein provided, in its sole judgement and discretion and in such manner and upon such terms and conditions as it may from time to time deem proper:

- (a) to open, operate and close accounts and other similar credit, deposit and banking arrangements and to negotiate and sign banking and financing contracts and agreements;
- (b) to borrow money upon the credit of the Trust and the Trust Assets;
- (c) to temporarily hold cash and other short term investments in connection with and for the purposes of the Trust's activities, including paying administration and trust expenses, paying any amounts required in connection with the redemption of Trust Units and making distributions to Unitholders and payments to other securityholders of the Trust;
- (d) without limit as to amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness for the purpose of carrying out the purposes of the Trust or its affiliates and associates or for other expenses incurred in connection with the Trust and to enter into hedging arrangements with respect thereto and for such purposes to draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and mortgage, pledge, assign or grant a security interest in any money owing to the Trust or in the Trust Assets or engage in any other means of financing the Trust;
- (e) to give a guarantee on behalf of the Trust to secure performance of an obligation of another person;
- (f) to mortgage, hypothecate, pledge or otherwise create a security interest in all or any movable or personal, immovable or real or other property of the Trust, owned or subsequently acquired, to secure any obligation of the Trust;
- (g) to obtain security, including encumbrances on assets, to secure the full payment of monies owed to the Trust and the performance of obligations in favour of the Trust, and to exercise all of the rights of the Trust, and to perform all of the obligations of the Trust, under such security;
- (h) to amend or revise the Material Contracts;
- (i) to renew or extend or participate in the renewal or extension of any security, upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any security or to any other modification or change in the terms of any security or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; and to waive any default whether in performance of any covenant or condition of any security, or in the performance of any guarantee or to enforce the rights in respect of any such default in such manner and to such extent that it may deem advisable;
- (j) to exercise and enforce any and all rights of foreclosure, to bid on property on sale or foreclosure, to take a conveyance in lieu of foreclosure with or without paying

a consideration therefor and in connection therewith to revive the obligation on the covenants secured by such security and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies with respect to any such security or guarantee;

- (k) to obtain or render services for or on behalf of the Trust necessary or useful to carry out the purposes of the Trust;
- (l) to obtain, prepare, compose, design, print, publish, issue and distribute marketing and public relations materials in connection with the Trust;
- (m) to establish places of business of the Trust;
- (n) to manage the Trust Assets;
- (o) to invest, hold shares, trust units, beneficial interests, partnership interests, joint venture interests or other interests in any person necessary or useful to carry out the purpose of the Trust;
- (p) to cause legal title to any of the Trust Assets to be held in the name of the Trustee or, to the extent permitted by applicable law, in the name of the Trust or any other person, on such terms, in such manner, with such powers in such person as the Trustee may determine and with or without disclosure that the Trust or the Trustee is interested therein, provided that should legal title to any of the assets of the Trust be held by and/or in the name of any person other than the Trustee or the Trust, the Trustee shall require such person to execute a trust agreement acknowledging that legal title to such assets is held in trust for the benefit of the Trust;
- (q) to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses and disbursements of the Trust;
- (r) to determine and effect, among other things, the amount of distributions to Unitholders pursuant to Article 5 but not contrary to any provisions of any Subordination Agreement or the terms of the Notes;
- (s) to determine conclusively the value of any or all of the Trust Assets from time to time and, in determining such value, to consider such information and advice as the Trustee in its sole judgement, may deem material and reliable;
- (t) to possess and exercise all the rights, powers and privileges pertaining to the ownership of securities and Notes owned by the Trust to the same extent that an individual might, unless otherwise limited herein (including pursuant to Section 8.7) and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, default, event of default or compliance with any covenant, including those in the Notes, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons with respect to voting securities and Notes held by the Trust, 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;

- (u) to pay out of the Trust Assets, all reasonable fees, costs and expenses incurred, from time to time, in the administration of the Trust, including those in connection with Offerings, and including: (i) the Underwriting Fees; (ii) any amounts in respect of Eligible Investments and Subsequent Investments; and (iii) Issue Expenses;
- (v) where reasonably required, to engage or employ on behalf of the Trust any persons as administrators, agents, advisors, representatives, employees, independent contractors or subcontractors (including Adminco, investment advisors, registrars, underwriters, accountants, lawyers, appraisers, brokers or otherwise) in one or more capacities;
- (w) to the extent not prohibited by law, to delegate any of the powers and duties of the Trustee to any one or more agents, representatives, employees, independent contractors, subcontractors or other persons without liability to the Trustee (including to Adminco pursuant to this Declaration of Trust), except as provided in this Declaration of Trust;
- (x) to appear and respond to all orders issued by a court, arbitral body or administrative authority or claims made by another person, to make all affidavits, sworn declarations and solemn affirmations with respect to such matters, to put in default, sue for and receive all sums of money or obligations due to the Trust, and to 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 Trust Assets or the Trust's affairs, to enter into agreements therefor, whether or not any suit or proceeding is commenced or claim asserted and to enter into agreements regarding the arbitration, adjudication or settlement thereof;
- (y) to arrange for insurance contracts and policies insuring the Trust, the Trust Assets, the Trustee and/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 Trustee or Unitholders or otherwise, and to perform all of the obligations of the Trust under such insurance policies and contracts;
- (z) to form any subsidiary for the purpose of making any Subsequent Investment and entering into or amending any unanimous shareholder agreement, management agreement or other agreement on such terms as may be approved by Adminco;
- (aa) to vote Subsequent Investments held by the Trust which carry voting rights in such manner as may be approved by Adminco;

- (bb) to do all such things and take all such action, and to negotiate, make, execute, acknowledge and deliver any and all deeds, instruments, contracts, waivers, releases or other documents, necessary or useful for the exercise or accomplishment of: (i) any of the powers herein granted to the Trustee; (ii) the purposes of the Trust as set forth in Section 4.1; and (iii) all of the rights and obligations of the Trustee hereunder; including the negotiation and execution of agreements in connection with the administration of the Trust; and
- (cc) to do all such other acts and things as are necessary, useful, incidental or ancillary to the foregoing and to exercise all powers and authorities which are necessary, useful, incidental or ancillary to carry on the affairs of the Trust, to promote the purpose for which the Trust is formed and to carry out the provisions of this Declaration of Trust.

### **8.3 Further Powers of the Trustee**

The Trustee shall have the power to prescribe any form of document or other instrument provided for or contemplated by this Declaration of Trust and the Trustee may make, adopt, amend, or repeal regulations containing provisions relating to the conduct of the affairs of the Trust not inconsistent with law or with this Declaration of Trust (the "Trustee's Regulations "). The Trustee shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Declaration of Trust which it may determine are necessary or desirable in interpreting, applying or administering this Declaration of Trust or in administering, managing or operating the Trust. Any Trustee's Regulations, decisions, designations or determinations made pursuant to this Section 8.3 in good faith shall be conclusive and binding upon all persons affected thereby. The Trustee shall also have such additional powers as may be approved by the Unitholders by Ordinary Resolution.

### **8.4 Standard of Care**

The standard of care required of the Trustee in exercising its powers and carrying out its functions under this Declaration of Trust shall be that it exercise its powers and carry out its functions hereunder as Trustee honestly, in good faith with a view to the best interests of the Trust and the Unitholders and that in connection therewith it exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Unless otherwise required by law, the Trustee shall not be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustee in its capacity as trustee shall not be required to devote its entire time to the affairs of the Trust.

For greater certainty, to the extent that the performance of certain duties and activities has been granted or allocated to Adminco in this Declaration of Trust, or that the Trustee has delegated the performance of certain duties and activities to Adminco in accordance with Article 13, the Trustee shall be deemed to have satisfied the aforesaid standard of care.

## **8.5 Reliance Upon the Trustee**

Any person dealing with the Trust in respect of any matters pertaining to the Trust, the Trust Assets or securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustee) executed by the Trustee or Adminco or, without limitation, such other person as may be authorized by the Trustee as to the capacity, power and authority of the Trustee, Adminco or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustee shall be bound to see to the application of any monies or property passing into the hands or control of the Trustee. The receipt by or on behalf of the Trustee of monies or other consideration shall constitute receipt by the Trust and be binding thereon.

