

# BTB REAL ESTATE INVESTMENT TRUST

## AMENDED AND RESTATED CONTRACT OF TRUST

(Made as of July 12, 2006,  
as amended and restated as of August 1, 2006 and as of March 4, 2011)

**De Grandpré Chait, LLP**

# BTB REAL ESTATE INVESTMENT TRUST

## CONTRACT OF TRUST

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**BTB REAL ESTATE INVESTMENT TRUST**  
**CONTRACT OF TRUST**

**THIS CONTRACT OF TRUST** made in Montréal, Province of Québec, as of July 12, 2006, as amended and restated as of August 1, 2006 and as of March 4, 2011.

**AMONG:** **NORMAND BEAUCHAMP**, an individual residing at Montréal, Québec, and **CLAUDE GARCIA**, an individual residing at Outremont, Québec, and **JEAN-PIERRE JANSON**, an individual residing at Montréal, Québec, and **LUC LACHAPELLE**, an individual residing at Ste. Adèle, Québec, and **MICHEL LÉONARD**, an individual residing at Montréal, Québec, and **RICHARD LORD**, an individual residing at St. Laurent, Québec, and **FERNAND PERREAULT**, an individual residing at Kirkland, Québec, and **PETER POLATOS**, an individual residing at Ste. Thérèse, Québec, and **JOCELYN PROTEAU**, an individual residing at Île Bizard, Québec, all of whom are the initial trustees of the Trust constituted by this Contract of Trust, and each person who, after the date hereof, becomes a trustee of the Trust as herein provided (each of the foregoing named or unnamed persons, while a trustee of the trust as herein provided, being hereinafter called a “**Trustee**” and collectively called the “**Trustees**”);

**AND:** **4360648 CANADA INC.**, a corporation incorporated under the *Canada Business Corporations Act*, having its head office in the Province of Québec (hereinafter called the “**Settlor**”);

**AND:** The **UNITHOLDERS** (as hereinafter defined), the sole Unitholder as at the date of this Contract of Trust being the Settlor.

**RECITALS**

**WHEREAS** on July 12, 2006 the Settlor established this irrevocable trust (the "Trust") for the principal purpose of providing persons who may become Unitholders with an opportunity to participate, directly or indirectly, in a portfolio of income-producing immovable property investments and related assets;

**AND WHEREAS** the Settlor has established the terms and conditions of this Trust;

**AND WHEREAS**, for the purpose of establishing the Trust, the Settlor has transferred to the Trustees a 10 ounces troy silver bar bearing registration number 671903;

**AND WHEREAS** the Trustees have agreed to hold the Initial Contribution and all other properties and assets forming part of the Trust Property, as a distinct patrimony, pursuant to this Contract of Trust;

**AND WHEREAS** the Settlor and the Trustees desire that the beneficiaries of the Trust shall be the holders of Units evidenced by certificates therefor as hereinafter provided, each of which shall rank equally in all respects with every other Unit;

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

**AND WHEREAS** the Settlor and the Trustees desire that the Trust shall qualify as a “unit trust” and as a “mutual fund trust” pursuant to paragraph 108(2)(a) and subsection 132(6) of the Tax Act;

**AND WHEREAS** pursuant to the contract of trust made as of July 12, 2006 among Normand Beauchamp, Daniel Bouffard, Jean-Pierre Janson, Luc Lachapelle, Michel Léonard, Richard Lord, Peter Polatos, Jocelyn Proteau and George Rossi as Trustees and the Settlor (the "Initial Contract of Trust"), the parties hereto desire to set out the terms and conditions which shall govern the mutual and respective rights, powers and obligations of the Trustees, the Settlor and the Unitholders with respect to the establishment and administration of the Trust;

**AND WHEREAS** the Trustees desire to amend and restate the Initial Contract of Trust in the manner provided below and have received Unitholder consent to do so;

**AND WHEREAS**, for greater certainty, the amendment and restatement of the Initial Contract of Trust shall not be deemed to constitute a termination of the Trust or a re-settlement of the Initial Contract of Trust or the Trust.

**NOW THEREFORE THIS CONTRACT OF TRUST WITNESSETH THAT**, in consideration of the premises and the mutual and respective covenants and agreements contained herein, the Trustees hereby declare and agree with the Settlor and the Unitholders to be bound by the provisions of this Contract of Trust.

