

**Yorkshire Agility Fund**

**DECLARATION OF TRUST**

**with**

**Yorkshire Capital Investments LLC**

**as Sponsor**

**and**

**ALTA TRUST COMPANY  
as Trustee**

**Dated as of May 1, 2022**

## NOTICE

**NEITHER YORKSHIRE AGILITY FUND NOR THE OWNERSHIP INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED, OR THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES. THE OFFERING OF SUCH OWNERSHIP INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.**

**THE DELIVERY OF THIS TRUST AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF INTERESTS IN THE FUND IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.**

**THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS TRUST AGREEMENT.**

## DECLARATION OF TRUST

THIS DECLARATION OF TRUST (this “**Trust Agreement**”) is dated and entered into effective as of the First of May, 2022, by Yorkshire Capital Investments LLC as Sponsor (“**Sponsor**”) and Alta Trust Company, as Trustee (the “**Trustee**”) (the Sponsor and Trustee are referred to, individually, as a “party” and, collectively, as “parties”).

### WITNESSETH:

WHEREAS, the Sponsor and the Trustee plan to establish a South Dakota Business Trust (the “**Fund**” and/or “**Trust**”) to be governed by the terms of this Trust Agreement and the other Operative Agreements as defined below.

WHEREAS, upon a Person signing Subscription Documents for the Fund and making an investment into the Fund in accordance with the Operative Agreements, and the Sponsor accepting such Subscription Documents on behalf of the Fund, such Person shall become an Interest Owner and shall receive an Interest in the Fund, which shall be governed by this Trust Agreement and the other Operative Agreements as defined below.

WHEREAS, the Fund is intended to be exempt from registration under Section 3(c)(1) of the Investment Company Act of 1940, as amended (the “**1940 Act**”).

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties and the Interest Owners, hereby agree as follows:

### 1. INTERPRETATIONS, DEFINITIONS, FORM OF DOCUMENTS AND DIRECTIONS

#### 1.1 Interpretations.

Unless the context otherwise requires:

(a) capitalized terms used in this Trust Agreement but not defined in the preamble or recitals above have the respective meanings assigned to them in Section 1.2; provided, however, that, to the extent not inconsistent with the provisions of this Trust Agreement, if any such term is defined with a different meaning in the other Operative Agreements, the meaning set forth in such other Operative Agreement(s) shall apply with respect to such other Operative Agreement(s);

(b) a term defined anywhere in this Trust Agreement has the same meaning throughout;

(c) all references to “this Trust Agreement” are to this Trust Agreement as modified, supplemented or amended from time to time in accordance with the provisions hereof;

(d) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;

(e) all references to a statute or other law means such statute or other law as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; and

(f) a reference in this Trust Agreement to the singular includes the plural and vice versa.

## 1.2 Definitions.

**“1940 Act”** means the Investment Company Act of 1940, as amended.

**“Accountants”** shall mean such accounting firm or other Person as may be specified in the Memorandum, and changed from time to time in the Sponsor’s sole discretion.

**“Affiliate”** means, with respect to a designated Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

**“Authorized Representative”** of a Person means any Person that is authorized to bind such Person with respect to the applicable matter.

**“BBA Procedures”** has the meaning specified in Section 9.4(c).

**“Business Day”** means any day other than a Saturday, a Sunday or those legal holidays enumerated in SDCL § 1-5-1.

**“Capital Account”** has the meaning specified in Section 9.4(a).

**“Capital Contribution”** means the amount that an Interest Owner invests or has invested in the Fund.

**“Certificate of Trust”** means the certificate of trust filed with the Office of the Secretary of State of the State of South Dakota with respect to the Fund pursuant to SDCL § 47-14A-43 of the South Dakota Business Trust Act, as amended or restated.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation.

**“Costs and Expenses”** means those costs and expenses related to the organization of the Fund, the offering and closing of the sale of the Interests (including, without limitation, placement agent fees) and the ongoing management and operation of the Fund (including, without limitation, the fees, costs and expenses of the Trustee, the Sponsor and the Accountants, the preparation of audits and tax returns, and any indemnities under this Trust Agreement), all as set forth in this Trust Agreement, the other Operative Agreements and other written agreements between the Fund and the Sponsor, the Trustee, the Accountants, Service Providers and/or other Persons.

**“Covered Person”** means: (a) the Fund, (b) any Sponsor, (c) any Trustee, (d) any Interest Owner, (e) any Placement Agent, (f) any Affiliate of the foregoing and (g) any manager, officer, director, partner, member, trustee, representative, employee, advisory board member, counsel, consultant, agent or contractor of the foregoing.

**“Direction”** or **“Directed”** or **“Direct”** means any direction, consent, request, demand, authorization, notice, waiver or other action provided by this Trust Agreement, the other Operative Agreements and/or the South Dakota Business Trust Act to be given, taken or received by the Fund, the Sponsor, the Trustee, the Interest Owners or other Persons.

**“ERISA”** has the meaning specified in Section 3.2(g).

**“Fiscal Year”** has the meaning specified in Section 9.1.

**“Fund”** has the meaning specified in the recitals of this Trust Agreement and shall be deemed to include the Fund assets and other property as provided in this Trust Agreement.

**“Fund Administration Agreement”** means the Fund Administration Agreement entered into between and among the Fund, the Sponsor and the Trustee, which sets forth the terms and conditions under which the Trustee agrees to provide services as Trustee hereunder.

**“Indemnifiable Losses”** has the meaning specified in Section 4.5.

**“Interest”** means the Interest Owner’s beneficial ownership interest in the Fund in accordance with and as set forth in this Trust Agreement, the other Operative Agreements and the South Dakota Business Trust Act.

**“Interest Owner”** means a Person (or Persons) executing Subscription Documents and making an investment into the Fund in exchange for an Interest in the Fund, and whose Subscription Documents have been accepted by the Sponsor.

**“Investment Management Agreement”** means the Investment Management Agreement entered into between the Fund and the Sponsor.

**“Memorandum”** shall mean the confidential Private Offering Memorandum, as updated or supplemented from time to time, used to offer Interests in the Fund.

**“Operative Agreements”** means (a) this Trust Agreement, (b) the Certificate of Trust, (c) the Subscription Documents, (d) any Placement Agent Agreement, (e) the Memorandum, (f) the Fund Administration Agreement and (g) the Investment Management Agreement.

**“Partnership Representative”** has the meaning specified in Section 9.4(b).

**“Permitted Investments”** means investments that meet certain criteria as specified in the Operative Agreements.

**“Person”** means a natural person, corporation, company, limited liability company, estate, partnership, limited partnership, trust association, trust, statutory trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

**“Placement Agent”** means an SEC-registered broker-dealer engaged to assist in the sale of the Interests.

**“Placement Agent Agreement”** means an agreement between the Sponsor, on behalf of the Fund, and a Placement Agent, the terms of which the Fund hereby acknowledges.

**“Predecessor Trustee”** has the meaning specified in Section 4.4(f).

**“Prime Rate”** means the prime rate as published in *The Wall Street Journal* or, if that rate hereafter ceases to be published, a comparable rate mutually agreeable to the Sponsor and the Trustee.

**“SDCL”** means the South Dakota Codified Laws, as amended from time to time.

**“SEC”** means the United States Securities and Exchange Commission.

**“Securities Act”** means the United States Securities Act of 1933, as amended.

**“Service Providers”** means the Trustee, the Sponsor, the Placement Agents, their respective successors and permitted assigns, and any other Persons designated as Service Providers pursuant to this Trust Agreement.

**“South Dakota Business Trust Act”** means Chapter § 47-14A of the SDCL.

**“Sponsor”** means Yorkshire Capital Investments LLC and its successors and permitted assigns.

**“Sponsor Indemnitee”** has the meaning specified in Section 2.11(k).

**“Subscription Documents”** means the subscription agreement between the Fund and the Interest Owner and the related documents which are required to be completed by the Interest Owner and accepted by the Sponsor, in the Sponsor’s sole discretion, in connection with the purchase and issuance of an Interest in the Fund.

**“Successor Trustee”** has the meaning specified in Section 4.4(b).

**“Taxing Authority”** has the meaning specified in Section 9.4(b).

**“Transfer”** means, when used as a noun, any voluntary or involuntary sale, hypothecation, pledge, assignment, attachment, or other transfer, whether voluntary or involuntary or by operation of law or otherwise, and, when used as a verb, means, voluntarily or involuntarily or by operation of law to sell, hypothecate, pledge, assign, permit attachment to or otherwise transfer.

**“Trust”** means the statutory trust created by the Certificate of Trust, as governed by this Trust Agreement.

**“Trustee”** means Alta Trust Company and its successors and permitted assigns.

**“Trustee Indemnitee”** has the meaning specified in Section 4.5.

“**UCC**” has the meaning specified in Section 2.2(c).

“**U.S. Dollars**” means the lawful currency of the United States of America.

“**Valuation Date**” has the meaning specified in Section 5.1.

### **1.3 Form of Documents.**

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters and any such Person may certify or give an opinion as to such matters in one or several documents. Where any Person is required to make, give or execute two or more applications, requests, consents, statements, opinions or other instruments under this Trust Agreement they may, but need not, be consolidated and form one instrument.

### **1.4 Directions.**

Any Direction by the Sponsor, the Trustee, the Interest Owners or other Persons under this Trust Agreement must be given in writing, which includes, without limitation, by electronic mail. If a Direction by an Interest Owner is required to be signed by the Interest Owner, the Direction may be signed (including by electronic signature, or by e-mail or facsimile of signature copies) by the Interest Owner or the Interest Owner's duly appointed agent or proxy.