## **8.6 Determinations of the Trustee Binding**

All determinations of the Trustee which are made in good faith with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a registered retirement savings plan, registered retirement income fund, registered education savings plan, deferred profit sharing plan or registered pension fund or plan as defined in the Tax Act, or such other fund or plan registered under the Tax Act, upon past, present or future fund or plan beneficiaries and fund or plan holders), and Trust Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

## **8.7 Restrictions on the Trustee's and Adminco's Powers and their Exercise**

Notwithstanding any provisions hereof, and in addition to any other provisions set forth herein requiring the approval of Unitholders in respect to certain matters, or as a condition precedent to taking certain actions, it is agreed that:

- (a) neither the Trustee nor Adminco shall, without the approval of the Unitholders and Special Rights Holders by Ordinary Resolution, take any of the following actions:
  - (i) vote the General Partner Shares to appoint, remove or replace directors of the Stoneham Board;
  - (ii) vote the Adminco Shares to appoint, remove or replace directors of the Adminco Board;
  - (iii) remove Stoneham as general partner of Stoneham L.P. (other than in the event of certain insolvency or bankruptcy or other defaults occurring); or
  - (iv) except to fill a vacancy in the office of Auditors in accordance with Section 15.16, appoint or change the Auditors; and

- (b) neither the Trustee nor Adminco shall, without the approval of the Unitholders and Special Rights Holders by Special Resolution, take any of the following actions:
- (i) amend this Declaration of Trust except as permitted in Article 9;
  - (ii) sell, lease or exchange or agree to sell, lease or exchange, all or substantially all of the property and assets of the Trust, other than: (A) in the ordinary course of business; (B) pursuant to *in specie* redemptions permitted hereunder; (C) in order to acquire Limited Partnership Units, Notes, General Partner Shares and Adminco Shares in connection with pursuing the purposes of the Trust; (D) in conjunction with 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 property and assets as the interest, whether direct or indirect, that it had prior to the reorganization; or (E) pursuant to a pledge in accordance with Subsection 8.2(d);
  - (iii) authorize the termination, liquidation or winding up of the Trust, other than in the circumstances set forth in Section 11.1; or
  - (iv) authorize the combination, merger or similar transaction between the Trust and any other person that is not an affiliate or associate of the Trust, except in connection with an internal reorganization of the Trust and its affiliates (but for greater certainty, a take-over bid by or on behalf of the Trust, an acquisition by or on behalf of the Trust by way of plan of arrangement or the acquisition by the Trust of all or substantially all of the assets of another person shall not be subject to the approval of the Unitholders or Special Rights Holders);

and, should any such matter or proposed matter be necessary or desirable, the Trustee (or Adminco) shall seek such approval in connection with any such matter or proposed matter.

## **8.8 Banking**

Subject to Subsection 4.2(b), the banking activities of the Trust, or any part thereof, shall be transacted with such bank, trust company, or other firm or corporation carrying on a banking business as the Trustee or Adminco may designate, appoint or authorize from time to time and all such banking activities, or any part thereof, shall be transacted on behalf of the Trust by the Trustee, Adminco or such other persons as the Trustee may designate, appoint or authorize from time to time, including the following activities:

- (a) the operation of the accounts of the Trust;
- (b) 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;

- (c) the giving of receipts for orders relating to any property of the Trust;
- (d) the execution of any agreement or instrument relating to any property of the Trust; and
- (e) 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.

## **8.9 Payments to Unitholders**

Except as may be otherwise provided herein, any cash payment required under the terms of this Declaration of Trust to be made to a Unitholder shall be paid in Canadian dollars, unless otherwise determined by the Trustee or Adminco, with such payment to be by cheque or bank draft to the order of the registered Unitholder and may be mailed by ordinary mail to the last address appearing on the books of the Trust in respect of such Unitholder but may also be paid in such other manner as such Unitholder has designated to the Trustee or Adminco and the Trustee or Adminco, as applicable in the circumstances, has accepted. In the case of joint registered Unitholders, any cash payment required hereunder to be made to a Unitholder shall be deemed to be required to be made to such Unitholders jointly and shall be paid by cheque or bank draft but may also be paid in such other manner as the joint registered Unitholders or any one of the joint registered Unitholders has designated to the Trustee or Adminco and that the Trustee or Adminco, as applicable in the circumstances, has accepted. For greater certainty, a Unitholder or any one of the joint Unitholders may designate and the Trustee or Adminco, as applicable in the circumstances, may accept that any payment required to be made hereunder shall be made by deposit to an account of such Unitholder or to a joint account of such Unitholder and any other person or in the case of joint registered Unitholders to an account of joint registered Unitholders or to an account of any one of the joint registered Unitholders. A cheque or bank draft shall, unless the joint registered Unitholders otherwise direct, be made payable to the order of all of the said joint registered Unitholders, and if more than one address appears on the books of the Trust in respect of such joint unitholding, the cheque or bank draft or payment in other acceptable manner as aforesaid may be sent to the address of any one of the joint registered Unitholders whose name and address appears on the books of the Trust. All payments made in the aforesaid manner shall satisfy and be a valid and binding discharge of all liability of the Trustee or the Trust for the amount so required to be paid unless the cheque or bank draft is not paid at par on presentation at Calgary, Alberta, or at any other place where it is by its terms payable. In the event of non-receipt of any such cheque or bank draft by the person to whom it was mailed, the Trustee or Adminco, as applicable, on proof of the non-receipt and upon satisfactory indemnity being given to it and to the Trust, shall issue to the person a replacement cheque or bank draft for a like amount.

The receipt, by the registered Unitholder, of any payment not mailed or paid in accordance with this Section 8.9 shall nonetheless be a valid and binding discharge to the Trust and to the Trustee for any payment made in respect of the registered Trust Units, and if several persons are registered as joint registered Unitholders or, in consequence of the death, bankruptcy or incapacity of a Unitholder, one or several persons are entitled so to be registered in

accordance with Sections 3.16 and 3.17, respectively, receipt of payment by any one of them shall be a valid and binding discharge to the Trust and to the Trustee for any such payment.

### **8.10 Notice to Unitholders of Non-Eligibility for Deferred Plans**

In addition to performing those matters described in Section 4.3, if Adminco determines that: (i) the Trust has ceased to be a "unit trust" or a "mutual fund trust", each for the purposes of the Tax Act; (ii) the Trust Units have ceased to be qualified investments for Deferred Plans; or (iii) the Trust Units have become "foreign property" (except for trusts governed by, registered education savings plans, which are not subject to the foreign property rules) within the meaning of the Tax Act, then Adminco shall so advise the Trustee and shall give notice to Unitholders at their latest address as shown on the register of Unitholders that the Trust Units have ceased to be a "unit trust" or a "mutual fund trust", ceased to be qualified investments for such Deferred Plans or that the Trust Units have become "foreign property", as the case may be. Neither the Trustee nor Adminco shall be liable to the Trust or to any Unitholder for any costs, expenses, charges, penalties or taxes incurred by a Unitholder or, where the Unitholder is a Deferred Plan, an annuitant, subscriber or beneficiary thereunder, as a result of or by virtue of a Trust Unit not being a "unit trust" and a "mutual fund trust" or a qualified investment for any such Registered Plan or the Trust Units having become "foreign property", as the case may be, where incurred by reason of a failure or omission by Adminco to have given the notice provided for herein.

## **ARTICLE 9 AMENDMENTS TO THE TRUST INDENTURE**

### **9.1 Amendment**

The provisions of this Declaration of Trust may only be amended by Special Resolution except where specifically otherwise provided herein, including pursuant to Sections 9.2 and 9.3.

### **9.2 Amendment without Approval**

The provisions of this Declaration of Trust may be amended by the Trustee at any time and from time to time, without the consent, approval or ratification of the Unitholders or any other person at any time for the purpose of:

- (a) ensuring continuing compliance, by the Trust, with applicable laws, regulations, requirements or policies of any Governmental Authority having jurisdiction over the Trustee or the Trust;
- (b) providing, in the *bona fide* opinion of the Trustee or Adminco, additional protection for the Unitholders or to preserve or clarify the provision of desirable tax treatment to Unitholders;
- (c) making minor corrections, or removing or curing any conflicts or inconsistencies between the provisions of the Declaration of Trust or any supplemental indenture and any other agreement of the Trust or any applicable law or regulation of any jurisdiction or any prospectus or other Offering document filed with any

regulatory or governmental body with respect to the Trust, provided that, in the opinion of the Trustee or Adminco in each case, the rights of the Unitholders are not materially prejudiced thereby;

- (d) making amendments which, in the opinion of the Trustee or Adminco, are necessary or desirable in the interests of the Unitholders as a result of changes in taxation laws or in their interpretation or administration;
- (e) making amendments hereto provided that, in the opinion of the Trustee or Adminco, the rights of the Trustee and of the Unitholders are not materially prejudiced thereby;
- (f) curing, correcting or rectifying any ambiguities, defective or inconsistent provisions, errors, mistakes or omissions, provided that in the opinion of the Trustee or Adminco the rights of the Trustee and of the Unitholders are not prejudiced thereby; or
- (g) making any amendments which, in the opinion of the Trustee or Adminco, are necessary or desirable in order to provide Unitholders with the benefit of any legislation limiting their liability including, if appropriate, amendments changing the *situs* of the Trust or the laws governing the Trust.

Notwithstanding anything contained herein or in any other agreement, and without in any way limiting the authority of Adminco herein provided for, the discretion of the Trustee to be exercised in this Section 9.2, shall be exercised by Adminco.