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions and Interpretation**

In this Contract of Trust, including the recitals, except where the context otherwise requires:

- 1.1.1 “**Acquisition Agreement**” has the meaning ascribed thereto in the Prospectus;
- 1.1.2 “**Adjusted Unitholders’ Equity**” means, at any time, the aggregate of the amount of Unitholders’ equity and the amount of accumulated depreciation and amortization recorded in the books and records of the Trust in respect of its depreciable or amortizable properties calculated in accordance with GAAP;
- 1.1.3 “**Affected Holder**” has the meaning ascribed thereto in subsection 7.12.3;
- 1.1.4 “**Affected Units**” has the meaning ascribed thereto in subsection 7.12.3;
- 1.1.5 “**affiliate**”, when used to indicate a relationship with a person, has the meaning that would be ascribed thereto in the *Securities Act* (Québec), as amended or replaced from time to time, if the word “company” were changed to “person” (as defined herein);
- 1.1.6 “**AMTB Management**”. means AMTB Management Inc., a corporation controlled by Mr. Michel Léonard;
- 1.1.7 “**annuitant**” means the annuitant of a Deferred Income Plan or any other plan of which a Unitholder acts as trustee or carrier;
- 1.1.8 “**associate**” means, where used to indicate a relationship between a person and a corporation, a person who beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the corporation, a spouse of such person that is an individual or an immediate family member of such person and, where used to indicate a relationship between a person and a partnership, a partner of that partnership and, if such partner is an individual, a spouse of such person that is an individual or an immediate family member of

such person, and where used to indicate a relationship between a person and a trust, a beneficiary or trustee of that trust and, if such person is a beneficiary or a trustee of such trust, a spouse of such person that is an individual or any immediate family member of such person;

- 1.1.9 “**Audit Committee**” means the committee of Trustees appointed pursuant to subsection 10.2.1;
- 1.1.10 “**Auditors**” means the firm of chartered accountants appointed as the auditors of the Trust, from time to time, in accordance with the provisions hereof and, initially, means KPMG LLP, Chartered Accountants;
- 1.1.11 “**Beneficial Owner**” means the holder of a beneficial interest in a Unit or Option, as the case may be;
- 1.1.12 “**Book-Entry System**” means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Service of CDS in force from time to time, or any successor system which CDS may offer from time to time.
- 1.1.13 “**business day**” means any day other than a Saturday, Sunday or a day on which the principal chartered banks located in Montréal, Province of Québec, are closed for business during normal banking hours;
- 1.1.14 “**CDS**” means The Canadian Depository for Securities Limited and its successors;
- 1.1.15 “**CDS Participant**” means a broker, dealer, bank, other financial institution or other person who, directly or indirectly, from time to time, effects book-based transfers with CDS and pledges of securities deposited with CDS;
- 1.1.16 “**Chairman**”, “**Lead Trustee**”, “**President**”, “**Chief Executive Officer**”, “**Chief Financial Officer**” and “**Secretary**” means the person(s) holding the respective office from time to time if so appointed by the Trustees;
- 1.1.17 “**Civil Code**” means the *Civil Code of Québec*;
- 1.1.18 “**Closing**” means the closing of the Offering;
- 1.1.19 “**Closing Date**” means the date of the Closing of the Offering;
- 1.1.20 “**closing market price**” has the meaning ascribed thereto in subsection 7.15.4;
- 1.1.21 “**Contract of Trust**” means the Initial Contract of Trust as amended and restated in this amended and restated Contract of Trust, as further amended, supplemented and/or restated from time to time;
- 1.1.22 “**Deferred Income Plans**” means, collectively, trusts governed by registered retirement savings plans, registered retirement income funds, RESPs and deferred profit sharing plans, each as defined or described in the Tax Act;
- 1.1.23 “**dissenting offeree**” means, where a take-over bid is made for all of the Units other than those held by the offeror, its affiliates and associates, a holder of Units who does not accept the take-over bid and includes a subsequent holder of these Units who acquires them from the first mentioned holder;
- 1.1.24 “**Distributable Income**” means, for any period, the net income of the Trust, on a consolidated basis, as determined in accordance with GAAP, adjusted by:

- (a) adding back: depreciation of buildings and improvements and amortization of related intangibles (including amortization of the value of tenant rents in in-place lease agreements, amortization of the differential between original rent and above market rents, amortization of customer relationships, and excluding amortization of tenant inducements, leasing commissions and deferred financing costs), future income tax expense, losses on dispositions of assets and amortization of any net discount on long-term debt assumed from vendors of properties at rates of interest less than fair value;
- (b) deducting: amortization of differential between original rents and below market rents, future income tax credits, gains on dispositions of assets and amortization of any net premium on long-term debt assumed from vendors of properties at rates of interest greater than fair value (except where such amortization is funded); and
- (c) adjusting for differences, if any, resulting from recognizing revenues on a straight-line basis as opposed to contractual rental amounts;

provided that,

- (i) other adjustments may be made as determined by a majority of the Trustees in their discretion; and
- (ii) where appropriate, estimates may be made of Distributable Income by a majority of the Trustees where the actual amount has not been finally determined, which estimates shall be adjusted as of the subsequent Distribution Date when the amount of Distributable Income has been determined;