## **2. ORGANIZATION**

### **2.1 Name of Fund; Appointment of Trustee; Trust Agreement and Other Operative Agreements; Fund Term; Contracts and Agreements; Assets and Other Property; Certificate of Trust; Tax Identification Number.**

(a) The name of the Fund is Yorkshire Agility Fund as such name may be modified from time to time by the Trustee at the Direction of the Sponsor.

(b) Alta Trust Company is hereby appointed as the Trustee of the Fund pursuant to the Fund Administration Agreement.

(c) This Trust Agreement shall constitute the governing instrument of the Fund and it is hereby declared that the Fund will be held for the benefit of the applicable Interest Owners possessing a beneficial interest in the Fund subject to the provisions of this Trust Agreement and the other Operative Agreements.

(d) The Fund shall continue indefinitely until dissolved as provided in Section 6.1 hereof.

(e) The Sponsor is hereby authorized to cause or Direct the Trustee to cause the Fund to enter into any agreements or contracts in connection with and for the purpose of

managing the business and affairs of the Fund as permitted by and in accordance with this Trust Agreement and the other Operative Agreements.

(f) The Fund will hold the Fund's assets and other property for the use and benefit of the Interest Owners in accordance with this Trust Agreement and the other Operative Agreements.

(g) The Sponsor shall cause a Certificate of Trust for the Fund to be filed with the Office of the Secretary of State of State of South Dakota.

(h) The Fund will have its own tax identification number.

## **2.2 Principal Office; Books and Records; Certificated Securities**

(a) The Fund's principal office shall be the same as the office of the Trustee, which is Alta Trust Company, 101 S. Main Avenue, Suite 310, Sioux Falls, South Dakota 57104. On ten (10) Business Days' written notice to the Sponsor, the Trustee may designate a different office and such office shall be the Fund's principal office.

(b) The books and records of the Fund shall be maintained at the principal office of the Fund and in the manner provided in this Trust Agreement and the other Operative Agreements.

(c) To the extent that the assets or other property of the Fund constitute "certificated securities" within the meaning of Article 8 of the Uniform Commercial Code ("**UCC**"), physical possession of such certificated securities shall be maintained at the principal office of the Fund.

## **2.3 Purpose; Activities.**

The purposes and function of the Fund are, in accordance with the Operative Agreements, as follows:

(a) to establish the Fund for the benefit of the Interest Owners;

(b) to invest amounts held in the Fund in Permitted Investments in accordance with the Operative Agreements;

(c) to purchase, sell, possess, transfer, lease, license, mortgage, pledge or otherwise deal in, and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to, the Permitted Investments, assets and other property;

(d) to borrow or raise money, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, letters of credit, bonds, debentures and other negotiable or nonnegotiable instruments and evidences of indebtedness, to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment of the whole or any part of the assets or other property of the Fund, and to sell, pledge or otherwise satisfy or dispose of such instruments and evidences of indebtedness of the Fund;

(g) to lend funds, assets and other property of the Fund either with or without security;

(h) to borrow assets or other property, and to pledge collateral for such borrowings;



(i) to open and maintain bank accounts, and to draw checks or other orders for the payment of money;

(j) to sue and be sued, to prosecute, settle or compromise claims against third parties, to settle or compromise claims against the Fund, and to execute such documents, and make such representations, admissions and waivers, as may be necessary or advisable in connection therewith;

(k) to engage independent attorneys, accountants and such other Persons, and to delegate its responsibility hereunder to such other Persons, as may be necessary or advisable in connection with the foregoing objects and purposes; and

(l) to engage in such other activities and transactions, and to enter into, make and perform such contracts, agreements and other undertakings, as may be necessary and advisable in connection with the foregoing objects and purposes.

## **2.4 Distributions.**

Distributions to the Interest Owners with respect to their Interests shall be made in accordance with the provisions of this Trust Agreement and the other Operative Agreements (including, without limitation, the distribution policy set forth in the Memorandum), and in compliance with and as limited by applicable law. The Trustee shall make distributions to Interest Owners as, when and if Directed by the Sponsor, in the Sponsor's sole discretion.

## **2.5 Directed Trust Provisions.**

It is expressly intended that this Trust be a directed trust under the South Dakota Directed Trust Statutes of SDCL Ch. 55-1B. It is the express intent that the language used herein shall not be construed by a court to imply that any fiduciaries and Persons hereunder are serving as co-trustees or co-fiduciaries unless this Trust Agreement expressly provides for such a relationship as to those fiduciaries and Persons involved. The Trustee shall be considered an excluded fiduciary pursuant to SDCL § 55-1B-2 and shall be exonerated from any and all liability for its acts or omissions that are Directed by the Sponsor as provided in this Trust Agreement, including, without limitation, this Section 2.5, the other Operative Agreements and/or the South Dakota Business Trust Act.

(a) The Sponsor shall be considered an "Investment Trust Advisor" under SDCL Ch. 55-1B with the following authority over the Fund to be exercisable by the Sponsor in a fiduciary capacity:

(i) Direct the Trustee with respect to the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership thereof or rights therein of investments held by the Fund;

(ii) Vote proxies for any securities held by the Fund;

(iii) Select one or more Placement Agents, managers or counselors and delegate to them any of its powers;

(iv) Direct the Trustee with respect to any additional powers and discretions over investment and management of the Fund provided in the Operative Agreements;

- (v) Direct the Trustee as to the value of non-publicly traded Fund investments;
- (vi) Direct the Trustee as to the investment or management of the Fund; and
- (vii) Exercise the powers granted to an investment trust advisor in SDCL § 55-2-13.

Except as required by this Trust Agreement, the Trustee shall have no responsibility to monitor the performance of any investment or actions taken by the Sponsor.

If it is impossible or impracticable for the Trustee, as determined in the sole, but good faith, discretion of the Trustee, to obtain the Direction of the Sponsor with respect to a particular matter or matters by reason of incapacity, disability or other condition preventing the Sponsor from acting, then all the rights, powers and discretion conferred upon the Sponsor in this Section 2.5(a) shall, until the passing of such period and solely with respect to the matter or matters in question, vest in and may be exercised by the Trustee as fully and effectively as if such rights, powers and discretion had originally been conferred upon the Trustee solely. The Trustee shall incur no liability for actions taken in good faith pursuant to the powers granted by this Section 2.5(a). If the Sponsor fails to act or give investment Directions, the Trustee may exercise the powers granted to the Sponsor in this Trust Agreement and shall be entitled to the protections granted to the Sponsor.

The Trustee shall maintain full and accurate books of account and records of all financial transactions relative to the Fund in accordance with the provisions of this Trust Agreement.

(b) In addition to an "Investment Trust Advisor" as provided in Section 2.5(a), Sponsor shall be construed in all respects as a "Distribution Trust Advisor" under SDCL Ch. 55-1B, to Direct the Trustee regarding all distributions of the Fund. However, the Sponsor shall not Direct distributions to itself, except for payment of management fees, commissions or other administrative fees to which it is entitled in the Operative Agreements; provided, however, that the foregoing shall not be construed to preclude distributions to the Sponsor or its Affiliates with respect to Interests they own in the corresponding Fund. The Trustee shall have no responsibility or authority over distribution from the Fund, except as Directed by the Sponsor; provided, however, the Sponsor shall not be authorized to Direct the Trustee to make any distributions that would violate the provisions of applicable law, the Operative Agreements or any provision of Code. Further, in regard to distribution of the Fund, the Trustee shall not be accountable for (i) any action taken pursuant to the Direction of the Sponsor, or (ii) inaction of the Sponsor. The rights and powers conferred on the Distribution Trust Advisor shall be exercisable only in a fiduciary capacity.

## **2.6 Title to Property of the Fund.**

Ownership of all property shall be vested in the Fund and legal title shall be taken in the name of the Fund or in the name of the Trustee for the sole use and benefit of the Fund; provided, the Trustee shall have the discretion, but not the obligation, to accept or decline the proposed ownership or holding of any asset by the Fund or the Trustee. No Interest Owner shall have any ownership interest in specific property of the Fund but shall have a proportionate, undivided beneficial ownership interest in the Fund and shall share in the income, profit and losses thereof as provided in the Operative Agreements. The percentage and portion of interest

that any Interest Owner has in the income, profits and losses of the Fund shall be determined in accordance with the Operative Agreements. No Interest Owner shall have the right to call for or demand any partition or division of the assets of the Fund.

## **2.7 Powers and Duties of the Trustee.**

The Trustee shall only have such powers and duties as set forth below and elsewhere in this Trust Agreement, and in the Fund Administration Agreement:

(a) To meet the requirements of a Trustee under SDCL § 47-14A-30 of the South Dakota Business Trust Act;

(b) The Trustee shall be the registrar and transfer agent of all purposes hereunder, including for the transfer of Interests. The registrar and transfer agent shall maintain a record of the Interests owned by each Interest Owner which shall show:

(i) the date of the Subscription Documents, a copy of the Subscription Documents, the amount and type of Interests allotted, and the amount paid therefor;

(ii) the date of each redemption, the Interests redeemed, the amount paid on redemption;

(iii) the value of Interests currently held;

(iv) the date of any transfer, including the identity of any transferor and any transferee; and

(v) the share in any liquidating account.