### **9.3 Further Restrictions on Amendments**

Notwithstanding anything herein contained, no amendment shall be made to this Declaration of Trust:

- (a) to modify the voting rights attributable to Trust Units as set out in this Declaration of Trust or reduce the fractional undivided beneficial interest in the Trust Assets represented by any Trust Unit without the consent of the holder of such Trust Unit; or
- (b) to amend this Section 9.3, unless the consent of the holders of all of the Trust Units then outstanding is obtained.

### **9.4 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to Section 9.2, the Trustee shall furnish written notification of the substance of such amendment to each Unitholder.

## **9.5 Further Acts Regarding Amendment**

When a vote of the Unitholders approves an amendment to this Declaration of Trust or an amendment is approved pursuant to Section 9.2, then the Trustee and Adminco (as applicable) shall sign such documents as may be necessary to effect such amendment, including executing an amended and restated version of this Declaration of Trust that includes all amendments to this Declaration of Trust in effect at the applicable time.

## **ARTICLE 10 MEETINGS OF UNITHOLDERS**

### **10.1 Annual Meeting**

There shall be an annual meeting of the Unitholders, which shall include any Special Rights Holders and which, for so long as the Trust holds any General Partner Share or Adminco Shares, shall be held immediately prior to, and at the same place as, each annual meeting of holders of General Partner Shares and Adminco Shares, for the purpose of:

- (a) directing and instructing Adminco as to the manner in which Adminco shall vote the General Partner Shares held by the Trust in respect of the election of the Stoneham Board at the corresponding annual meeting of holders of General Partner Shares;
- (b) directing and instructing Adminco as to the manner in which Adminco shall vote the Adminco Shares held by the Trust in respect of the election of the Adminco Board at the corresponding annual meeting of holders of Adminco Shares;
- (c) appointing the auditors of the Trust for the ensuing year; and
- (d) transacting such other business as the Trustee or Adminco may determine or as may be properly brought before the meeting.

The annual meeting of Unitholders shall be held within 180 days after the end of each fiscal year of the Trust.

### **10.2 Other Meetings**

- (a) *Called by the Trustee:* The Trustee shall have the power, at any time and for any purpose, to call special meetings of the Unitholders at such time and place as the Trustee may determine or Adminco may request (and, for greater certainty, the Trustee shall call a special meeting of Unitholders upon request of Adminco).
- (b) *Requisition by Unitholders and Special Rights Holders:* Unitholders and Special Rights Holders, if any, holding in the aggregate not less than ten percent of the votes attached to outstanding Trust Units and Special Voting Rights, if any, may requisition the Trustee to call a special meeting of the Unitholders for the purposes stated in the requisition. The requisition shall be in writing and shall

state in reasonable detail the business to be transacted at the meeting and shall be sent to the Trustee at the Trustee's principal place of business in Alberta. Upon receiving the requisition, the Trustee shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:

- (i) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Trust Units are listed for trading;
  - (ii) the Trustee has called a meeting of the Unitholders and has given notice thereof pursuant to Section 10.4; or ;
  - (iii) in connection with the business as stated in the requisition:
    - (A) it clearly appears that a matter covered by the requisition is submitted by the Unitholder or the Special Rights Holder, as the case may be, primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustee, the Unitholders or any affiliate of any of the foregoing, or primarily for the purpose of promoting general economic, political, religious, social or similar causes or primarily for a purpose that does not relate in a significant way to the business or affairs of the Trust;
    - (B) the Trust, at the Unitholder's or Special Rights Holder's request, had previously included a matter substantially the same as a matter covered by the requisition in an information circular relating to a meeting of Unitholders held within 30 months preceding the receipt of such requisition and the Unitholder or the Special Rights Holder failed to present the matter, in person or by proxy, at the meeting;
    - (C) substantially the same matter covered by the requisition was submitted to Unitholders in an information circular relating to a meeting of Unitholders held within 30 months preceding the receipt of such requisition and the matter covered by the requisition was defeated; or
    - (D) the rights conferred by this Section 10.2 are being abused to secure publicity.
- (c) *Requisition by Stoneham Board:* While the Trust holds, directly or indirectly, any General Partner Shares, the Trustee shall call a special meeting of Unitholders upon receipt of a requisition from the Stoneham Board for the purposes set forth in such requisition, including seeking the required approvals from the Unitholders and Special Rights Holders to vote the General Partner Shares held by the Trust in respect of the matters set forth in Section 8.7.

- (d) *Requisition by Adminco Board:* While the Trust holds, directly or indirectly, any Adminco Shares, the Trustee shall call a special meeting of Unitholders upon receipt of a requisition from the Adminco Board for the purposes set forth in such requisition, including seeking the required approvals from the Unitholders and Special Rights Holders to vote the Adminco Shares held by the Trust in respect of the matters set forth in Section 8.7.
- (e) *Failure to Call Meeting:* If the Trustee does not, within 21 days after receiving the requisition, call a meeting (except where the grounds for not calling the meeting are one or more of those set forth in Subsection 10.2(b)), any Unitholder or Special Rights Holder who signed the requisition or the Stoneham Board or the Adminco Board, as the case may be, may call the meeting in accordance with the provisions of Article 10, *mutatis mutandis*.

### 10.3 Unitholder Proposals

- (a) A Unitholder entitled to vote at an annual meeting of Unitholders and who holds at least 5,000 Trust Units, may:
  - (i) submit to Adminco notice of any matter that the Unitholder proposes to raise at the meeting, referred to in this Section 10.3 as a "**Proposal**"; and
  - (ii) discuss at the meeting any matter in respect of which the Unitholder would have been entitled to submit a Proposal.
- (b) Adminco shall set out the Proposal in the proxy circular in respect of the meeting or attach the Proposal to it.
- (c) If so requested by the Unitholder, Adminco shall include in the proxy circular or attach to it a statement by the Unitholder of not more than 200 words in support of the Proposal, and the name and address of the Unitholder.
- (d) A Proposal may include nominations for the election of directors to the Stoneham Board or the Adminco Board if the Proposal is signed by one or more Unitholders or Special Rights Holders representing in the aggregate not less than 25% of the issued and outstanding Trust Units and Special Voting Rights.
- (e) Adminco is not required to comply with Subsections 10.3(b) and 10.3(c) if:
  - (i) the Proposal is not submitted to Adminco at least 90 days before the anniversary date of the previous annual meeting of Unitholders;
  - (ii) it appears that the Proposal has been submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, Adminco, Stoneham, Stoneham L.P. or their affiliates or their respective trustees, directors, officers or security holders or any of them, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;

- (iii) Adminco, at the Unitholder's request, included a Proposal in a proxy circular relating to a meeting of Unitholders held within two years preceding the receipt of the request, and the Unitholder failed to present the Proposal, in person or by proxy, at the meeting;
  - (iv) substantially the same Proposal was submitted to Unitholders in a proxy circular relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the Proposal was defeated; or
  - (v) the rights being conferred by this Section 10.3 are being abused to secure publicity.
- (f) If Adminco refuses to include a Proposal in a proxy circular, Adminco shall, within ten days after receiving the Proposal, notify the Unitholder submitting the Proposal of its intention to omit the Proposal from the proxy circular and send to the Unitholder a statement of the reasons for the refusal.

#### **10.4 Notice of Meeting of Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Trustee to each Unitholder and Special Rights Holder, to the Trustee, to Adminco and to the Auditors not less than 21 nor more than 50 days before the meeting (or within such other time periods as required or permitted by applicable securities laws). The attendance of a Unitholder or Special Rights Holder at a meeting shall constitute a waiver of notice, or defect therein, with respect to such meeting except where a Unitholder or Special Rights Holder attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Such notice shall set out 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 or Special Rights Holder to form a reasoned judgement thereon, together with the text of any special resolution in substantially the final form proposed to be passed. Any adjourned meeting may be held as adjourned without further notice. The accidental omission to give notice to or the non-receipt of such notice by the Unitholders and Special Rights Holders shall not invalidate any resolution passed at any such meeting.

#### **10.5 Quorum; Chairman**

A quorum for any meeting of Unitholders shall be two individuals being Unitholders or Special Rights Holders and being present in person or represented by proxy, and representing in the aggregate not less than 5% of the total number of votes attached to outstanding Trust Units and Special Voting Rights, in the aggregate. For the purpose of determining such quorum, the holders of any issued Special Voting Rights who are present at the meeting shall be regarded as representing outstanding Trust Units equivalent in number to the votes attaching to such Special Voting Rights. 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 and/or Special Rights Holders, shall be

terminated and, if otherwise called, shall stand adjourned to a day not less than seven days later and to such place and time as may be determined by the chairman of the meeting. If at such adjourned meeting a quorum as above defined is not present, the Unitholders and Special Rights Holders 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. The Chairman of the Adminco Board, or such other individual as may be appointed by the Trustee on the advice of Adminco, shall be the chairman of any meeting of the Unitholders and Special Rights Holders.

## **10.6 Voting**

Holders of Trust Units and Special Voting Rights may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Trust Unit shall be entitled to the number of votes set out in Section 3.1 and each Special Voting Right shall entitle the holder thereof to such number of votes as may be prescribed by Adminco when authorizing the issuance of such Special Voting Right. Any action to be taken by the Unitholders shall, except as otherwise required by this Declaration of Trust or by law, be authorized when approved by an Ordinary Resolution. The chairman of any meeting of Unitholders shall not have a second or casting vote.