- 1.1.25 “**Distribution Date**” means, in respect of any Distribution Period and subject to the provisions of Section 11.1, on or about the 15<sup>th</sup> day of the immediately following month or such other dates determined from time to time by the Trustees in their discretion;
- 1.1.26 “**Distribution Period**” means each month in each calendar year from and including the first day thereof and to and including the last day thereof (whether or not such days are business days);
- 1.1.27 “**Fiscal Year**” means each fiscal year of the Trust;
- 1.1.28 “**generally accepted accounting principles**” or “**GAAP**” means Canadian generally accepted accounting principles; except as otherwise specified, all accounting terms used in this Contract of Trust shall be construed in accordance with GAAP;
- 1.1.29 “**Governance Committee**” means the committee of Trustees appointed pursuant to subsection 10.3.1;
- 1.1.30 “**Global Unit Certificate**” has the meaning ascribed thereto in Section 7.14;
- 1.1.31 “**Gross Book Value**” means, at any time, the book value of the properties and assets of the Trust and its consolidated Subsidiaries, as shown on its then most recent consolidated balance sheet, plus accumulated depreciation and amortization in respect of the Trust's properties (and related intangible assets) shown thereon or in the notes thereto, less (a) the amount of any receivable reflecting interest rate subsidies on any debt assumed by the Trust and (b) the amount of future income tax liability arising out of the fair value adjustment in respect of the indirect acquisitions of certain properties; provided, however, if approved by a majority of the Independent Trustees, the appraised value of the properties and assets of the Trust and its consolidated Subsidiaries may be used instead of book value;

- 1.1.32 “**herein**”, “**hereof**”, “**hereby**” and similar expressions refer to this Contract of Trust and include every instrument supplemental or ancillary to or in implementation or in restatement of this Contract of Trust and, except where the context otherwise requires, does not refer to any particular article, section, subsection, subparagraph, schedule or other portion hereof or thereof;
- 1.1.33 “**hypothec**” means a hypothec on a movable or immovable property under the laws of the Province of Québec;
- 1.1.34 “**immediate family member**” when used to indicate a relationship with a person that is an individual, means a parent, spouse, child or sibling of such person;
- 1.1.35 “**immovable property**” means an immovable property under the laws of the Province of Québec or real property under other applicable law;
- 1.1.36 “**including**” and terms and expressions of similar import mean “including, without limitation” and “including, but not limited to”, unless the context otherwise requires;
- 1.1.37 “**Independent Trustee**” means a Trustee who, in relation to the Trust or any of its Related Parties from and after Closing, is “independent” within the meaning of Multilateral Instrument 52-110 – Audit Committees and is not “related” within the meaning of the Tax Act, as amended or replaced from time to time;
- 1.1.38 “**Independent Trustee Matters**” means any matter requiring the prior approval of the Independent Trustees pursuant to the provisions of Section 4.3;
- 1.1.39 “**Initial Contract of Trust**” has the meaning ascribed hereto in the preamble hereof;
- 1.1.40 “**Initial Contribution**” means a 10 ounces troy silver bar bearing registration number 671903 paid by the Settlor to the Trustees for the purpose of establishing the Trust;
- 1.1.41 “**Initial Trustees**” means those individuals named as the first Trustees of the Trust in the description of parties to this Contract of Trust;
- 1.1.41A “**International Financial Reporting Standards**” means the International Financial Reporting Standards issued by the International Accounting Standards Committee, and as adopted by the Canadian Institute of Chartered Accountants, as amended from time to time;
- 1.1.42 “**Investment Committee**” means the committee of Trustees appointed pursuant to subsection 10.4.1;
- 1.1.43 “**Lead Trustee**” has the meaning ascribed thereto in Section 5.3;
- 1.1.44 “**Management Services Agreement**” means the agreement to be entered into between the Trust and AMTB Management pursuant to which AMTB Management provides certain advisory, management and administrative services to the Trust and its Subsidiaries as such agreement is amended, restated or supplemented from time to time, and includes any other management services agreement to which the Trust is a party under an agreement with the Manager;
- 1.1.45 “**Manager**” means a person who provides advisory, management and administrative services to the Trust and its Subsidiaries pursuant to a written contract; AMTB Management is the initial Manager;
- 1.1.46 “**market price**” has the meaning ascribed thereto in subsection 7.15.4;
- 1.1.47 “**Monthly Limit**” has the meaning ascribed thereto in subsection 7.15.6(a);