The Sponsor and the Trustee may treat the Person in whose name any Interest is registered as the owner of such Interests for purposes of receiving distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Interests, whether or not the Trustee shall have actual or other notice thereof.

(c) The Trustee shall be the fund accountant for the Fund, and shall be responsible for the following specified functions and no other accounting or recordkeeping functions:

(i) A reconciliation of the Fund at least as often as its valuation frequency;  
and

(ii) A valuation for the Fund based on its frequency.

(d) Upon Direction from the Sponsor, to modify the name of the Fund as set forth in Section 2.1 and this Section 2.7;

(e) To approve the amendment of this Trust Agreement, as set forth in Section 10.1;

(f) To file the Certificate of Trust for the Fund, and any supplements or amendments thereto, with the Office of the Secretary of State of the State of South Dakota;

(g) To file a certificate of cancellation for the Fund as set forth in Section 6.1;

(h) To receive compensation for services provided as a Trustee, and to be reimbursed for the Costs and Expenses incurred in carrying out the Trustee's duties, as set forth in this Agreement and the Fund Administration Agreement;

(i) To receive the interest income paid on the cash assets of the Fund in its custody prior to investment in the Fund as additional compensation for its services provided as a Trustee;

(j) Subject to Section 2.10(a), to have the power to take all action that may be necessary or appropriate for the preservation and the continuation of the Fund's valid existence, rights, franchises and privileges as a business trust under the South Dakota Business Trust Act. In exercising its power under this clause (j), the Trustee shall be fully protected in relying (but shall not be required to rely) upon (A) an opinion of South Dakota counsel covering the matters referred to in this clause (j) furnished to the Trustee from time to time at its request or (B) a Direction of the Sponsor in connection with such matters;

(k) To have control and/or custody of the property of the Fund and to hold such property in trust in accordance with this Trust Agreement and the Fund Administration Agreement; provided, the Trustee shall have the discretion, but not the obligation, to accept or decline the proposed control and/or custody or holding of any asset by the Trustee; and

(l) To provide any other services agreed to be provided by the Trustee in writing.

## **2.8 Prohibition of Actions by the Fund.**

The Sponsor or any Service Provider shall not cause the Fund or the Trustee to:

(a) possess Fund property for a purpose not authorized by this Trust Agreement or the Operative Agreements of the Fund;

(b) vary the terms of the Interests issued by the Fund in any material way whatsoever unless (i) otherwise provided in this Trust Agreement or the other Operative Agreements or (ii) permitted pursuant to Section 10;

(c) issue any evidence of ownership of, or interest in, the Fund other than the Interests issued consistent with a Subscription Documents and this Trust Agreement;

(d) establish any lien on, or grant any security interest in, the assets of the Fund, other than as expressly authorized by this Trust Agreement or as required in accordance with applicable law; or

(e) make any investment or acquire any assets or other property other than the Permitted Investments as specified in this Trust Agreement and the other Operative Agreements.

## **2.9 Limitation on Duties and Responsibilities of Trustee.**

(a) The Trustee shall undertake to perform such duties and only such duties as are specifically set forth in this Trust Agreement and the Fund Administration Agreement. No

implied covenants (except the implied covenant of good faith and fair dealing) or obligations shall be read into this Trust Agreement against the Trustee. Whether or not therein expressly provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 2.9.

(b) No provision of this Trust Agreement shall be construed to impose liability on the Trustee other than for its own fraud, gross negligence or willful misconduct.

(c) At all times:

(i) the Trustee shall not be liable for any actions of the Sponsor or any Service Provider, nor have any duty or obligation to supervise the Sponsor or any Service Provider;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the Direction of the Sponsor or, if applicable, the requisite Interest Owners (or such other Persons authorized to give such Direction) in accordance with the terms of the Operative Agreements, as the case may be, relating to the exercising of any trust or power conferred upon the Trustee under this Trust Agreement;

(iii) no provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers; and

(iv) the Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the assets of the Fund; provided, however, that the foregoing shall not limit the Trustee's duties and liabilities as custodian or administrator (if applicable) or related to the Trustee's valuation of the assets as contemplated by the Operative Agreements.

(d) The recitals contained in this Trust Agreement shall not be deemed to be statements of the Trustee, and the Trustee does not assume any responsibility for their correctness. The Trustee makes no representations as to the title to, or value or condition of, the property of the Fund or any part thereof; provided, however, that the foregoing shall not limit the Trustee's duties and liabilities as custodian or related to the Trustee's valuation of the assets as contemplated by the Operative Agreements.

## **2.10 Certain Rights of the Trustee.**

(a) In addition to and without limitation on the provisions of Section 2.9:

(i) the Trustee may rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, Direction, consent, or other paper or document (including emails) believed by it to be genuine and to have been signed, sent or presented by the proper Persons (whether or not requested by the Trustee);

(ii) the Trustee shall have no duty to make, review or confirm any recording, filing or registration of any instrument (including any financing or continuation statement) or any re-recording, refiling or reregistration thereof, except for the filing of the Certificate

of Trust, any amendment to the Certificate of Trust upon the receipt of a Direction, or the certificate of cancellation when required under Section 6.1;

(iii) the Trustee, at the reasonable expense of the Fund, may consult with legal counsel or other experts of its selection, including, without limitation, experts in accounting and financial matters, and the advice or opinion of such legal counsel with respect to legal matters or advice or opinion of such experts within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Trustee hereunder in good faith and in accordance with such advice or opinion. Such legal counsel and experts may be legal counsel to or experts of the Sponsor and/or the Fund and may be employed by the Sponsor and/or the Fund on a salaried or other basis. To the extent such legal counsel and experts are retained by the Trustee, they shall not be deemed to be legal counsel or experts for or providing legal advice or opinions to (and no attorney-client or other relationship or fiduciary or other duty or obligation shall exist between them and) the Sponsor, the Fund, the Interest Owners and/or any other related Person;

(iv) The Sponsor, the Fund and the Interest Owners acknowledge and agree that (i) the Trustee is not providing any legal, securities, accounting, tax, investment or other advice and that the Trustee is not a registered broker-dealer and (ii) each is advised to retain their own legal counsel and other advisors to review and advise them with respect to this Trust Agreement, the other Operational Documents and the transactions contemplated thereby;

(v) The Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction if there is a reasonable question regarding the administration of this Trust Agreement;

(vi) the Trustee shall not be bound to make any investigation into the facts or matters stated in the Operative Agreements (including the Memorandum), any resolution, certificate, statement, instrument, opinion, report, notice, request, Direction, consent, or other paper or document (including emails), but shall have the right to review the Memorandum and other disclosures prior to their use;

(vii) the Trustee shall not be under any obligation to take any action or exercise any right that is discretionary under the provisions of this Trust Agreement or the other Operative Agreements; and

(viii) the Trustee shall not be liable to the Fund or to the Sponsor or any Interest Owner or to another Person that is a party to or is otherwise bound by this Trust Agreement for breach of fiduciary duty for the Trustee's good faith reliance on the provisions of this Trust Agreement or the other Operative Agreements or any received Direction from an appropriate Person.

(b) No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the Trustee to perform its duties as set forth in Section 2.7 in any jurisdiction in which it shall be illegal, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law (excluding the State of South Dakota), to perform such duties.

(c) The Sponsor, the Fund, and the Interest Owners acknowledge and agree that (i) the Fund may invest in other trusts, funds, plans, investments, etc., for which the Trustee or an Affiliate thereof serves as a trustee, provides services, manages or sponsors and (ii) the Trustee and/or its Affiliate(s) may be directly or indirectly compensated by the Sponsor, the Fund, the Interest Owners as well as such other trusts, funds, plans, investments, etc., and such investment and compensation shall not constitute or be deemed to create a conflict of interest or any breach of the Trustee's duties and obligations under this Trust Agreement, the other Operative Agreements or applicable law.

(d) The Trustee may employ, contract or associate itself with such Persons as the Trustee believes to be desirable in the performance of its duties and obligations under this Trust Agreement; provided that, in such event the compensation of such Persons shall be paid by and be the sole responsibility of the Trustee, and the Sponsor and the Fund shall not bear any cost or obligation with respect thereto; and provided further that the Trustee shall not be relieved of any of its obligations under this Trust Agreement in such event and shall be responsible for all acts of any such Persons taken in furtherance of this Trust Agreement to the same extent it would be for its own acts.

## **2.11 Powers and Duties of the Sponsor.**

(a) **General Duties and Authority.** The Sponsor hereby agrees, so long as it shall be Sponsor, to carry out the objects and purposes of the Fund in accordance with the Operative Agreements, in good faith and in a manner reasonably believed by Sponsor to be in the best interest of the Fund and the Interest Owners and to devote to such objects and purposes such of its time, skill and attention during normal business hours as the Sponsor shall deem necessary or desirable in its sole discretion. Provided, however:

(i) That nothing contained in this Trust Agreement or the other Operative Agreements shall preclude the Sponsor or any Affiliate of the Sponsor, from engaging in any other business or activity, or from acting as a director, manager, officer or employee of any entity, a trustee of any trust, a partner of any partnership, an executor of any estate or an administrative official of any entity, or from receiving any compensation or participating in any profits in connection with any of the foregoing, or from trading in securities or other investments for its own account, including securities or investments which are the same as or different from any traded in or held by the Fund, and

(ii) No Interest Owner (other than the Sponsor) or the Fund shall have any right to participate in any manner in any profits or income earned or derived by the Sponsor, or any Affiliate of the Sponsor, from or in connection with the conduct of any such other business or activity.