## **10.7 Record Dates**

For the purpose of determining the Unitholders and Special Rights Holders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustee may from time to time, without notice to Unitholders and Special Rights Holders, close the transfer books for such period, not exceeding 30 days, as the Trustee may determine. Alternatively, with or without closing the transfer books, the Trustee may fix a date not more than 60 days prior to the date of any meeting of the Unitholders or any distribution or any other action to be taken by the Trust, as a record date for the determination of Unitholders and Special Rights Holders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders and Special Rights Holders of record for purposes of such other action, as the case may be. Any person who was a Unitholder or Special Rights Holder at the record date so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder or Special Rights Holder, as the case may be, of record for purposes of such other action, even though he has since that date disposed of his Trust Units or Special Voting Rights, as the case may be, and no person who becomes a Unitholder or Special Rights Holder, as the case may be, after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof, or to receive such distribution, or to be treated as a Unitholder or a Special Rights Holder, as the case may be, of record for purposes of such other action. Notwithstanding the foregoing, if a Unitholder or Special Rights Holder transfers ownership of any of his Trust Units or Special Voting Rights after the record date and the transferee of such securities provides properly endorsed certificates in respect of such securities to Adminco or otherwise establishes to the satisfaction of Adminco that he owns such securities and demands, no later than ten days prior to the meeting, that his name be included in the list of Unitholders or Special Rights

Holders before the meeting, the transferee shall be entitled to vote his Trust Units and Special Voting Rights at the meeting.

### **10.8 Proxies**

Whenever the vote or consent of Unitholders or Special Rights Holders is required or permitted under this Declaration of Trust, such vote or consent may be given either directly by the Unitholder or the Special Rights Holder, as the case may be, or by a proxy in such form as is acceptable to the Trustee acting reasonably. A proxy holder need not be a Unitholder or a Special Rights Holder. The Trustee may solicit such proxies from the Unitholders, the Special Rights Holders, if any, or any of them in respect of any matter requiring or permitting the Unitholders' and Special Rights Holders' vote, approval or consent in such manner as may be required or permitted by applicable law.

Subject to applicable laws, the Trustee may adopt, amend or repeal such rules relating to proxies, including pertaining to the appointment of proxy holders and the solicitation, execution, validity, revocation and deposit of proxies, as it in its discretion from time to time determines and such rules may be contained in the Trustee's Regulations.

### **10.9 Resolution in Lieu of Meeting**

A resolution signed in writing by Unitholders and Special Rights Holders holding a proportion of all the outstanding votes attributable to all issued and outstanding Trust Units and Special Voting Rights, where such proportion is equal to or greater than the proportion of votes required to be voted in favour of such resolution at a meeting of Unitholders to approve that resolution, is as valid as if it had been passed at a meeting of Unitholders duly called and convened.

### **10.10 Materials Sent to Unitholders**

At any time that the Trust, directly or indirectly, holds more than 50% of the issued and outstanding General Partner Shares or Adminco Shares, the Trustee shall include in the materials sent to Unitholders and Special Rights Holders in respect of meetings thereof all materials requested to be sent to Unitholders and Special Rights Holders, if any, by the Stoneham Board or the Adminco Board, acting reasonably.

### **10.11 Meetings of Holders of General Partner Shares and Adminco Shares**

Meetings of Unitholders may be held immediately prior to, after or simultaneously with meetings of the holders of General Partner Shares and Adminco Shares; provided, however, that for so long as the Trust holds any General Partner Shares or Adminco Shares the annual meeting of Unitholders shall be held immediately prior to that of the holders of General Partner Shares and Adminco Shares.

### **10.12 Resolutions Binding the Trustee**

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

- (a) the appointment or removal of the Trustee or a director of the Stoneham Board or the Adminco Board;
- (b) the appointment or removal of Auditors as provided in Sections 15.13 and 15.15;
- (c) amendments of this Declaration of Trust as provided in Article 9;
- (d) the termination of the Trust as provided in Section 11.2; and
- (e) any other matter referred to in Subsections 8.7(a) or 8.7(b).

For greater certainty, any resolution passed by Unitholders and Special Rights Holders pertaining to the number in which securities held by the Trust are to be voted in respect of any matter referred to in Section 8.7 shall be deemed to be a direction to the Trustee and Adminco to vote such securities in favour of, or in opposition to, or to vote or withhold from voting in respect of the relevant matter in equal proportion to the votes cast by Unitholders and Special Rights Holders in respect of the matter, and the Trustee or Adminco is hereby obligated to vote the securities in accordance with such direction.

Except with respect to the above matters set out in this Section 10.12, no action taken by the Unitholders or any resolution of the Unitholders at any meeting shall in any way bind the Trustee. Any action taken or resolution passed in respect of any matter at a meeting of Unitholders shall be by Ordinary Resolution, unless the contrary is otherwise expressly provided under any specific provision of this Declaration of Trust.

## **ARTICLE 11 TERMINATION**

### **11.1 Term of the 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 May 30, 2003. For the purpose of terminating the Trust by such date, the Trustee shall commence to wind-up the affairs of the Trust on such date as may be determined by the Trustee, being not more than two years prior to the end of the term of, the Trust.

### **11.2 Termination with the Approval of Unitholders**

The Trust shall be terminated if the Unitholders pass a Special Resolution authorizing such termination. Following the passage of such Special Resolution and subject to any exercise of the rights of the Trustee under Section 12.5, the Trustee shall commence to wind-up the affairs of the Trust. Such Special Resolution may contain such directions to the Trustee as the Unitholders determine, including a direction to distribute securities, Notes or any other Trust Assets, or any of them, in specie. The Trust shall terminate when all of the assets of the Trust have been sold, all known and other outstanding debts, liabilities and obligations of the Trust have been paid, retired, discharged or provided for and the amounts referred to in Section 11.6

have been distributed or paid into court as provided in this Article 11. In no event shall the winding-up of the affairs of the Trust exceed ten years.

### **11.3 Procedure Upon Termination**

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

### **11.4 Powers of the Trustee Upon Termination**

After the date on which the Trustee is required or determines to commence to wind-up the affairs of the Trust pursuant to this Declaration of Trust, the Trustee shall carry on no activities except for the purpose of winding-up or terminating (as the case may be) the affairs of the Trust as hereinafter provided and, for this purpose, the Trustee shall continue to be vested with and may exercise all or any of the powers conferred upon the Trustee under this Declaration of Trust.

### **11.5 Sale of Investments**

After the date referred to in Section 11.4, the Trustee 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 wind-up authorized under Section 11.2, sell and convert into money the Trust Assets 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 11.2). If the Trustee is unable to sell all or any of the Trust Assets or other assets which comprise part of the Trust by the date set for wind-up or termination, the Trustee may distribute undivided interests in the remaining Trust Assets or other assets directly to the Unitholders on a pro rata basis in accordance with their respective interest in the Trust as determined by the number of Trust Units held by each such respective Unitholder.

### **11.6 Distribution of Proceeds**

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 an indemnity or establishing a reserve amount against any other outstanding liabilities and obligations, the Trustee shall distribute the remaining part of the proceeds of the sale of the Trust Assets pro rata among the Unitholders in accordance with their respective interest in the Trust as determined by the number of Trust Units held by each such respective Unitholder.

### **11.7 Further Notice to Unitholders**

In the event that less than all of the Unitholders have surrendered their Trust Units for cancellation within six months after the time specified in the notice referred to in Section 11.3, the Trustee shall give further notice to the remaining Unitholders to surrender their Trust Units for cancellation and if, within one year after the further notice, all the Trust Units shall not have been surrendered for cancellation, such remaining Trust Units shall be deemed to be cancelled

without prejudice to the rights of the holders of such Trust Units to receive their pro rata share of the remaining Trust Assets, and the Trustee 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 Trustee, may pay such amounts into court.

### **11.8 Responsibility of the Trustee after Sale and Conversion**

The Trustee 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 11.4 and, after such sale, the sole obligation of the Trustee under this Declaration of Trust shall be to collect, distribute and hold such proceeds in trust for distribution under this Article 11.

## **ARTICLE 12 LIABILITY OF TRUSTEE, STONEHAM, ADMINCO AND UNITHOLDERS AND OTHER MATTERS**

### **12.1 General Limitation of Liability and Indemnification**

- (a) The Trustee, Stoneham, Adminco and the directors, officers, employees, consultants and agents of the Trust, the Trustee, Stoneham and Adminco, as the case may be, in incurring any debts, liabilities or obligations, or taking or omitting any other actions for or in connection with the affairs of the Trust are, and shall be conclusively deemed to be, acting for and on behalf of the Trust, and not in their own personal capacities.
  