- 1.1.48 “**mortgage**” means, under applicable law, any mortgage, charge, bond, debenture, note or other evidence of indebtedness, in each case, which is directly or indirectly secured by real property located outside the Province of Québec;
- 1.1.49 “**net realized capital gains of the Trust**” for any period, means the amount, if any, by which the amount of the realized capital gains of the Trust for the period exceeds the aggregate of:
- (a) the amount of any capital losses incurred by the Trust for the period determined in accordance with the Tax Act; and
  - (b) the amount of any net capital losses of the Trust carried forward from a previous period to the extent not previously deducted from realized capital gains of the Trust determined in accordance with the Tax Act;
- 1.1.50 “**non-resident**” means a person who is a non-resident of Canada for purposes of the Tax Act, including a partnership that is not a Canadian partnership within the meaning of the Tax Act;
- 1.1.51 “**Note Indenture**” means the note indenture providing for the issuance of the TB Subsidiary Trust Notes, to be dated as of the Closing Date and to be made between TB Subsidiary Trust and Computershare Investors Services Inc. or its successors as trustee under the Note Indenture;
- 1.1.52 “**offeree**” means a person to whom a take-over bid is made;
- 1.1.53 “**Offering**” means the offering of Units pursuant to the Prospectus;
- 1.1.54 “**offeror**” means a person, other than an agent, who makes a take-over bid, and may include two or more persons who, directly or indirectly, (a) make a take-over bid jointly or in concert or (b) intend to exercise jointly or in concert voting rights attached to the Units for which a take-over bid is made;
- 1.1.55 “**Optionholder**” means the holder of an Option;
- 1.1.56 “**Options**” has the meaning ascribed thereto in Section 7.12;
- 1.1.57 “**person**” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies, limited liability corporations, joint ventures, associations, companies, trusts, banks, trust companies, trustees, executors, administrators or other legal personal representatives, two or more persons who, together, constitute all the owners of a Property, pension funds, land trusts, business trusts or other organizations, whether or not legal entities and regulatory bodies, governments and agencies and political subdivisions thereof and municipalities;
- 1.1.58 “**Property Management Agreement(s)**” means the agreement(s) to be entered into between TB Subsidiary Trust and such person or persons as the Trustees or AMTB Management may determine from time to time, which may include the Trustees and officers of the Trust, AMTB Management or their respective associates or affiliates, for the provision of property management services as such agreement(s) are amended, restated or supplemented from time to time, and includes any other property management agreement(s) to which the Trust or its Subsidiaries is a party under an agreement with a Property Manager;
- 1.1.59 “**Property Manager**” means a person who provides property management services to the Trust or its Subsidiaries pursuant to a written agreement, which may include the Trustees and officers of the Trust, AMTB Management or their respective associates and affiliates;

- 1.1.60 “**Prospectus**” means the final prospectus of the Trust relating to the Offering to be filed with one or more securities commissions or similar authorities in Canada, as the same may be amended, or amended and restated;
- 1.1.61 “**real property**” means property which, under applicable law other than the laws of the Province of Québec, is real property and includes, whether or not the same would in law be real property, leaseholds, immovable hypothecs, mortgages, undivided joint interests in real property (whether by way of tenancy-in-common, joint tenancy, co-ownership, joint venture or otherwise), any interests in any of the foregoing and securities of corporations, partnerships or trusts of whom the sole or principal purpose and activity is to invest in, hold and deal in real property;
- 1.1.62 “**Record Date**” means the date for determining Unitholders entitled to receive notice of or to vote at a meeting of Unitholders or to receive any of the Trust’s distributions;
- 1.1.63 “**Redemption Date**” has the meaning ascribed thereto in subsection 7.15.4;
- 1.1.64 “**Redemption Price**” has the meaning ascribed thereto in subsection 7.15.4;
- 1.1.65 “**Register**” means the register established and maintained pursuant to Section 7.22;
- 1.1.66 “**regulations**” means the regulations adopted by the Trustees pursuant to Section 4.5, a copy of the initial regulations being attached hereto as Schedule 1.1.66;
- 1.1.67 “**Related Party**” means with respect to any person, a person who is a “related party” as the term is defined in Rule 61-501;
- 1.1.68 “**resident**” means a person who is a resident of Canada for purposes of the Tax Act;
- 1.1.69 “**RESPs**” means registered education savings plans, as defined in the Tax Act;
- 1.1.70 “**Retiring Trustee**” has the meaning ascribed thereto in subsection 3.6.4;
- 1.1.71 “**Rule 61-501**” means Ontario Securities Rule 61 501 – *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*, as amended or replaced from time to time (including any successor rule or policy thereto);
- 1.1.72 “**Sell Notice**” has the meaning ascribed thereto in subsection 7.12.3;
- 1.1.73 “**Series 1 Trust Notes**” means the Series 1 unsecured subordinated promissory notes of TB Subsidiary Trust to be issued pursuant to the Note Indenture;
- 1.1.74 “**Series 2 Trust Notes**” means the interest-bearing Series 2 unsecured subordinated promissory notes of TB Subsidiary Trust to be issued pursuant to the Note Indenture;
- 1.1.75 “**Series 3 Trust Notes**” means the interest-bearing Series 3 unsecured subordinated promissory notes of TB Subsidiary Trust to be issued pursuant to the Note Indenture;
- 1.1.76 “**Special Resolution**” has the meaning ascribed thereto in subsection 8.15.1;
- 1.1.77 “**Settlor**” means the party of the second part to this Contract of Trust;
- 1.1.78 “**Subsidiary**” includes, with respect to any person, corporation, partnership, limited partnership, trust or other entity controlled, directly or indirectly, by such person, corporation, partnership, limited partnership, trust or other entity and, without limiting the generality of the foregoing, includes TB Subsidiary Trust in respect of the Trust;