Persons dealing with the Fund are entitled to rely conclusively upon the power and authority of the Sponsor as herein set forth.

The Sponsor shall be a party to this Trust Agreement and the other Operative Agreements, and shall have such rights, duties and obligations with respect to the Fund, the Trustee and the Interest Owners as provided in the Operative Agreements.

(b) **Exclusive Duties and Authority.** In addition to the duties and authority set forth elsewhere in this Section 2.11, the Sponsor shall have the exclusive power, duty, and authority to cause the Fund to engage in the following actions:

(i) to wind up and dissolve the Fund and/or any of the Funds, as set forth in Section 6.1;

(ii) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Fund in all matters necessary, convenient or incidental to the operation of the Fund, including the furnishing to any Interest Owner notice regarding the operation of the Fund;

(iii) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Fund;

(iv) to employ or otherwise engage (or provide Direction to the Trustee to so engage) Accountants, Service Providers, Placement Agents, advisors and consultants and Direct the Trustee to remit payment of reasonable compensation to the Sponsor for such services from the available funds of the Fund; and

(v) to take such steps, execute such documents and make such filings as required in order to comply with applicable federal and state laws, regulations and exemptions, including, without limitation, concerning securities, investment companies, investment advisors, employee retirement income securities, entities, taxes, South Dakota trusts, authority to transact business, "bad actor" and "covered persons" questionnaires, Form D under Regulation D, consents to service of process and/or other documents as may be required with the appropriate regulatory authorities, or to cause the Trustee to do so.

(c) **Specific Duties and Authority.** Without in any way limiting the foregoing, the Sponsor shall have the duty and/or right, in its sole discretion, to, or cause the Fund to, as applicable:

(i) prepare the Memorandum or other disclosures and Subscription Documents for use in the offer, sale and issuance of Interests by the Fund;

(ii) select and retain Placement Agents to assist in the offer and sale of Interests, and assist the Placement Agents in responding to questions and correspondence from potential Interest Owners;

(iii) select which Persons to accept as Interest Owners, in conformance with any requirements established by the Sponsor, the Subscription Documents and applicable law, and, with the Placement Agents, perform "know-your-customer" due diligence on each such Person prior to accepting the subscription for Interests from such Person;

(iv) elect for the Fund to be exempt under Section 3(c)(1) of the 1940 Act and limit the number of Interest Owners to qualify under the Section 3(c)(1) exemption (if such exemption is elected);



(v) determine the value for the Interests in accordance with the Operative Agreements;

(vi) select, and arrange for the retention of, the Trustee, Accountants, Service Providers and such other agents as may be necessary to perform the respective duties required of such Persons under the Operative Agreements, which may include responsibilities and services that would otherwise be performed by the Sponsor;

(vii) license to each Service Provider, as necessary, the patents, ideas, processes and systems proprietary to the Sponsor solely to enable the operation of the Fund;

(viii) institute, settle, and/or compromise suits, administrative proceedings, and other similar matters; provided, however, it may not settle or compromise any such suits or proceedings against the Trustee or any Service Provider without such Person's consent;

(ix) make amendments, give waivers or consents, and take any other actions necessary or appropriate with respect to any provision of the Operative Agreements to the extent provided in Section 10.1;

(x) monitor the performance of the Service Providers under this Trust Agreement;

(xi) make and perform such other agreements and undertakings as may be necessary or advisable to the carrying out of any of the foregoing powers, objects, or purposes, which agreements may include such representations, warranties, covenants, indemnities, and guaranties that the Sponsor deems necessary or advisable; and

(xii) request the Trustee to create a special fund valuation in its discretion.

(d) **Specific Limit on Sponsor's Authority.** Under no circumstances shall a Sponsor, in any of its roles (e.g. as Sponsor, as Investment Advisor, or as Distribution Trust Advisor) take custody or possession of any assets of the Fund or have access to the assets of the Fund except for the management of investments. Under no circumstances shall the Sponsor Direct a distribution of the Fund to itself, except for payment of fees, commissions or administrative expenses specifically set forth in the Operative Agreements.

(e) **Term.** The Sponsor shall continue to serve as Sponsor of the Fund unless removed or discharged by a court of competent jurisdiction or until it resigns or terminates the Fund. Neither the Trustee nor the Interest Owners may remove the Sponsor.

(f) **Resignation.** The Sponsor may resign at any time by giving written notice to the Trustee and Interest Owners. The resignation of any Sponsor shall take effect upon the appointment of a successor Sponsor in accordance with Section 2.11(g).

(g) **Successor Sponsor.** In the event of the resignation of the Sponsor, a successor Sponsor shall be appointed by the affirmative vote of the Interest Owners owning more than half of the total Interests owned by the Interest Owners (or if such Interest Owners cannot so agree, as appointed by a court of the State of South Dakota).

(h) **Limitation of Sponsor Liability.** NOTWITHSTANDING ANY OTHER PROVISION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE SPONSOR OR ITS MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR ADVISORY BOARD MEMBERS BE PERSONALLY LIABLE TO THE FUND, THE TRUSTEE, OR THE INTEREST OWNERS OR ANY OTHER PERSON FOR THE DEBTS, OBLIGATIONS, OR LIABILITIES OF THE FUND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, PROVIDED THE SPONSOR OR SUCH PERSON'S ACTIONS OR OMISSIONS DID NOT CONSTITUTE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE SPONSOR OR ITS MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AGENTS OR ADVISORY BOARD MEMBERS SHALL NOT BE PERSONALLY LIABLE FOR FAILURE TO PERFORM IN ACCORDANCE WITH, OR TO COMPLY WITH THE TERMS AND CONDITIONS OF, THIS TRUST AGREEMENT OR FOR ANY OTHER REASON UNLESS SUCH FAILURE TO CONFORM OR TO COMPLY OR SUCH OTHER REASON CONSTITUTES FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY THE SPONSOR OR SUCH PERSON. PROVIDED, HOWEVER, THIS PROVISION SHALL NOT RELIEVE OR LIMIT THE SPONSOR'S LIABILITY FOR ANY OF ITS OR THE FUND'S PAYMENT OBLIGATIONS TO THE TRUSTEE, INCLUDING, WITHOUT LIMITATION, UNDER THIS AGREEMENT OR THE FUND ADMINISTRATION AGREEMENT.

(i) **Reliance Upon Third Parties.** The Sponsor shall be fully protected in relying in good faith upon information, opinions, reports, or statements furnished by any Person as to matters the Sponsor reasonably believes are within such other Person's professional or expert competence.

(j) **Fees.** All fees, commissions or administrative expenses shall be charged by the Sponsor consistent with a fee schedule for the Fund that has been disclosed to the Interest Owners through the Operative Agreements.

(k) **Indemnification.** The Fund shall indemnify, defend and hold harmless the Sponsor and each of its Affiliates and each of its and their respective principals, managers, members, officers, directors, employees, equity holders, agents, consultants, servants, delegates and representatives (each, a "**Sponsor Indemnitee**") against any and all claims, causes of action, liability, loss, expense, or damage incurred or sustained by reason of any act or omission in the conduct of the business of the Fund, except to the extent resulting from the Sponsor Indemnitee's fraud, gross negligence or willful misconduct. Such indemnification shall include the reasonable out of pocket expenses (including attorney fees) incurred by the Sponsor Indemnitees in connection with the defense of any claim or action to which it may be made a party by reason of its interest in or activities on behalf of the Fund, and the advancement of such expenses. Any indemnity under this Section 2.11(k) shall be provided out of and to the extent of the Fund assets only, and no Interest Owner or any Service Provider shall have any personal liability on account thereof.

## **2.12 Organizational and Offering Expenses.**

The Fund shall pay, or reimburse the Sponsor or Trustee for, all reasonable Costs and Expenses (including the fees and expenses of counsel and accountants) incurred by or on

behalf of the Fund or by or on behalf of the Sponsor or the Trustee in connection with the formation and operation of the Fund and the offering and sale of Interests.

### **2.13 Operating Expenses, Etc.**

At the Sponsor's Direction the Trustee shall pay from Fund assets all direct costs, fees and expenses incurred by or on behalf of the Fund in connection with its management and operation, including, without limitation: (i) administrative fees, (ii) all costs, fees and expenses of the Fund directly related to the purchase, sale, valuation or retention of assets and other property to the Fund (including all fees and commissions of brokers custodians, sub custodians, pricing services, all fees of independent attorneys and accountants and all transfer taxes); (iii) all federal, state and local taxes and filing fees payable by the Fund; (iv) all costs, fees and expenses of the Fund relating to Interest Owner's and Sponsor's meetings and the preparation and mailing of reports and notices to Interest Owners, including online portals; (v) all fees and disbursements of the Fund's independent attorneys, accountants and consultants; (vi) all filing and recording fees; (vii) all interest expense of the Fund; (viii) fees associated with integration efforts for new Interest Owners; and (ix) any extraordinary expenses of the Fund.

### **2.14 No Salaries; Etc.**

Except as provided in the Operative Agreements, no salary, bonus or other remuneration shall be payable to the Sponsor, the Trustee or any Affiliate of the Sponsor or the Trustee in connection with the operation, management and administration of the Fund. The Sponsor and Trustee will receive fees for operating, managing, and administering the Fund in accordance with the Memorandum and the other Operative Agreements.