- (b) No Unitholder, in its capacity as such, or annuitant, shall incur or be subject to any liability in contract or in tort or of any other kind whatsoever to any person in connection with the Trust Assets or the obligations or the affairs of the Trust or with respect to any act performed by the Trustee, Adminco or by any other person pursuant to this Declaration of Trust or with respect to any act or omission of the Trustee, Adminco or any other person in the performance or exercise, or purported performance or exercise, of any obligation, power, discretion or authority conferred upon the Trustee, Adminco or such other person hereunder or with respect to any transaction entered into by the Trustee, Adminco or by any other person pursuant to this Declaration of Trust. No Unitholder or annuitant shall be liable to indemnify the Trustee, Adminco or any other person with respect to any such liability or liabilities incurred by the Trustee, Adminco or by any such other person or persons or with respect to any taxes payable by the Trustee, Adminco or any other person on behalf of or in connection with the Trust. To the extent that, notwithstanding the foregoing, any such liabilities are determined by a court of competent jurisdiction to be liabilities of the Unitholders and annuitants, such liabilities shall only be enforceable against, and shall be satisfied only out of, the Trust Assets to the extent of, in respect of any one Unitholder, such Unitholder's pro rata interest in the Trust Assets.

- (c) All reasonable efforts shall be made to ensure that every contract entered into by or on behalf of the Trust, whether by the Trustee, Adminco or otherwise, shall (except as the Trustee may otherwise expressly agree in writing with respect to personal liability of the Trustee) include a provision substantially to the following effect:

"The parties hereto acknowledge that the [Trustee/Adminco] is entering into this agreement solely in its capacity as [Trustee/agent] on behalf of the Trust and the obligations of the Trust hereunder shall not be personally binding upon the Trustee, Adminco or any of the Unitholders of the Trust or any annuitant under a plan of which a Unitholder is a trustee or carrier (an "annuitant") and that any recourse against the Trust, the Trustee, Adminco or any Unitholder or annuitant in any manner in respect of any indebtedness, obligation or liability of the Trust arising hereunder or arising in connection herewith or from the matters to which this agreement relates, if any, including without limitation claims based on negligence or otherwise tortious behaviour, shall be limited to, and satisfied only out of, the Trust Assets as defined in the Declaration of Trust dated as of May 30, 2003 as amended and restated December 15, 2004, as amended."

The rights conferred by any such provision shall be held in trust and enforced by the Trustee or Adminco, as applicable, for the benefit of the Trustee, Adminco, Unitholders and annuitants. The omission of such a provision from any such written agreement shall not operate to impose personal liability on the Trustee, Adminco or any Unitholder or annuitant.

- (d) Except as provided in Subsection 12.1(e), if, contrary to the provisions of Subsection 12.1(b), any Unitholder or annuitant shall be held personally liable in its capacity as such with respect to the matters described in Subsection 12.1(b), such Unitholder or annuitant shall be entitled to indemnity and reimbursement out of the Trust Assets to the extent of such Unitholder's pro rata interest in the Trust's property and to the costs of any litigation or other proceedings in which such liability shall have been determined, including the reasonable fees and disbursements of counsel. The rights accruing to a Unitholder or annuitant under this Subsection 12.1(d) shall not exclude any other rights to which such Unitholder or annuitant may be lawfully entitled, nor shall anything herein contained restrict the right of the Trustee to indemnify or reimburse a Unitholder or, annuitant out of the Trust Assets in any appropriate situation even though not specifically, provided herein, but, for greater certainty, the Trustee shall have no liability to reimburse Unitholders or annuitants for taxes assessed against them by reason of their ownership of Trust Units, nor for any losses suffered by reason of changes in the market value of investments forming part of the Trust Assets.
- (e) 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 any entity controlled by the Trust other than the Trust or contrary to the terms of the Notes, then the persons entitled to enforce such Subordination Agreements or subordination provisions shall be entitled, subject to Subsection 12.1(b), to pursue whatever remedies may be available to them to enforce such Subordination Agreements or provisions and the limitations in Subsection 12.1(d) 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.

- (f) The Trustee, its directors, officers, employees and agents shall not be liable to any Unitholder, annuitant or any other person, in tort, contract or otherwise for:
- (i) any action taken in good faith in reliance on any documents that are, prima facie, properly executed;
  - (ii) any depreciation of, or loss to, the Trust incurred by reason of the retention or sale of any property;
  - (iii) any inaccuracy or omission in any evaluation provided by Adminco or any other appropriately qualified person or for relying in good faith on any such evaluation;
  - (iv) any action or failure to act of Adminco or any subdelegate thereof, including anything done or permitted to be done pursuant to, or any error or omission relating to, the Indenture Conferred Duties or any material contracts of the Trust, or the act of agreeing to the conferring upon, granting, allocating and delegating the Indenture Conferred Duties to Adminco in accordance with the terms of this Indenture.

The Trustee, its directors, officers, employees and agents shall not be liable to any Unitholder, annuitant or any other person, in tort, contract or otherwise for any other action or failure to act (including the failure to compel in any way any former trustee to redress any breach of trust), unless such liabilities arise principally and directly from a breach of the Trustee's standard of care as set out in Section 8.4 or the Trustee's or such director's, officer's, employee's or agent's negligence, wilful default or fraud (provided, for greater certainty, that for purposes of this provision neither Adminco nor any sub-delegate thereof shall be considered an agent of the Trustee).

The Trustee, its directors, officers, employees and agents shall not be liable to any Unitholder, annuitant or any other person, in tort, contract or otherwise in acting or failing to act, in good faith, in relation to any matter arising from or relating to this Declaration of Trust where such action or failure to act is based upon the opinion or advice of or information obtained from any Expert, provided that the Trustee has satisfied its standard of care in Section 8.4 in selecting such Expert.

## **12.2 Indemnification, of Trustee**

The Trust (to the extent of the assets of the Trust) is liable to, and shall indemnify and save harmless the Trustee, its directors, officers, employees, shareholders and agents, and all of their successors and assigns in respect of:

- (a) any liability and all costs, charges and expenses sustained or incurred in respect of any action, suit or proceeding (including all reasonable defense costs) that is proposed or commenced against the Trustee or any of its directors, officers, employees, shareholders and agents, as the case may be, for or in respect of anything done or permitted to be done in respect of the Trust or any error or omission in respect of any matter relating to the Trust and the execution of all duties, responsibilities, powers and authorities pertaining thereto;
- (b) all other costs, charges, taxes, penalties and interest in respect of unpaid taxes and all other expenses and liabilities sustained or incurred by the Trustee in respect of the administration or termination of the Trust (excluding, however, any and all taxes on any income of the Trustee); and
- (c) any loss, expense, claim, liability or asserted liability (including strict liability and including costs and expenses of abatement and remediation of spills or releases of contaminants and including liabilities of indemnified parties to third parties, including Governmental Authorities, in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage and including liabilities to third parties for the third parties' foreseeable and unforeseeable consequential damages) incurred as a result of the administration of the trust created hereby, or the exercise by the Trustee of any of the rights under this Declaration of Trust; or the breach or alleged breach of any environmental laws by Stoneham L.P. or an affiliate thereof,

unless any of the foregoing arises principally and directly from a breach of the Trustee's standard of care as set out in Section 8.4 or the Trustee's or such director's, officer's, employee's or agent's negligence, wilful default or fraud, in which case the provisions of this Section 12.2 shall not apply (provided, for greater certainty, that for purposes of this provision neither Adminco nor any sub-delegate thereof shall be considered an agent of the Trustee). These indemnities shall survive the termination of the Trust and the resignation or removal of the Trustee.

## **12.3 Execution of Instruments and Apparent Authority**

- (a) Any instrument executed in the name of the Trust or on behalf of the Trust by Adminco shall constitute and shall be deemed to constitute a valid obligation of the Trust enforceable in accordance with its terms as if executed by the Trustee. The Trustee has expressly approved and ratified the actions taken by Adminco to execute and file the Prospectus and the stock exchange listing application necessary to qualify the Trust Units for sale to the public and to have them listed and posted for trading on the Toronto Stock Exchange on behalf of and in the name of the Trust.