- 1.1.79 “**TB Subsidiary Trust Notes**” means the Series 1 Trust Notes, Series 2 Trust Notes and Series 3 Trust Notes and other trust notes issued pursuant to the Note Indenture;
- 1.1.80 “**TB Subsidiary Trust**” means TB Subsidiary Trust, a trust established under the laws of the Province of Québec;
- 1.1.81 “**TB Subsidiary Trust Unit**” means a trust unit of TB Subsidiary Trust, each such unit representing an equal undivided beneficial interest therein;
- 1.1.82 “**take-over bid**” has the meaning ascribed to such term in the *Securities Act* (Québec), as amended or replaced from time to time;
- 1.1.83 “**Tax Act**” has the meaning ascribed thereto in Section 1.3;
- 1.1.84 “**Taxation Year**” means the taxation year of the Trust for the purposes of the Tax Act;
- 1.1.85 “**Transfer Date**” has the meaning ascribed thereto in subsection 7.15.7;
- 1.1.86 “**Transfer Agent**” means initially the Trustees and thereafter such person as may from time to time be appointed by the Trust to act as registrar and transfer agent of the Units, together with any sub-transfer agent duly appointed by such person;
- 1.1.87 “**Trust**” means *BTB Real Estate Investment Trust*, whose name in its French form is *Fonds de placement immobilier BTB*, established hereunder which constitutes a patrimony by appropriation but, for greater certainty, unless otherwise provided, does not include any Subsidiaries or affiliates thereof;
- 1.1.88 “**Trust Property**”, at any time, shall, unless the contrary intention appears in any particular instance or instances in this Contract of Trust, mean all of the moneys, properties and other assets as are at such time held by the Trust or by the Trustees on behalf of the Trust as a distinct patrimony, including:
- (a) the Initial Contribution;
  - (b) all moneys realized from or property or assets received on the sale or issuance of Units from time to time;
  - (c) all property or assets of whatsoever nature and kind substituted by the Trustees for the foregoing moneys, properties or assets, in whole or in part, at any time and from time to time, all additional property or assets of whatsoever nature and kind acquired, from time to time, by the Trustees that is to be held upon the trust herein and all property and assets substituted therefor, all property and assets substituted for substituted property and assets and shall include all resultant properties and assets, movable or immovable, tangible or intangible, and wherever situate anywhere in the world of any nature whatsoever and, without limiting the generality of the foregoing, the Trust Property shall include all proceeds of policies of insurance, securities, shares, whether common or preferred or otherwise ranking, share warrants, bonds, debentures, bills of exchange or any other forms or evidence of title which may at any time hereafter be purchased or acquired by exchange or in any other manner whatsoever by the Trustees directly or indirectly as well as all interest, revenues and fruits which may at any time hereafter derive or accrue from any of the foregoing or from any part or parts thereof and shall further include the interest, revenue and fruits which may at any time ever be derived or accrued from dealing in or the investment of or the reinvestment or exchange of the investments and the proceeds thereof flowing from the property and assets of the Trust in any manner whatsoever;

- (d) any proceeds of disposition of any of the foregoing property or assets; and
  - (e) all income, interest, profit, gains and accretions and additional properties and assets, rights and benefits of any kind or nature whatsoever arising directly or indirectly from or in connection with or accruing to the foregoing moneys, properties or assets or such proceeds of disposition;
- 1.1.89 “**Trustee**” means a person who is holding office as a trustee of the Trust in accordance with the provisions hereof, including, so long as they remain as Trustees, each of the Initial Trustees; and “**Trustees**” means all of the persons each of whom is a Trustee;
- 1.1.90 “**Trustee’s Acceptance**” has the meaning ascribed thereto in subsection 3.2.3;
- 1.1.91 “**Unit**” means a unit of interest in the Trust issued from time to time in accordance with the provisions of this Contract of Trust and includes, where the context so requires, Units issued pursuant to any option plan, distribution reinvestment plan or rights plan of the Trust and Units issued upon conversion of convertible debentures, and includes a fraction of a Unit;
- 1.1.92 “**Unit Certificates**” has the meaning ascribed thereto in Section 7.16;
- 1.1.93 “**Unit Option Plan**” means any Unit option plan adopted from time to time by the Trust pursuant to the provisions of subsection 7.32.1; and
- 1.1.94 “**Unitholder**” or “**holder of Units**” means a person whose name appears on the Register as a holder of Units and includes, for the purposes of Sections 7.22, 7.23, 7.24 and 7.27 only, any person who is the owner of a Unit.