## **3. INTEREST OWNERS**

### **3.1 Issuance of Interests**

Upon receipt and acceptance of Subscription Documents by the Sponsor, Interest Owners will make an investment of cash, acceptable securities, other property, or have a definitive obligation to make an investment of cash pursuant to the terms of the executed Subscription Documents, to the Fund in such amount as shall be specified by the Sponsor. For the avoidance of doubt, the Sponsor and not the Trustee will have the authority and responsibility on behalf of the Fund to enforce any Interest Owner's obligation to invest cash pursuant to the executed Subscription Documents as described above. The Sponsor's approval shall be a Direction to the Trustee to issue Interests in the name of such Interest Owner.

### **3.2 Responsibilities of the Interest Owners.**

(a) Other than as specifically provided in this Trust Agreement or the Operative Agreements, the Interest Owners shall have no duties or responsibilities with respect to the operation of the Fund.

(b) Notwithstanding any other provision in this Trust Agreement, no Interest Owner shall owe to any other Interest Owner or to any Trustee any duty or obligation to make presentations or prepare or submit any written material in connection with (i) any matter requiring or contemplating the vote of, or other action by, any Interest Owner or (ii) the administration or operation of the Fund and other activities of the Fund.

(c) No Interest Owner shall have any right, except as expressly provided herein, to vote or in any manner otherwise control the operation and management of the Fund or the obligations of the parties hereto or thereto, nor shall anything set forth herein, or contained in the terms of this Trust Agreement be construed so as to constitute the Interest Owners from time to time as partners or members of a pass-through entity, except for federal income tax purposes (and as, applicable, state and local tax purposes).

(d) Except as set forth in Section 7.1(b), no Interest Owner may Transfer, redeem or withdraw all or any portion of its beneficial interest in the Fund, except upon the prior written approval by the Sponsor, which may be granted, withheld or conditioned in the Sponsor's sole discretion. Any Transfer, redemption or withdrawal (attempted or purported Transfer, redemption or withdrawal) of all or any portion of an Interest without the prior written approval of the Sponsor and/or not otherwise made in accordance with this Trust Agreement, the other Operative Agreements and applicable law shall be null and void.

(e) Every Person, by virtue of having become an Interest Owner in accordance with the terms of this Trust Agreement, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, the Operative Agreements.

(f) The Trustee shall provide a statement to each Interest Owner at least quarterly. The statement will show the amount and type of Interests owned, the value of the Interests and any purchases or redemptions made during the period. The statement is subject to Section 9.3 of this Trust Agreement.

(g) Notwithstanding anything to the contrary in this Trust Agreement, if an Interest Owner is a "benefit plan investor" as defined in Regulation Section 2510.3-101 under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), such Interest Owner (or another fiduciary having discretion to act on behalf of such Interest Owner) shall be responsible for (i) determining whether an investment in the Fund is prudent for such Interest Owner both at the time of its initial investment and periodically thereafter, (ii) for monitoring the performance of the Sponsor and the Trustee in carrying out their responsibilities under this Agreement, and (iii) for determining whether any transaction entered into by the Fund violates the prohibited transaction rules of ERISA or the Code with respect to such Interest Owner and taking such remedial action as it may deem necessary to remediate such prohibited transaction.

#### **4. TRUSTEE**

##### **4.1 Number of Trustees.**

There shall be one Trustee of this Trust.

##### **4.2 Trustee; Eligibility.**

(a) The Trustee of the Fund shall be a legal entity with a place of business in the State of South Dakota that is authorized to exercise corporate trust powers, and that otherwise meets the requirements of applicable South Dakota law, including SDCL § 47-14A-30 of the South Dakota Business Trust Act, and that shall act through one or more Persons authorized to bind such entity.

(b) If at any time a Trustee who is qualified under Section 4.2 shall cease to be so qualified, such Trustee shall immediately resign in the manner and with the effect set forth in Section 4.4(c).

#### **4.3 Trustee; Merger of Trustee.**

(a) The initial Trustee of the Fund shall be Alta Trust Company.

(b) Any Person into which the institution acting as a Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from or surviving any merger, conversion or consolidation to which the institution acting as Trustee shall be a party, and, shall, subject to the terms of this Section, succeed to the Trustee's position as Trustee without any further act, except that such Person shall file any amendment to the Certificate of Trust which may be required by the South Dakota Business Trust Act to reflect the change in the Trustee.

#### **4.4 Appointment and Resignation of Trustee.**

(a) In the event that the Trustee fails to materially comply with any provision of this Trust Agreement and has been notified by the Sponsor and given thirty (30) days to cure such failure, the Sponsor, subject to Section 4.4(b), may remove the Trustee as Trustee.

(b) The Trustee shall not be removed in accordance with Section 4.4(a) until a successor Trustee ("**Successor Trustee**") that is qualified under Section 4.2(a) has been appointed by the Sponsor and has accepted such appointment by written instrument executed by such Successor Trustee and delivered to the Sponsor of the Fund and to the Interest Owners of the Fund.

(c) Any Trustee of the Fund may resign from office by an instrument in writing signed by the Trustee and delivered to the Sponsor of the Fund and to the Interest Owners, which resignation shall take effect upon the appointment and acceptance of a Successor Trustee.

(d) If the Trustee of the Fund is removed from office or delivers an instrument of resignation in accordance with this Section 4.4, the Sponsor shall use its best efforts to promptly appoint a Successor Trustee.

(e) If no Successor Trustee of the Fund shall have been appointed by the Sponsor and accepted appointment as provided in this Section 4.4 within 30 days after delivery of an instrument of resignation in accordance with Section 4.4(c), the resigning Trustee may petition any court of competent jurisdiction for appointment of a Successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Trustee of the Fund.

(f) The predecessor trustee ("**Predecessor Trustee**") shall transfer and set over to the Successor Trustee all rights, title and interest of the Predecessor Trustee in and to the Fund and all rights, powers and trusts, under this Trust Agreement; and the Predecessor Trustee shall provide an accounting of all funds and investments held by the Predecessor Trustee pursuant to this Trust Agreement and take such other actions as may be reasonably requested in connection with the transfer and set over to the Successor Trustee. The Predecessor Trustee shall be reasonably compensated for its time, efforts, costs and expenses with the transfer to the Successor Trustee.

(g) Notwithstanding the replacement of any Trustee, a Predecessor Trustee shall be entitled to all of the protections and benefits of Sections 4.5 and 8 hereof.

#### **4.5 Limitation of Liability and Indemnification of Trustee.**

THE DUTIES AND OBLIGATIONS OF THE TRUSTEE SHALL BE CONFINED TO THOSE EXPRESSLY SET FORTH IN THIS TRUST AGREEMENT AND THE FUND ADMINISTRATION AGREEMENT, AND NO OTHER DUTIES OR OBLIGATIONS MAY BE IMPLIED, ARE ASSUMED BY OR MAY BE ASSERTED AGAINST THE TRUSTEE. NOTWITHSTANDING ANY OTHER PROVISION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TRUSTEE'S LIABILITY UNDER THIS TRUST AGREEMENT AND/OR THE OTHER OPERATIVE AGREEMENTS SHALL IN NO CASE BE MORE THAN ONE YEAR OF ITS ANNUAL ADMINISTRATIVE FEES AS SPECIFIED IN THE FUND ADMINISTRATION AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE TRUSTEE'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT WILL THE TRUSTEE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR SIMILAR DAMAGES (INCLUDING LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL) CAUSED BY ITS ACTS OR OMISSIONS UNDER THIS TRUST AGREEMENT AND/OR THE OTHER OPERATIVE AGREEMENTS REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF THE TRUSTEE IS AWARE OR ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO LIABILITY FOR FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE PARTIES AND INTEREST OWNERS ACKNOWLEDGE AND AGREE THAT THE PARTIES HAVE FREELY AND OPENLY NEGOTIATED THIS TRUST AGREEMENT, INCLUDING THE FEES SET FORTH IN THE FUND ADMINISTRATION AGREEMENT, WITH THE KNOWLEDGE THAT THE LIABILITY OF THE TRUSTEE IS AND SHALL BE STRICTLY LIMITED IN ACCORDANCE WITH THE FOREGOING. SUBJECT TO THE SAME EXCEPTIONS CONTAINED IN THIS SECTION 4.5, THE FOREGOING LIMITATIONS OF LIABILITY ALSO SHALL APPLY TO EACH OF THE TRUSTEE'S AFFILIATES AND EACH OF ITS AND THEIR RESPECTIVE PRINCIPALS, MANAGERS, MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, EQUITY HOLDERS, AGENTS, CONSULTANTS, SERVANTS, DELEGATES AND REPRESENTATIVES.

The Fund shall (and to the extent that fraud, gross negligence or willful misconduct by the Sponsor gives rise to Indemnifiable Losses (as defined below), the Fund and the Sponsor shall jointly and severally) defend, indemnify and hold harmless the Trustee and each of its Affiliates and each of its and their respective principals, managers, members, officers, directors, employees, contractors, equity holders, agents, consultants, servants, delegates and representatives (each, a "**Trustee Indemnitee**") against any and all claims, causes of action, liability, loss, expense, or damage incurred or sustained by reason of any act or omission in the conduct of the business of the Fund (collectively, "**Indemnifiable Losses**"), except to the extent resulting from the Trustee Indemnitee's fraud, gross negligence or willful misconduct. Such indemnification shall include the reasonable out of pocket expenses (including attorney fees) incurred by a Trustee or its directors, officers, employees, contractors, consultants or agents in connection with the defense of any action to which it may be made a party by reason of its interest in or activities on behalf of the Fund, and the advancement of such expenses. Any indemnity under this Section 4.5 to be provided by the Fund shall be provided by the Fund out

of and to the extent of the Fund assets only, and no Interest Owner nor the Sponsor shall have any personal liability on account thereof.