- (b) No purchaser, transfer agent or other person dealing with the Trustee or with any officer, employee or agent of the Trustee shall be bound to make any enquiry concerning the validity of any transaction purporting to be made by the Trustee or by such officer, employee or agent or make enquiry concerning, or be liable for, money or property paid, lent or delivered to or on the order of the Trustee or such officer, employee or agent. Any person dealing with the Trust in respect of any matters pertaining to the Trust Assets and any right, title or interest therein, or pertaining to the Trust or to the Trust Units shall be entitled to rely on a certificate, statutory declaration or resolution executed or certified by the Trustee as to the capacity, power and authority of the Trustee, Adminco, consultant or agent or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustee, Adminco, or any consultant or agent of the Trust, shall be bound to see to the application of any funds or property passing into the hands or control of such Trustee, Adminco, consultant or agent of the Trust. The receipt of the Trustee, Adminco, or authorized consultants or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

#### **12.4 Reliance**

- (a) The Trustee shall be entitled to rely on statements from, the opinion or advice of, or information from Experts, provided that, with respect to Experts other than the Auditors and Counsel, the Trustee has satisfied its standard of care in Section 8.4 in selecting such Expert.
- (b) The Trustee and its directors, officers, employees and agents shall not be liable to any Unitholders, annuitants or other persons in relying in good faith upon statements or information from, the opinion or advice of, or instruments or directions given by an officer, director, employee or agent of Adminco or by a broker, a custodian or any Unitholder, or by such other parties as may be authorized to give instructions or directions to the Trustee. If required by the Trustee, Adminco shall file with the Trustee a certificate of incumbency setting forth the names and titles of parties authorized to give instructions or directions to the Trustee together with specimen signatures of such persons and the Trustee shall be entitled to rely on the latest such certificate of incumbency filed with it. The Trustee, Adminco and their respective directors, officers, employees and agents shall not be liable to any Unitholders, annuitants or other persons shall each be fully protected from liability in acting upon any instrument, certificate or paper believed by it to be genuine and signed or presented by the proper person or persons. For greater certainty, in discharging any duties ascribed to it hereunder, the Trustee shall be entitled to rely upon the statements, advice or opinions referred to in Subsection 12.1(f).

#### **12.5 Conditions Precedent to Trustee's Obligations to Act**

The obligation of the Trustee to: (i) commence to wind up the affairs of the Trust pursuant to Section 11.2; (ii) commence or continue any act, action or proceeding for the purpose of enforcing the rights of the Trustee, the Trust and of the Unitholders; or (iii) undertake any of

those matters referred to in Subsection 8.2(x), shall be conditional upon Adminco or Unitholders furnishing, when required by notice in writing by the Trustee, sufficient funds to commence or continue such act, action or proceeding and an indemnity (to the extent sufficient funds for such purpose are not available in the Trust) satisfactory to the Trustee, acting reasonably, to protect and hold harmless the Trustee against the costs, charges and expenses and liabilities to be incurred therein and any loss and damage the Trustee may suffer by reason thereof. None of the provisions contained in this Declaration of Trust shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless indemnified as aforesaid.

### **ARTICLE 13 RESPONSIBILITIES OF AND DELEGATION TO ADMINCO**

#### **13.1 Delegation Permitted to Adminco**

Except as expressly prohibited by law, the Trustee may grant or delegate separately to Adminco such authority and such powers as the Trustee may in its sole discretion deem necessary or desirable to carry out and effect the actual administration of the duties of the Trustee under this Declaration of Trust, without regard to whether such authority is normally granted or delegated by trustees. In addition to those matters specifically granted, allocated or delegated to Adminco in this Declaration of Trust, the Trustee may, subject to Section 8.7, enter into any other contract with Adminco relating to the Trustee's delegation of its duties hereunder to Adminco, and pertaining to Adminco's authority, term of appointment, compensation and any other matters deemed desirable by the Trustee.

#### **13.2 General Delegation to Adminco**

Subject to and in accordance with the terms, conditions and limitations of this Declaration of Trust and, in particular, subject to Section 13.4, the Trustee hereby delegates to Adminco, and Adminco hereby accepts the delegation of, the authority, responsibility and obligation to perform the Trustee's duties and responsibilities under this Declaration of Trust, and agrees to be responsible for the administration and management of all general and administrative affairs of the Trust.

#### **13.3 Responsibilities of Adminco**

Notwithstanding the powers and responsibilities conferred upon the Trustee in this Declaration of Trust, Adminco shall have broad discretion to be responsible for the general administration and management of the day-to-day affairs and operations of the Trust. Subject to and in accordance with the terms, conditions and limitations herein contained, and in addition to those other responsibilities, duties and obligations that are granted, allocated or delegated to Adminco herein, Adminco shall provide and perform, or procure from third parties, all general administrative, management and support services (other than those set forth in Section 13.4) as may be required or advisable, from time to time, in order to administer the business, affairs and operations of the Trust, including the following services:

- (a) undertake any matters required by the terms of this Declaration of Trust to be performed by the Trustee, which are not otherwise delegated herein, including taking all actions which are necessary to effect the implementation and carrying out of the Trustee's powers and responsibilities described in Section 8.2, and generally provide all other services as may be necessary or as requested by the Trustee for the administration of the Trust;
- (b) vote all securities held by the Trust (subject to restrictions in this Declaration of Trust);
- (c) prepare all returns, filings and documents and make all determinations necessary for the discharge of the Trustee's obligations under this Declaration of Trust;
- (d) retain and monitor the Transfer Agent and other organizations serving the Trust;
- (e) develop acquisition strategies for, and investigate potential acquisitions by, the Trust and its subsidiaries, other than Stoneham and Stoneham L.P.;
- (f) carry out any acquisitions or dispositions of assets of the Trust and any financings related thereto;
- (g) authorize and pay operation expenses incurred on behalf of the Trust and negotiate contracts with third party providers of services (including, but not limited to, transfer agents, legal counsel, auditors and printers);
- (h) provide office space, telephone, office equipment, facilities, supplies and executive, secretarial and clerical services;
- (i) prepare and provide to the Unitholders annual audited and interim unaudited financial statements of the Trust, as well as relevant tax information;
- (j) submit all income tax returns and filings to the Trustee in sufficient time prior to the dates upon which they must be filed so that the Trustee has a reasonable opportunity to review them, execute them and return them to Adminco, and arrange for their filing within the time required by applicable tax law;
- (k) compute, determine and make on the Trust's behalf distributions to Unitholders properly payable by the Trust and administer such distribution reinvestment plans and other similar plans as the Trust may establish from time to time;
- (l) ensure compliance by the Trust with, and enforce all rights of the Trust under, all agreements entered into by the Trust, provide advice with respect to the Trust's obligations as a reporting issuer, and ensure compliance by the Trust with all applicable securities legislation including without limitation, continuous disclosure obligations;
- (m) implement trading and disclosure policies in respect of Trust Units and Other Trust Securities;

- (n) prepare any circular or other disclosure document required under applicable securities legislation with respect to an offer to acquire securities of another person or in response to an offer to purchase Trust Units and otherwise undertake all matters pertaining to any take-over bid, merger, amalgamation, arrangement, reorganization, recapitalization, business combination or similar transaction involving the Trust;
- (o) provide investor relations services to the Trust;
- (p) undertake all matters related to the listing and maintaining of the listing on the TSX of the Trust Units, or such other stock exchanges as may be determined by Adminco from time to time;
- (q) call and hold all annual and/or special meetings of Unitholders pursuant to the Declaration of Trust and prepare and arrange for the distribution of all materials (including notices of meetings and information circulars) in respect thereof;
- (r) prepare and provide or cause to be provided to Unitholders on a timely basis all information to which Unitholders are entitled under the Declaration of Trust and under applicable laws, including information or proxy circulars, annual information forms, quarterly and annual reports, notices, financial reports and tax information relating to the Trust;
- (s) take all steps necessary to complete the issuance of securities of the Trust;
- (t) attend to all administrative and other matters arising in connection with any redemptions of Trust Units;
- (u) determine the timing and terms of any offer by the Trust for, and repurchase by the Trust of, Trust Units;
- (v) obtain and maintain appropriate liability insurance for the benefit of the directors and officers of all of the Trust's direct and indirect subsidiaries, including Stoneham and Adminco;
- (w) monitor the Trust's status as a mutual fund trust and provide the Trustee with written notice when the Trust is at risk of ceasing to be a mutual fund trust for the purpose of the Tax Act;
- (x) monitor the investments of the Trust to ensure that the aggregate cost amount of the "foreign property" of the Trust does not exceed the limits prescribed in the Tax Act, the result of which would be to expose the Trust to Part XI tax under such act;
- (y) deal with banks and other institutional lenders, including in respect of the maintenance of bank records and the negotiation and securing of bank financing or refinancing of one or more credit or debt facilities, hedging or swap facilities or

other ancillary facilities in respect of the Trust or any entity in which the Trust holds any direct or indirect interest, excluding Stoneham L.P.;

- (z) undertake, manage and prosecute any and all proceedings from time to time before or in respect of governmental authorities;
- (aa) undertake all matters relating to an Offering, including preparing any prospectus or comparable documents of the Trust to qualify the sale of securities of the Trust from time to time and ensure compliance with all applicable laws in relation to an Offering; and
- (bb) promptly notify the Trust of any event that might reasonably be expected to have a material adverse effect on the affairs of the Trust.

Upon the request of Adminco, the Trustee shall notify such parties as requested by Adminco of the Indenture Conferred Duties conferred upon, granted, allocated or delegated to Adminco under this Declaration of Trust and shall execute all directions and other instruments as may be necessary to evidence, document or otherwise give effect to Adminco's authority under this Declaration of Trust.

For further certainty, Adminco is under no obligation to consult with, seek advice from, or otherwise communicate with any person whomsoever, (including the Trustee) pertaining to the performance and discharge of the Indenture Conferred Duties, or otherwise.