## 1.2 References to Acts Performed by the Trust or Rights of the Trust

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

## 1.3 Tax Act

In this Contract of Trust, any reference to the “**Tax Act**” shall refer to the *Income Tax Act*, Revised Statutes of Canada 1985, Chapter 1 (5<sup>th</sup> Supplement) and the regulations thereunder as amended from time to time applicable with respect thereto. Any reference herein to a particular provision of the Tax Act shall include a reference to that provision as it may be renumbered or amended from time to time. Where there are proposals for amendments to the Tax Act which have not been enacted into law or proclaimed into force on or before the date on which such proposals are to become effective, the Trustees may take such proposals into consideration and apply the provisions hereof as if such proposals had been enacted into law and proclaimed into force. Any reference herein to the Tax Act shall also include a reference to any applicable and corresponding provision under the income tax laws of a province or territory of Canada.

## 1.4 Day Not a Business Day

Except as expressly specified in this Contract of Trust, in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a business day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a business day. Notwithstanding the foregoing, this Section 1.4 is not applicable to Sections 11.1 and 11.2.

### **1.5 Number and Gender**

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

### **1.6 Reference to Property, etc.**

Any reference to “**property**” or “**property of the Trust**” or “**assets**” or “**assets of the Trust**” includes, in each case, property and assets of the Trust and the Trust Property.

## **ARTICLE 2 THE TRUST**

### **2.1 Initial Contribution, Acceptance and Trust Property**

Concurrent with the execution by the Settlor of the Contract of Trust, the Settlor hereby irrevocably transfers the Initial Contribution to the Trustees for the purposes of establishing the Trust. Receipt of the Initial Contribution is hereby acknowledged by the Trustees for the purposes hereof and in consideration of the Settlor’s Initial Contribution, the Trust hereby issues to the Settlor one initial Unit in the Trust. The Settlor hereby fully and finally, unconditionally and irrevocably, divests itself of the Initial Contribution and of any other property and assets which are to be initially comprised within the Trust Property and further fully and finally, unconditionally and irrevocably, divests itself of all rights of ownership, possession, usufruct, enjoyment or administration of the Trust Property and the Trustees hereby accept the Initial Contribution and all other property or assets and hereby accept all other property and assets which may become the Trust Property on behalf of and for the benefit of the Unitholders, subject to the provisions hereof (including any discretionary rights and powers granted the Trustees) such acceptance includes and will continue to include not merely the receipt or future receipt of the Trust Property but also the acceptance for the benefit of the Unitholders pursuant to the terms hereof, of all rights of ownership, possession, usufruct, enjoyment and administration of the said Trust Property as referred to in the definition of Trust Property herein.

### **2.2 Seizin**

The Trustees are hereby seized of the Trust Property, in trust, for the purpose of having, holding, using and administering the same as trustees for the account and benefit of the Unitholders pursuant to the terms hereof.

### **2.3 Beneficiaries**

The Unitholders (as they may vary from time to time) are the sole beneficiaries of the Trust pursuant to this Contract of Trust.

### **2.4 Establishment of Trust**

The Trustees hereby confirm the acceptance of the Trust hereby constituted and their agreement to hold the Trust Property transferred to them in trust from time to time for the use and benefit of the Unitholders, their permitted assigns and personal representatives upon the trust and subject to the terms and conditions hereinafter set forth, such trust to constitute the Trust hereunder. The Trustees hereby acknowledge that the Trust results from the execution of this Contract of Trust, the transfer by the Settlor of the Initial Contribution from its patrimony to the patrimony of the Trust thereby constituted by the Settlor, which the Settlor has appropriated to the particular purposes set forth therein and herein, including those set forth in Section 2.9, and each of the Trustees hereby confirms his acceptance and undertaking to hold and administer such trust patrimony in accordance with the provisions hereof. The Settlor hereby confirms the appointment of the Initial Trustees and provides that the mode of appointment and replacement of the Trustees and of the Independent Trustees is set forth in ARTICLE 3. By his execution of this Contract of

Trust, each Initial Trustee hereby accepts such appointment and each Trustee hereby confirms his own acceptance of such appointment and to hold office, subject to the provisions of Section 3.8, until his removal or until his successor is elected or appointed. Subject to the provisions hereof, each of the Trustees elected or appointed pursuant to this Contract of Trust shall have all of the powers set forth herein, including the powers of full administration referred to in the Civil Code. The Units shall be issued upon the terms and subject to the terms and conditions of this Contract of Trust, and the provisions herein shall be binding upon all Unitholders and by acceptance of the certificate representing any such Unit, the Unitholder shall be deemed to agree to be bound by this Contract of Trust.

## **2.5 Name**

The Trust shall be known and designated as the *BTB Real Estate Investment Trust* in its English form and *Fonds de placement immobilier BTB* in its French form. As far as practicable and whenever lawful and convenient and except as otherwise provided in this Contract of Trust, the Trustees shall conduct the affairs of the Trust, hold Trust Property, execute all documents and take all legal proceedings under such name, in either its English form or its French form or in both forms as the Trustees deem appropriate and as required by law.