## **5. VALUATION AND AUDIT OF THE FUND**

### **5.1 Valuation Date.**

The Trustee shall determine the value of the Fund in accordance with the Fund's valuation frequency and the Interests of each Interest Owner in the manner prescribed in Section 5.2, Section 5.3 and the Operative Agreements. The Sponsor will review and approve the valuation of the Fund prepared by the Trustee. Each such date as of which the value of the Fund and the value of the Interest Owner's Interests shall be determined shall be known as a "Valuation Date."

### **5.2 Method of Determining Value.**

To the aggregate value of all the assets and other property held in the Fund, determined as provided by Section 5.3 hereof, there shall be added to value of any rights, warrants or dividends which may have been declared but unpaid as of the Valuation Date (in respect of any security which has been valued ex-rights, ex-warrants or ex-dividends), the amount of any current interest accrued but unpaid on any bonds or other obligations, and uninvested cash. From the total of the foregoing so obtained shall be deducted all expenses, charges, reserves, and liabilities due, accrued, or anticipated which, are properly deductible from the value of each on the Valuation Date.

### **5.3 Valuation of Interests.**

The value on any Valuation Date of each Interest Owner's Interests shall be determined by the method set forth in the Memorandum. All values will be made in U.S. Dollars. The Sponsor may Direct the Trustee to perform a special valuation at any time.

### **5.4 Performance Allocations.**

To the extent applicable, performance allocations to the Trustee, Sponsor or other Service Provider shall be calculated and remitted only to the extent set forth in the Operative Agreements.

### **5.5 Valuation Conclusive.**

Valuation by the Trustee as approved by the Sponsor in the manner set forth above shall be conclusive and binding upon all Interest Owners. In the event that the Sponsor, in its sole discretion, decides to revise and restate a valuation, the Trustee, at the Sponsor's Direction, will reprocess any activity for the Valuation Date which may result in an Interest Owner's value being adjusted up or down. In the event that an Interest Owner received a distribution on the revised Valuation Date and sold its Interests at a deflated valuation, the Interest Owner would receive additional monies as a result of the revision.

## **5.6 Suspension of Valuations and Other Activities.**

Notwithstanding anything to the contrary elsewhere in this Trust Agreement, the Sponsor, in its sole discretion and to the extent permissible under applicable law, may suspend the valuation of the assets or Interests pursuant to this Section 5, and/or may suspend the issuance of Interests, suspend the redemption or withdrawal of Interests, withhold distributions, and/or suspend the payment of Costs and Expenses from the Fund, for the whole or any part of any period when (a) any market or stock exchange on which a significant portion of the investments of the Fund is quoted is closed (other than for ordinary holidays) or dealings therein are restricted or suspended, or a closing of any such market or stock exchange or a suspension or restriction of dealings is threatened; (b) there exists any state of affairs which, in the opinion of the Sponsor, constitutes an emergency as a result of which disposition of the Fund would not be reasonably practicable or would be seriously prejudicial to the Fund, as determined by the Sponsor in its sole discretion; (c) there has been a breakdown in the means of communication normally employed in determining the price or value of any of the investments, or of current prices on any stock exchange on which a significant portion of the investments are quoted, or when for any reason the prices or values of any investments cannot reasonably be promptly and accurately ascertained; (d) the transfer of funds involved in the realization or acquisition of any investment cannot, in the opinion of the Sponsor, be effected at normal rates of exchange; or (e) the normal settlement procedures for the purchase or sale of assets or other property cannot be effected in the customary manner or in accordance with generally applicable time periods; provided, however, that in the event of any of the foregoing, the Sponsor may elect to have an additional Valuation Date of the Fund.

## **5.7 Auditors.**

An audit of the Fund shall be performed annually by auditors selected by the Sponsor. Such auditors shall be independent public accountants. The compensation and expenses of such audit(s) shall be charged to the Fund.

## **5.8 Financial Statements and Audit of Accounts.**

Audited annual financial statements of the Fund are to be distributed to all Interest Owners within 120 days of the end of the Fund's Fiscal Year. In general, the Fund's financial statements will be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). However, the Fund intends to amortize its organizational and offering expenses over a period of 60 calendar months from the date the Fund commences operations because it believes such treatment is more equitable than expensing the entire amount of the organizational and offering expenses in the Fund's first year of operation, as is required by US GAAP. The Sponsor may, however, limit the amount of organizational and offering expenses that the Fund amortizes so that the audit opinion issued with respect to the Fund's financial statements will not be qualified.

## **6. TERMINATION OF TRUST**

### **6.1 Termination of Trust and/or Fund.**

(a) The Sponsor in its sole discretion shall cause the dissolution and winding up of the Fund pursuant to this Trust Agreement, the other Operative Agreements and the South Dakota Business Trust Act, and at the Direction of the Sponsor, the Trustee shall file a



certificate of cancellation with the Office of the Secretary of State of State of South Dakota and the Fund shall terminate.

(b) In connection with the dissolution and winding up of the Fund, the Sponsor shall cause the Fund to pay all amounts due to the Trustee and other Service Providers, and shall have the right, but not the obligation unless required by applicable law, to establish reserves or make other reasonable provisions to pay all other claims and obligations, including all contingent, conditional or unmatured claims and obligations known to the Fund and all claims and obligations which are known to the Fund but for which the identity of the claimant is unknown. After the foregoing payments and reserves, final payment of outstanding amounts of the Fund shall be made to the applicable Interest Owners.

(c) The death or incapacity of any Interest Owner shall not operate to terminate this Trust or the Fund, nor entitle such Interest Owner's legal representatives or heirs to claim an accounting or to take any action or commence any proceeding in any court for a partition or winding up of the Fund, nor otherwise affect the rights, obligations, and liabilities of the parties hereto or any Interest Owners.

(d) The provisions of Sections 2.11(h) and (k), 4.5, 6, 8 and 11, and any other provisions hereof intended by their terms or nature to survive the termination of this Trust Agreement, shall survive the termination of this Trust Agreement and any dissolution, winding-up or termination of the Fund.

## **7. TRANSFER, REDEMPTION OR WITHDRAWAL OF INTERESTS**

### **7.1 Transfer, Redemption or Withdrawal of Interests.**

(a) Except as set forth in Section 7.1(b), no Interest Owner may Transfer, redeem or withdraw all or any portion of its Interest in the Fund, except upon the prior written approval by the Sponsor, which may be granted, withheld or conditioned in the Sponsor's sole discretion. Any Transfer, redemption or withdrawal (attempted or purported Transfer, redemption or withdrawal) of all or any portion of an Interest without the prior written approval of the Sponsor and/or not otherwise made in accordance with this Trust Agreement, the other Operative Agreements and applicable law shall be null and void.

(b) Notwithstanding the restrictions on Transfer set forth in Section 7.1(a):

(i) Upon the death of an Interest Owner, the Interest Owner's estate shall succeed to such Interest Owner's Interest (other than an Interest held in joint tenancy with rights of survivorship). Thereupon, the estate of a deceased Interest Owner may Transfer all or any portion of the Interest pursuant to the deceased Interest Owner's testamentary documents or the laws of intestacy. In addition, certain Transfers of an Interest Owner's Interest may occur by operation of law, for example, as a result of the dissolution of an entity or domestic dissolution / divorce.

(ii) In such circumstances, the transferee shall succeed to the transferor's rights in the Interests transferred and shall be deemed to be an Interest Owner under this Trust Agreement; provided, however, the Sponsor and the Trustee each have the right, but not the obligation, to request additional documentation regarding such Transfer, the transferee may be required to complete and execute Subscription

Documents, and the Sponsor, in the Sponsor's sole discretion, may elect to treat such Transfer as a request for withdrawal immediately prior to such Transfer.

## **7.2 Registration of Transfer.**

The Trustee shall be the registrar and transfer agent. The registrar and transfer agent shall keep or cause to be kept an account for each Interest Owner on the Fund's books and records which will reflect the Interests owned by each Interest Owner and the other details described elsewhere in this Trust Agreement.

## **7.3 Deemed Interest Owners.**

The Person(s) in whose name any Interest is registered in accordance with Section 7.2 shall be deemed and may be treated by the Sponsor and the Trustee as the sole owner(s) of such Interest for purposes of receiving distributions and for all other purposes whatsoever and, accordingly, the Sponsor and the Trustee shall not be bound to recognize any equitable or other claim to or interest in such Interest whether or not the Sponsor or the Trustee shall have actual or other notice thereof.

## **8. LIMITATION OF LIABILITY OF INTEREST OWNERS, TRUSTEE, SPONSOR AND OTHERS**

### **8.1 Liability.**

(a) Neither the Trustee nor the Sponsor shall be:

(i) personally liable for the return of any portion of the Capital Contributions (or any return thereon) of the Interest Owners, it being understood that any such return shall be made solely from assets, if any, of this Trust and the Fund;

(ii) required to pay to the Fund any deficit upon dissolution of the Fund, or otherwise; or

(iii) personally liable for the debts, or the payment or performance of the obligations, of the Fund which in all cases, other than as specifically provided herein, shall only be satisfied out of the Fund's assets.

(b) Pursuant to SDCL § 47-14A-5 of the South Dakota Business Trust Act, the Interest Owners shall be entitled to the same limitation of personal liability that is extended to stockholders of private corporations for profit organized under the general corporate law of the State of South Dakota.