#### **13.4 Services for which Adminco is not Responsible**

Notwithstanding any provision herein contained, the right and obligation of Adminco to perform or procure all general administrative and support services as may be required or advisable, from time to time, in order to administer the business, affairs and operations of the Trust (as more particularly set forth in Section 13.3) shall not be construed to derogate from the position of the Trustee, as the sole trustee of the Trust, holding the legal ownership of the Trust Assets in its' name for the benefit of the Unitholders and, without limiting the foregoing, shall not be construed to include or be deemed to include the delegation by the Trustee of its rights, powers, authorities and duties to act on behalf of the Trust and be responsible for:

- (a) the issue, certification, exchange or cancellation of Trust Units;
- (b) making the distribution of payments or property to Unitholders and statements in respect thereof;
- (c) any mailings to Unitholders of materials directed by Adminco to be so mailed;
- (d) any matters ancillary or incidental to any of those set forth in Subsections 13.4(a) to 13.4(c); and
- (e) any matter which, pursuant to applicable law, cannot be delegated by the Trust to Adminco as provided for herein.

### **13.5 Covenants of Adminco**

Adminco covenants and agrees that, in the performance of the Indenture Conferred Duties, it shall:

- (a) perform all such services at all times in compliance with applicable laws;
- (b) observe and perform or cause to be observed and performed on behalf of the Trust, in every material respect, the provisions of: (i) all agreements from time to time entered into by the Trust in connection with its activities; and (ii) all applicable laws;
- (c) not commingle its own funds with any funds held by it on behalf of the Trust;
- (d) maintain proper books, records and documents in which complete, true and correct entries in conformity, in all material respects, with generally accepted accounting principles and all requirements of applicable laws will be made in respect of the performance of Adminco's services under this Declaration of Trust, and all such books and records shall be maintained at Adminco's head office in the Province of Alberta; and
- (e) upon reasonable prior notice by the Trust to Adminco, make available to the Trustee and its authorized representatives, for examination during normal business hours on a business day, all books, records and documents required to be maintained under Subsection 13.5(d), wherever maintained. In addition, Adminco shall make available to the Trustee and its authorized representatives such financial and operating data and other information in respect of the performance of Adminco's services under this Declaration of Trust as may be in existence and as the Trustee and its authorized representatives shall from time to time reasonably request, including for the purposes of conducting any audit in respect of expenses of the Trust or other matters necessary or advisable to be audited in order for the Trustee to conduct an audit of the financial affairs of the Trust. Any examination of records at Adminco's head office shall be conducted in a manner which will not unduly interfere with the conduct of the business of Adminco.

### **13.6 Grant of Power and Authority Adminco**

Adminco is hereby granted, allocated and, where applicable, delegated full and absolute right, power and authority to undertake, perform and provide, for and on behalf of the Trust, all of the Indenture Conferred Duties and to take and do, for and on behalf of the Trust, in connection with the provision of all such Indenture Conferred Duties, all such actions and all such things which Adminco deems appropriate, in its sole discretion, including the right, power and authority to retain and instruct such appropriate experts or advisors to perform those duties and obligations granted to Adminco which it is not qualified to perform, to execute and deliver contracts, leases, licenses, and other documents, instruments and agreements, to make all applications and filings with Governmental Authorities, and to take such other actions as Adminco considers appropriate, in the name of and on behalf of the Trust.

### **13.7 Determinations of Adminco Binding**

All determinations of Adminco which are made in good faith with respect to any Indenture Conferred Duties relating to the Trust, including whether any particular investment or disposition meets the requirements of this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a registered retirement savings plan, registered retirement income fund; registered education savings plan, deferred profit sharing plan or registered pension fund or plan as defined in the Tax Act, or such other fund or plan registered under the Tax Act, upon past, present or future fund or plan beneficiaries and fund or plan holders), and Trust Units shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

### **13.8 Execution of Documents**

In carrying out the Indenture Conferred Duties, Adminco may execute and deliver, in the name of and for and on behalf of the Trust, all agreements, certificates, deeds, instruments, waivers, releases or other documents pertaining to the Trust which Adminco considers appropriate, in its sole discretion, and in doing so Adminco shall be designated as the "Manager" of the Trust. Any such instrument or document shall be executed in the following manner:

STONEHAM DRILLING TRUST  
By its Manager, Stoneham Administration Inc.

Per: \_\_\_\_\_  
Authorized Signatory

and provide for such signatures as may be required by applicable laws and the by-laws of Adminco.

### **13.9 Expense Reimbursement**

Adminco shall, be reimbursed by the Trust for all costs and expenses reasonably incurred by Adminco in carrying out Adminco's obligations and duties hereunder in connection with the provision and performance of the Indenture Conferred Duties.

### **13.10 Standard of Care of Adminco**

Adminco shall discharge and perform the Indenture Conferred Duties honestly, in good faith and with a view to the best interests of the Trust, and with the same degree of care, diligence and skill that a reasonably prudent person, having responsibilities of a similar nature to those hereunder, would exercise in comparable circumstances. Adminco shall only be responsible for the Indenture Conferred Duties and the other duties and obligations expressly provided for in this Indenture and no other obligation or duty (fiduciary, as a trustee or otherwise) in respect to Adminco shall be implied. No other standard of care, other than as set forth in this Section 13.10, shall apply or be implied in relation to the performance of the Indenture Conferred Duties.

### **13.11 Indemnification of Adminco and Stoneham**

The Trust (to the extent of the assets of the Trust) is liable to, and shall indemnify and save harmless Adminco and Stoneham and their respective directors, officers, employees and agents, and all of their successors and assigns (each, an "**Indemnitee**") in respect of:

- (a) any liability and all costs, charges and expenses sustained or incurred in respect of any action, suit or proceeding (including all reasonable defense costs) that is proposed or commenced against an Indemnitee for or in respect of anything done or permitted to be done in respect of the Trust or Stoneham L.P. or any error or omission in respect of any matter relating to the Trust or Stoneham L.P. and the execution of all duties, responsibilities, powers and authorities pertaining thereto including pursuant to this Declaration of Trust and the Limited Partnership Agreement; and
- (b) any loss, expense, claim, liability or asserted liability (including strict liability and including costs and expenses of abatement and remediation of spills or releases of contaminants and including liabilities of indemnified parties to third parties, including Governmental Authorities, in respect of bodily injuries, property damage, damage to or impairment of the environment or any other injury or damage and including liabilities to third parties for the third parties' foreseeable and unforeseeable consequential damages) incurred as a result of the administration of the Trust or Stoneham L.P., or the exercise by the Indemnitee of any of the rights under this Declaration of Trust or Stoneham L.P.; or the breach or alleged breach of any environmental laws by Stoneham L.P. or an affiliate thereof, unless any of the foregoing arises principally and directly from a breach of the Indemnitee's standard of care or such Indemnitee's negligence, wilful default or fraud, in which case the provisions of this Section 13.11 shall not apply. These indemnities shall survive the termination of the Trust and the resignation or removal of Stoneham as the general partner of Stoneham L.P.

### **13.12 Reliance by Adminco**

In carrying out the Indenture Conferred Duties and its other duties hereunder, Adminco and its delegates shall be entitled to rely on:

- (a) statements of fact of other persons who are considered by Adminco, acting reasonably, to be knowledgeable of such facts; and
- (b) statements from, the opinion or advice of, or information from Experts, provided that Adminco exercised reasonable care and diligence in selecting such Expert to provide such statements, opinion, advice or information.

Adminco may, from time to time, employ such Experts as may be necessary for the proper discharge of the Indenture Conferred Duties

### **13.13 Sub-Delegation by Trustee and Adminco**

In respect of any delegation by the Trustee of any of its powers and authorities, as permitted hereunder, to any person whomsoever, the Trustee, in its absolute discretion, shall be permitted to authorize a delegate to further sub-delegate any such powers, and authorities. Subject to and in accordance with the terms and conditions herein contained, Adminco may delegate (by subcontract or otherwise) the performance of the Indenture Conferred Duties to any person without the prior written consent of the Trustee, provided that such delegation shall not relieve Adminco of the responsibility for performance of the Indenture Conferred Duties. If Adminco delegates the performance of the Indenture Conferred Duties to any person, and in so doing does not breach its standard of care, Adminco shall not be liable for the acts or omissions of such delegate.

### **13.14 Liability of Trustee in Respect of Adminco's Obligations**

Notwithstanding anything herein contained (including Subsection 12.1(f)), the Trustee shall have no liability or responsibility to the Trust, any Unitholder or other person for any act or omission of Adminco (or sub-delegate thereof), whether pursuant to Indenture Conferred Duties or otherwise, and the Trustee, in agreeing to the granting and allocation of certain responsibilities to Adminco herein and in delegating to and relying upon Adminco, or any sub-delegate thereof, for the performance of the Indenture Conferred Duties on the terms set forth herein, shall be deemed to have complied with its standard of care as prescribed by Section 8.4 or as otherwise prescribed by law or equity.