## **2.6 Use of Name**

Should the Trustees determine that the use of the name set forth in Section 2.5 is not practicable, legal or convenient, the Trust may, subject to the provisions of the Civil Code, use such other designation or may adopt such other name as the Trustees deem appropriate, and the Trust may hold property and conduct and transact its affairs under such other designation or name.

## **2.7 Principal Office**

The principal office and centre of administration of the Trust shall be located at 1000 De La Gauchetière Street West, Suite 2900, in the City of Montreal, Province of Québec, H3B 4W5 unless changed by the Trustees to another location in Canada. The Trust may have such other offices or places of business for the conduct of its affairs as the Trustees may from time to time determine as necessary or desirable.

## **2.8 Nature of the Trust**

- 2.8.1 The Trust is an unincorporated open-end investment trust. The Trust, its Trustees, the Units and the Trust Property shall be governed by the general rules set forth in the Civil Code, except as such general rules have been or are from time to time modified, altered, abridged or replaced for the Trust by (a) applicable laws and regulations or other requirements and (b) the terms, conditions and trusts set forth in this Contract of Trust.
- 2.8.2 The interest and rights generally of a Unitholder in the Trust shall be limited to the right to participate equally and rateably in distributions when and as declared by the Trustees as contemplated by ARTICLE 11 and distributions upon the termination of the Trust as contemplated in ARTICLE 15.
- 2.8.3 The Trust is not and is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, syndicate, association, joint venture, company, corporation or joint stock company nor shall any Trustee or the Unitholders or any of them for any purpose be, or be deemed to be, treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers.
- 2.8.4 The Trustees shall not be, or be deemed to be, agents of the Unitholders. The relationship of the Unitholders to the Trustees, to the Trust and to the Trust Property shall be solely that of beneficiaries in accordance with this Contract of Trust. In its first Taxation Year, in filing a return of income for the Trust, the Trust shall elect, assuming that the requirements for such election are met, that the Trust shall be deemed to be a “mutual fund trust” for purposes of the Tax Act for the entire Taxation Year.

## 2.9 Trust Investments

In accordance with and paragraph 132(6)(b) of the Tax Act, the only undertaking of the Trust shall be as contemplated by the aforesaid provisions of the Tax Act. The Trust shall invest, directly or indirectly, primarily in immovable property and shall ensure that its only undertaking and accordingly all its investments comply with paragraph 132(6)(b) of the Tax Act.

## 2.10 Control and Administration of the Trust Property

The control and administration of the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees and the Unitholders shall have no rights therein, including any right of ownership in the Trust Property, other than the rights specifically set forth in this Contract of Trust and they shall have no right to compel any partition, division, dividend or distribution of the Trust Property or any of the other properties or assets of the Trust, except as specifically provided herein. No Unitholder shall be entitled to interfere with or give any direction to the Trustees with respect to the affairs of the Trust or in connection with the exercise of any powers or authorities conferred upon the Trustees under this Contract of Trust, except as specifically provided herein. The Units shall be movable property (personal property) and shall confer upon the holders thereof only the interest and rights specifically set forth in this Contract of Trust.

## 2.11 Civil Code

To the fullest extent permitted by applicable law, the following provisions shall apply and shall be binding on the Settlor, the Trustees and on all Unitholders, namely:

- 2.11.1 in the event of any conflict, inconsistency or contradiction between the provisions of this Contract of Trust and the Civil Code, the provisions of this Contract of Trust shall prevail;
- 2.11.2 the Settlor, having established the Trust, hereby waives:
  - (a) any right which it may have in its capacity as Settlor (but not in its capacity as Unitholder during any period while it is a Unitholder), including with respect to the administration of the Trust pursuant to Article 1287 of the Civil Code;
  - (b) any right to receive the Trust Property upon the termination of the Trust pursuant to Article 1297 of the Civil Code; and
  - (c) any right which it may have in its capacity as Settlor (but not in its capacity as Unitholder during any period while it is a Unitholder), the existence of any such right not being admitted by any party hereto, to be a party to or to participate in any amendment or supplement to or restatement of this Contract of Trust;
- 2.11.3 any amendments to this Contract of Trust shall be made in accordance with ARTICLE 13, the whole without prejudice to the rights of any person pursuant to the Civil Code and, except as provided in ARTICLE 13, no Unitholder shall have any right to be a party to or to participate in any such amendment;
- 2.11.4 the following provisions of the Civil Code that are not of public order, to the extent in any way inconsistent or conflicting with or contradictory to the provisions of this Contract of Trust, shall not apply to this Contract of Trust or to the Trustees, the Settlor, the Unitholders or the administration of the Trust or the Trust Property, namely Articles 1266 (second paragraph), 1275, 1301, 1302, 1303, 1304, 1305, 1306 (except that the Trustee shall have full administration of the Trust Property), 1310, 1311, 1312, 1320, 1321 (first paragraph), 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1334, 1337, 1338, 1339 (it being agreed that the investments of the Trust shall be made solely pursuant to this Contract of Trust), 1340, 1341, 1343, 1344, 1345, 1346, 1347, 1348,