### **8.2 Exculpation.**

(a) No Covered Person shall be liable, responsible or accountable in damages or otherwise to the Fund or any other Covered Person or any other Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of or in connection with the Fund and in a manner such Covered Person reasonably believed to be within the scope of the authority conferred on such Covered Person by this Trust Agreement or by law, except that a Covered Person shall be liable for any such

loss, damage or claim incurred by reason of such Covered Person's own fraud, gross negligence or willful misconduct with respect to such acts or omissions.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Fund and upon such information, opinions, reports or statements presented to the Fund by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which distributions to Interest Owners might properly be paid.

### **8.3 Fiduciary Duty.**

(a) To the extent that, at law or in equity, the Sponsor or a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Fund or to any other Covered Person, the Sponsor or a Covered Person acting under this Trust Agreement or any other Covered Person shall not be liable for breach of fiduciary duty for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Sponsor or a Covered Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of the Sponsor or such Covered Person unless otherwise agreed to in writing.

(b) Whenever in this Trust Agreement a Covered Person is permitted or required to make a decision:

(i) in its "discretion" or under a grant of similar authority, the Covered Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Fund or any other Person; or

(ii) in its "good faith" or under another express standard, the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Trust Agreement or by applicable law.

### **8.4 Outside Businesses.**

Any Covered Person may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Fund. The Interest Owners and other Covered Persons shall have no rights by virtue of this Trust Agreement in and to such other business ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Fund, by such Covered Persons shall not be deemed wrongful or improper. No Covered Person shall be obligated to present any particular investment or other opportunity to the Fund even if such opportunity is of a character that, if presented to the Fund, could be taken by the Fund, and any Covered Person and the Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. The Sponsor, the Trustee and any other Covered Persons may engage or be interested in any financial or other transaction with each other, any Interest Owner, any other Covered Persons or any Affiliates thereof.

## 9. ACCOUNTING

### 9.1 Fiscal Year.

The fiscal year (“**Fiscal Year**”) of the Fund shall be the calendar year.

### 9.2 Report of the Sponsor.

The Sponsor shall provide a financial report of the Fund to the Interest Owners following the end of the Fiscal Year pursuant to Section 5.8.

### 9.3 Reports.

Any reports, together with related information respecting the Fund, may be made available to other Persons to the extent required or permitted by applicable law or regulation. Reports will be sent electronically. Pursuant to SDCL § 55-3-45, if no objection has been made by an Interest Owner within one hundred eighty (180) days after a copy of the report has been mailed, postage prepaid, to the last known address of such Interest Owner, or electronically in accordance with SDCL § 15-6-5(d), the Interest Owner is deemed to have approved such report, and the Sponsor and Trustee, absent fraud, intentional misrepresentation, or material omission, shall be released and discharged from any and all liability to all Interest Owners of the Fund as to all matters set forth in such report.

### 9.4 Taxes.

(a) It is intended that the Fund be treated as a partnership solely for federal income tax purposes (and, as applicable, state and local tax purposes). Except as provided in the immediately preceding sentence, nothing contained herein shall be construed to constitute the Fund as a partnership or joint venture.

(i) The Fund shall establish and maintain on its books and records a capital account for each Interest Owner in the Fund (a “**Capital Account**”) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

(ii) In each fiscal year, items of income, deduction, gain, loss, or credit that are recognized for income tax purposes shall be allocated to the Interest Owners based on their pro-rata percentage ownership in the Fund.

(iii) Notwithstanding anything contained herein to the contrary special allocations shall be made, as needed, to comply with: (1) loss limitation under Treasury Regulations Sections 1.704-1(b)(2)(ii)(d), including the reductions described in subparagraphs (4), (5) and (6) therein; (2) any “qualified income offset” within the meaning of Treasury Regulations Section 1.704-1 (b)(2)(ii)(d); and, (3) minimum gain chargeback requirements in Treasury Regulations Section 1.704-2(f) and will be interpreted consistently therewith, including that no chargeback will be required to the extent of the exceptions provided in Treasury Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

(iv) The allocation provisions set forth herein and the other provisions relating to the maintenance of Capital Accounts are intended to comply with Treasury

Regulations Section 1.704-1(b) and will be interpreted and applied in a manner consistent with such Treasury Regulations; provided, however, that such provisions will not affect the economic rights of any Interest Owner, including rights to distributions with respect to the Fund. To the extent that the Sponsor determines, in consultation with the Fund's certified public accountants, that the manner in which the Capital Accounts are to be maintained hereunder needs to be modified in order to comply with the foregoing Treasury Regulations, the Sponsor may make the necessary modifications as recommended by the Fund's certified public accountants.

(b) The Sponsor shall be the "**Partnership Representative**" of the Fund within the meaning of Section 6223(a) of the Code. The Partnership Representative is authorized and required to represent the Fund (at the expense of the Fund) in connection with all examinations of the Fund's affairs by any federal, state, local, or foreign taxing authority (each, a "**Taxing Authority**"), including resulting administrative and judicial proceedings, and to expend Trust funds for professional services and costs associated therewith. Each Interest Owner agrees that such Interest Owner will not independently act with respect to tax audits or tax litigation of the Fund, unless previously authorized to do so in writing by the Partnership Representative, which authorization may be withheld by the Partnership Representative in its sole discretion. The Partnership Representative shall have sole discretion to determine whether the Fund (either on its own behalf or on behalf of the Interest Owners) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any Taxing Authority. The Fund and its Interest Owners shall be bound by the actions taken by the Partnership Representative.

(c) In the event of an audit of the Fund that is subject to the partnership audit procedures enacted under Section 1101 of the Bipartisan Budget Act of 2015 (the "**BBA Procedures**"), the Partnership Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Partnership Representative or the Fund under the BBA Procedures. If an election under Code Section 6226(a) is made, the Trustee shall furnish to each Interest Owner for the year under audit a statement of the Interest Owner's share of any adjustment set forth in the notice of final partnership adjustment, and each Interest Owner shall take such adjustment into account as required under Code Section 6226(a).

(d) Each Interest Owner agrees that such Interest Owner shall not treat the Fund item inconsistently on such Interest Owner's federal, state, foreign or other income tax return with the treatment of the item on the Fund's return. Any deficiency for taxes imposed on any Interest Owner (including penalties, additions to tax or interest imposed with respect to such taxes and any taxes imposed pursuant to Code Section 6226) will be paid by such Interest Owner and if required to be paid (and actually paid) by the Fund, will be recoverable from such Interest Owner by the Fund, and such Interest Owner shall be liable to the Fund for all of its costs, expenses, and fees (including attorneys' and accountants' fees) incurred in connection therewith.

(e) Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Fund; provided, that the Partnership Representative will make an election under Code Section 754, if requested in writing by another Interest Owner.

## **9.5 Waiver of Uniform Principal and Income Act.**

None of the Sponsor, the Trustee, the Fund, nor any fiduciary, shall be required to allocate receipts and disbursements of the Fund to or between principal and income. The provisions of SDCL Ch. 55-13A are hereby waived except as otherwise provided in this Trust Agreement.

## **10. AMENDMENTS**

### **10.1 Amendments of Trust Agreement.**

(a) Except as otherwise provided herein, this Trust Agreement may only be amended by a written instrument executed by the Sponsor and the Trustee, and to the extent such amendment materially adversely affects the interests of the Interest Owners of the Fund, approved by Interest Owners holding at least 50% of the outstanding Interests of the Fund.

(b) Any consent to be obtained from Interest Owners owning more than 50% of the outstanding Interests may be obtained by the form of a negative consent or a failure to respond following written notice of a proposed amendment. For clarity, the Interest Owners may be provided with reasonable advance notice of a proposed amendment and if an Interest Owner does not respond to such notice within a reasonable time as set forth in the notice (of not less than 20 days), such Interest Owner shall be deemed to have approved such proposed amendment. For the avoidance of doubt, any amendment to the Operative Agreements is not an amendment to this Trust Agreement.

(c) Without the consent of the Interest Owners, the Sponsor, the Trustee and/or the Fund in their sole discretion (subject to Section 8.3) may at any time and from time to time, enter into one or more agreements supplemental to this Trust Agreement or any other Operative Agreement, in a form satisfactory to the Trustee and the Sponsor, for any of the following purposes:

(i) to correct or supplement any provision in this Trust Agreement or any Operative Agreement which may be defective or inconsistent with any other provision herein or therein or to cure any ambiguity or correct any mistake or to modify any other provision with respect to matters or questions arising under this Trust Agreement or any other Operative Agreement; provided, that any such action shall not materially adversely affect the interests of the Interest Owners; or

(ii) to comply with any requirement of the SEC, or any other applicable law, rules or regulations; or

(iii) to evidence and provide for the acceptance of appointment under this Trust Agreement or facilitate the administration of the Fund.

(d) Any amendment to the Certificate of Trust shall be approved by the Sponsor and, at the Direction of the Sponsor, executed by the Trustee and filed with Office of the Secretary of State of State of South Dakota.

## **10.2 Documents Affecting Immunity or Indemnity.**

If in the opinion of the Trustee any document required to be executed by the Trustee pursuant to the terms of Section 10.1 affects adversely any interest, right, duty, limitation of liability, immunity or indemnity of or in favor of the Trustee under this Trust Agreement or the other Operative Agreements, the Trustee may in its sole discretion decline to execute such document.