### **13.15 Adminco as Party to Declaration of Trust**

It is acknowledged by all parties that Adminco, in its capacity as administrator of the Trust, shall be a party hereto (and be deemed to have continuously been a party hereto from and after the date hereof).

### **13.16 No Partnership or Joint Venture**

Neither the Trust, the Trustee nor Unitholders are and they shall be deemed not to be partners, or joint venturers with Adminco and nothing herein shall be construed so as to impose any liability as such on Adminco. The parties agree that Adminco shall perform the Indenture Conferred Duties as an independent contractor for and on behalf of the Trust (with its duties and obligations in respect thereto as expressly provided for herein), and it is acknowledged and agreed that only where Adminco undertakes execution of contracts or other instruments for and on behalf of the Trust may Adminco then be acting as an agent of the Trust. In no circumstances shall Adminco be, or be deemed to be, a fiduciary or trustee for any person, whether or not a party hereto, in connection with the discharge by Adminco of such Indenture Conferred Duties.

### **13.17 Absence of Adminco as a Party**

If Adminco (including any successors or assigns) ceases to exist, or if Adminco is unable or unwilling to perform its obligations under this Declaration of Trust, the Trustee shall be entitled to engage another person that is duly qualified to perform the Indenture Conferred Duties.

## **ARTICLE 14 SUPPLEMENTAL INDENTURES**

### **14.1 Provision for Supplemental Indentures**

The Trustee may, without approval of 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, or may enter into an amended and restated trust indenture, for the purposes of modifying or amending any provisions of this Declaration of Trust in the circumstances set forth in Article 9.

## **ARTICLE 15 GENERAL**

### **15.1 Notices**

- (a) *Notice to Unitholders:* Any notice or other document required to be given or sent to Unitholders under this Declaration of Trust shall be given or sent by personal service or through ordinary post addressed to each registered holder at his or her last address appearing on the Registers or in any other manner from time to time permitted by Canadian securities legislation, including internet based or other electronic communications; provided that if any such notice or communication shall have been mailed and if regular mail service shall be interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, 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 further that during the period that regular mail service shall be interrupted, 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 such notice may be given by publishing twice in the business section of a newspaper in each city where the Registers or a branch register is maintained. Any notice or document given or sent by ordinary post shall be deemed to have been given on the day following that on which the letter or other document was posted or, in the case of notice given by publication, after publication of such notice twice in the designated newspaper or newspapers. In proving notice or another document was posted, it shall be sufficient to prove that such letter or other document was properly addressed, stamped and posted. Notwithstanding the foregoing, any notice or document which is personally delivered is deemed to be received on the day such personal delivery is effected.
- (b) *Notice to the Trustee:* Any notice or other document or written communication to be given to the Trustee shall be addressed to the Trustee and sent to:

Valiant Trust Company  
#310, 606 – 4<sup>th</sup> Street S.W.

Calgary, Alberta T2P 1T1

Attention: •

Facsimile: •

and shall be deemed to have been given on the date of delivery or, if mailed, three days from the date of mailing or, if sent by facsimile transmission, shall be deemed to have been given on the first Business Day thereafter. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by reason of a strike, lockout or other work stoppage, actual or threatened, involving postal employees, 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 delivered or given by personal delivery, cable, telegram, telex, facsimile transmission or other means of prepaid, transmitted or recorded communication.

## **15.2 Failure to Give Notice**

The failure by the Trustee or Adminco, 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 Trustee and Adminco shall not be liable to any Unitholder for any-such failure.

## **15.3 Joint Holders**

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

## **15.4 Service of Notice**

Any notice or document sent to a Unitholder pursuant to this Article 15 shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustee or Adminco has 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 Trust Units concerned.

## **15.5 Trust Records**

Adminco shall prepare and maintain or cause to be prepared and maintained records Containing: (a) this Declaration of Trust; (b) minutes of meetings and resolutions of Unitholders; (c) minutes of meetings and resolutions of the Adminco Board; and (d) the Registers. The Trust shall also prepare and maintain adequate accounting records. All such records shall be kept at the head office of the Trust or at such other place as Adminco thinks fit and shall at all reasonable times be open to inspection by the Trustee. Adminco shall also provide the Trustee with copies of all agreements and contracts entered into by or on behalf of the Trust.

## **15.6 Information Available to Unitholders**

Each Unitholder shall have the right to obtain, on demand and on payment of reasonable reproduction costs, from the head office of the Trust a copy of this Declaration of Trust and any amendments thereto relating to Trust Units held by that Unitholder and shall be entitled to inspect and, on payment of a reasonable fee therefor, obtain a list of the Unitholders for purposes connected with the Trust to the same extent and upon the same conditions as those which apply to shareholders of a corporation governed by the *Business Corporations Act* (Alberta). In addition, Unitholders may, during the normal business hours of Adminco, examine the minutes of meetings and resolutions of Unitholders.

## **15.7 Fiscal Year**

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

## **15.8 Financial Disclosure**

The Trust will file:

- (a) within 140 days after the end of each fiscal year of the Trust (or such shorter time as may be required under applicable laws) the audited annual financial statements of the Trust for such fiscal year, together with comparative audited financial statements for the preceding fiscal year, if any, and the report of the Auditors thereon; and
- (b) within 60 days after the end of each fiscal quarter of the Trust (or such shorter time as may be required under applicable laws), 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 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. The financial statements shall be approved by Adminco, and such approval shall be evidenced by the signature of one or more directors of Adminco on such financial statements.

## **15.9 Unitholder Meeting Information**

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

## **15.10 Taxation Information**

On or before March 30 in each year, Adminco shall cause the Trust to provide to Unitholders who received distributions from the Trust in the prior calendar year, such information and forms as may be needed by such Unitholders in order to complete any tax

returns required to be filed by them in respect of the prior calendar year under section 150 of the Tax Act and equivalent provincial and territorial legislation in Canada.

#### **15.11 Income Tax: Obligations of the Trustee**

The Trustee shall satisfy, perform and discharge all obligations and responsibilities of the Trustee under the Tax Act and neither the Trust nor the Trustee shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustee consistent, or carried out in intended compliance, with any such obligations or responsibilities.

#### **15.12 Qualification of Auditors**

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

#### **15.13 Appointment of Auditors**

Subject to Sections 15.15 and 15.16, the Auditors will be elected at each annual meeting of Unitholders by Ordinary Resolution. The Auditors will receive such remuneration as may be approved by Adminco.

#### **15.14 Auditors Ceasing to Hold Office**

The Auditors shall cease to hold office-when the Auditor resigns or is removed pursuant to Section 15.15. The resignation of the Auditors shall become effective at the time a written resignation is sent to the Trust or at the time specified in the resignation, whichever is later.

#### **15.15 Removal of Auditors**

The Auditors may at any time be removed by Ordinary Resolution. A vacancy created by the removal of Auditors as aforesaid may be filled by Ordinary Resolution or, if not so filled, may be filled by Adminco under Section 15.16.

#### **15.16 Filling Vacancy**

Adminco shall forthwith fill a vacancy in the office of Auditors. The Auditors appointed to fill a vacancy shall hold office until the unexpired term of the Auditors' predecessor. Adminco shall fix the remuneration of the Auditors appointed to fill such a vacancy.

#### **15.17 Reports of Auditors**

The Auditors shall audit the accounts of the Trust at least once in each year.

#### **15.18 Trust Assets to be Kept Separate**

The Trustee shall maintain the Trust Assets separate from all other property in its possession and not commingled, and to the extent that all or part of the Trust Assets is placed in the possession of Adminco or any other person on behalf of the Trust, the Trustee shall take such

reasonable steps to ensure that such persons shall also keep such Trust Assets separate from all other property of such persons and not commingled.

#### **15.19 Trustee May Not Hold Trust Units**

The Trustee, other, than in its role as trustee hereunder, may not be a Unitholder, provided, however, that the Trustee may hold Trust Units for the account of its clients generally. For greater certainty and notwithstanding the foregoing, affiliates of the Trustee may be Unitholders.

#### **15.20 Execution and Effect of Restated Declaration of Trust**

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

#### **15.21 Consolidations**

The Trustee may prepare consolidated copies of the Declaration of Trust as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Declaration of Trust, as amended or amended and restated.

#### **15.22 Severability**

The provisions of this Declaration of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of this Declaration of Trust and shall not affect or impair any of the remaining provisions thereof. 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.

#### **15.23 Successors and Assigns**

The provisions of this Declaration of Trust shall enure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

#### **15.24 Counterparts**

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

**IN WITNESS WHEREOF** this Declaration of Trust is executed effective the 30<sup>th</sup> day of May, 2003 and amended and restated the 15<sup>th</sup> day of December, 2004.

**VALIANT TRUST COMPANY**

By: "J. Robert Morris"

Name: J. Robert Morris

Title: Director, Corporate Services

By: "Cheryl Dahlager"

Name: Cheryl Dahlager

Title: Manager, Income Trusts

By: "Bruce W. Jones"

Name: Bruce W. Jones

Title: President and Chief Executive Officer