## **11. MISCELLANEOUS**

### **11.1 Notices.**

(a) Except as otherwise provided herein, all notices or other communications provided for in this Trust Agreement will be conducted primarily electronically via e-mail. Notices shall be provided in writing and delivered in person or by first class mail, overnight courier, facsimile transmission or electronic mail, and delivered as follows:

(i) if given to the Trustee, at the Trustee's e-mail or mailing address set forth below (or such other address as the Trustee may give notice to the Sponsor, the Fund and Interest Owners):

Alta Trust Company  
101 S. Main Avenue, Suite 310  
Sioux Falls, South Dakota 57104  
Telephone: 303-996-3781  
Email: [compliance@trustalta.com](mailto:compliance@trustalta.com)

(ii) If given to the Sponsor, at the Sponsor's e-mail or mailing address set forth below (or such other address as a Sponsor may give notice of to the Trustee and Interest Owners):

Yorkshire Capital Investments LLC  
111 North Orange Avenue Orlando, Florida 32801  
407-495-2004  
[chris@oxfordadvisorygroup.com](mailto:chris@oxfordadvisorygroup.com)

(iii) If given to the Fund, at the Trustee's and Sponsor's respective e-mail or mailing address set forth above (or such other address as the Trustee or Sponsor may give notice of to the other, the Fund and Interest Owners).

(iv) if given to any Interest Owner in respect of the Fund, at the e-mail or mailing address set forth on the Subscription Documents.

(b) All such notices shall be deemed to have been given when actually received, except that if a notice is refused delivery or cannot otherwise be delivered to the designated address, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver. Any party, by notice to the other parties, may designate additional or different addresses for subsequent notices or communications.

## **11.2 Governing Law; Jurisdiction; Waiver of Jury Trial.**

The validity and construction of this Trust Agreement and all amendments and supplements hereto and thereto shall be governed by laws of the State of South Dakota, and the rights of the parties and the Interest Owners, and the effect of every provision hereof, shall be subject to and construed according to the laws of the State of South Dakota without regard to the conflicts of law provisions thereof which would purport to apply the law of any other jurisdiction. Provided, however, that the parties and the Interest Owners intend that the provisions of this Trust Agreement and the other Operative Agreements shall control, and there shall not be applicable to the Fund, the Sponsor, the Trustee, the Interest Owners or this Trust Agreement or the other Operative Agreements, any provision of the laws (statutory or common) of the State of South Dakota pertaining to trusts that relate to or regulate in a manner inconsistent with the terms of this Trust Agreement or the other Operative Agreements: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, employees or contractors of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents, employees or contractors of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, (g) the existence of rights or interests (beneficial or otherwise) in trust assets, (h) the ability of beneficial owners or other Persons to terminate or dissolve a trust, or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts, duties, powers, liability, immunity or indemnification of sponsors, trustees, beneficial owners or other Persons that are inconsistent with the authorities, duties, powers, limitation of liability, immunity and indemnification of the Sponsor, the Trustee, the Interest Owners and other Persons set forth or referenced in this Trust Agreement and the other Operative Agreements.

The parties to this Trust Agreement and the Interest Owners hereby consent and agree to the personal and exclusive jurisdiction of the courts of the State of South Dakota with respect to any disputes arising in connection with this Trust Agreement and/or the other Operative Agreements. Service of process shall be effected by sending notice pursuant to Section 11.1.

The parties to this Trust Agreement and the Interest Owners hereby waive any right to trial by jury in any court with respect to any contractual, tortious, or statutory claim, counterclaim or cross claim against the other arising out of or connected in any way to this Agreement.

## **11.3 Headings.**

Headings contained in this Trust Agreement are inserted for convenience of reference only and do not affect the interpretation of this Trust Agreement or any provision hereof.

## **11.4 Successors and Assigns; No Third-Party Beneficiaries.**

(a) Whenever in this Trust Agreement either of the parties or an Interest Owner is named or referred to, the successors and permitted assigns of such party or Interest Owner shall be deemed to be included, and all covenants and agreements in this Trust Agreement by the Sponsor, the Trustee and the Interest Owners shall bind and inure to the benefit of their respective successors and permitted assigns, whether or not so expressed. This Trust



Agreement may be assigned only by either party hereto and only with the prior signed written consent of the other party, which consent shall not be unreasonably withheld.

(b) Nothing in this Trust Agreement or in the Certificate of Trust, expressed or implied, shall give any Person, other than the parties hereto, the Interest Owners, the Covered Persons (in respect of Sections 8.2, 8.3 and 8.4 only), any Person entitled to indemnification or limitation of liability under Section 2.11(h) or (k) (in respect of Section 2.11(h) or (k) only) and any Person entitled to indemnification or limitation of liability under Section 4.5 (in respect of Section 4.5 only), and their respective successors and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Trust Agreement.

#### **11.5 Partial Enforceability.**

If any provision of this Trust Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. In the event that any such provision is deemed to be invalid, the parties and Interest Owners agree that a court or Person making such judgement shall have the ability to and shall interpret and apply such provision to the fullest extent permitted by law, within such provision's original intent, and still maintain its validity.

#### **11.6 Confidentiality.**

Except as otherwise required by law, no Interest Owner or former Interest Owner shall make use of or disclose or divulge to any Person (other than the Interest Owner's legal and other advisors with corresponding confidentiality obligations) any information (other than any information properly available to the public) relating to the Sponsor, the Trustee, the Fund, or their respective business, including, but not limited to, the identity of any other Interest Owners. Each Interest Owner or former Interest Owner shall use his, her or its best efforts, and in any event no less than reasonable efforts, and all efforts required by applicable law, to prevent the improper disclosure, publication or use of any such information.

#### **11.7 Counterparts.**

This Trust Agreement may be executed in any number of counterparts (including those delivered by facsimile, e-signature or other electronic means), each of which shall be considered an original and all of which taken together shall constitute one and the same agreement.

#### **11.8 Signed Writing.**

Delivery of a signed writing, including a counterpart page of this Trust Agreement by fax, email in portable document format (.pdf), or any other electronic means that preserves the original appearance of a document, has the same effect as delivery of a signed writing original. Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record) hereto or to any other certificate, agreement or document related to the transactions contemplated by this Trust Agreement, and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National

Commerce Act, Section 53-12-1 et seq. of the South Dakota Codified Laws, or any similar state law based on the Uniform Electronic Transactions Act, and the parties hereby waive any objection to the contrary.

### **11.9 Entire Agreement**

This Trust Agreement and the other Operative Agreements contain the complete and exclusive agreement among the parties and the Interest Owners with respect to the subject matter of the Operative Agreements. The Operative Agreements supersede all prior understandings, promises, agreements, and representations—whether written or oral—by or among the parties with respect to the subject matter of the Operative Agreements; provided, however, (i) to the extent not amended by this Trust Agreement, the provisions of the engagement agreement between the Trustee and the Sponsor shall not be governed or affected by this provision and (ii) the Trustee may embody in one or more separate documents its agreement, if any, with respect to delegated duties and oral instructions. Notwithstanding the foregoing or any other provisions of this Trust Agreement or the other Operative Agreements, it is hereby acknowledged and agreed that, subject to applicable law, rules and regulations, the Sponsor on its own behalf or on behalf of the Fund, without the approval of the Trustee, any Interest Owner or any other Person, may enter into a side letter or similar agreement to or with an Interest Owner which has the effect of establishing rights under, or altering or supplementing the terms of, this Trust Agreement or any other Operative Agreement solely with respect to and between the Sponsor and such Interest Owner.

### **11.10 Authority**

The undersigned hereby acknowledges and represents that he/she has the legal authority to execute this Trust Agreement and has executed this Trust Agreement in such capacity and not individually.

### **11.11 Further Action**

The parties hereto and Interest Owners shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Trust Agreement.

### **11.12 Force Majeure**

Except with respect to the timely payment of amounts due to the Sponsor or the Trustee, no party will be liable for delay in performance of a failure to perform its obligations in whole or in part due to causes reasonably beyond the control of such party, including, without limitation, war or act of war, terrorism, insurrection, riot or civil commotion, act of public enemy, flood, fire, pandemic, labor dispute, change in law, act of God, power outage, interruption of internet service, regardless of whether foreseeable or not, and any such delay or failure will not be considered a breach of this Trust Agreement.

### **11.13 No Presumption**

This Trust Agreement or any section thereof shall not be construed against any party due to the fact that this Trust Agreement or any section thereof was drafted by said party.

**11.14 No Public Announcements**

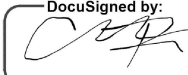
No public announcement or press release concerning the Operative Agreements and the transactions and provisions thereof shall be made without the prior written approval of the parties.

**11.15 Waiver of Compliance**


Except as otherwise expressly provided in this Trust Agreement, any failure of a party or Interest Owner to comply with any obligation, representation, warranty, covenant, agreement or condition hereof may be waived only by a written instrument signed by the party or Interest Owner granting the waiver. Any such waiver or failure to insist upon strict compliance with a term of this Trust Agreement shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

IN WITNESS WHEREOF, the undersigned have caused this Trust Agreement to be executed effective as of the day and year first written above.

Yorkshire Capital Investments LLC, as Sponsor

DocuSigned by:  
  
By: 8DB8169A2422406...  
Name: Chris Dixon  
Title: Presidnt  
Date: 5/4/2022

ALTA TRUST COMPANY, as Trustee

DocuSigned by:  
  
By: 0E54E289F72F2E  
Name: Nathan Crisenberry  
Title: COO  
Date: 5/4/2022