1349, 1350, 1351, 1352, 1353, 1354, 1355 (second paragraph), 1356, 1357, 1358, 1359, 1360, 1361, 1363, 1364, 1365, 1366, 1368, 1369 and 1370;

- 2.11.5 notwithstanding Article 1324 of the Civil Code, the Trustees shall have no obligation to make an inventory or to furnish security to guarantee the performance of their obligations under this Contract of Trust or at law, except that the Trustees may be required by a Unitholder to make an inventory as contemplated by Article 1324 of the Civil Code or to render an account as contemplated by Article 1363 of the Civil Code following any sale of all or substantially all of the assets of the Trust and upon termination of the Trust;
- 2.11.6 the provisions of this Contract of Trust shall apply notwithstanding the provisions of Article 1337 of the Civil Code;
- 2.11.7 notwithstanding anything in this Contract of Trust to the contrary, the second sentence of Article 1322 of the Civil Code shall apply to and enure to the benefit of the Settlor, the Trustees and the Unitholders; and
- 2.11.8 the Settlor particularly and specifically exempts the Trustees and the Unitholders from making any return of the Trust Property or any part thereof, whether capital or income, to the general mass of the estate and succession of the Settlor.

## **2.12 Retraction Right**

So long as the Settlor is the sole Unitholder, at any time and from time to time, the Settlor may require the Trust to purchase for cancellation any or all Units held by the Settlor for a consideration equivalent to the Initial Contribution received by the Trust for such Units.

## **ARTICLE 3 TRUSTEES AND OFFICERS**

### **3.1 Number of Trustees**

There shall be a minimum of five (5) and a maximum of fifteen (15) Trustees, including the Independent Trustees. A majority of the Trustees, a majority of the Independent Trustees and a majority of any committee of Trustees must be residents. The number of Trustees may be increased or decreased within such limits from time to time, by Special Resolution of Unitholders at a meeting of Unitholders duly called and held or, if so authorized by the Unitholders, by the Trustees, provided the Trustees may not, between meetings of Unitholders, appoint an additional Trustee if after such appointment the total number of Trustees would be greater than one and one-third ( $1\frac{1}{3}$ ) times, without any adjustment for rounding, the number of Trustees in office immediately following the last annual meeting of Unitholders. In the event of any such increase, the Unitholders or the Trustees, if so authorized by the Unitholders, shall forthwith elect or appoint, as the case may be, any such additional Trustee.

### **3.2 Appointment of Trustees, Acceptance and Term of Office**

- 3.2.1 Except as otherwise provided herein, Trustees shall be appointed (including the reappointment of incumbent Trustees) at each annual meeting of Unitholders, and may be appointed at a special meeting of Unitholders, in each case to hold office, subject to the provisions of Section 3.6, for a term that will expire at the close of the first annual meeting of the Unitholders, following the establishment of this Trust and, thereafter at each annual meeting of Unitholders, unless a Trustee otherwise resigns, is removed or disqualified as provided hereunder. All Trustees will be eligible for reappointment. Any such appointment shall be made either by a resolution approved by a majority of the votes cast at a meeting of Unitholders or shall be made by resolution in writing in

the manner set out in Section 9.1. An Independent Trustee may be removed as Trustee in accordance with the provisions of Section 3.6.

- 3.2.2 Trustees appointed by the Trustees between meetings of Unitholders in accordance with the provisions of subsection 0 shall be appointed for a term expiring at the conclusion of the next annual meeting of the Unitholders and will be eligible for appointment or reappointment, as the case may be.
- 3.2.3 Upon their appointment or election, each Trustee (other than the Initial Trustees) shall sign one or more written instruments substantially in the form set out in Section 3.5 (each of such written instruments being herein called a “**Trustee’s Acceptance**”) whereby each Trustee so appointed or elected accepts such appointment or election. Upon receipt by the Trust of a Trustee’s Acceptance signed by a Trustee so appointed or elected, such Trustee shall be a Trustee of the Trust pursuant to this Contract of Trust and shall be deemed to be a party to this Contract of Trust as fully and effectually as if such Trustee had executed this Contract of Trust. Receipt by the Trust of any Trustee’s Acceptance shall be conclusively deemed to have occurred upon a written acknowledgement of receipt being signed by any officer of the Trust.
- 3.2.4 Notwithstanding the foregoing:
- (a) if no Trustees are appointed at the annual meeting of Unitholders held immediately before the term of office of the existing Trustees expires, such existing Trustees shall continue to hold the office of Trustees under this Contract of Trust until successors have been appointed or they cease to hold office; and
  - (b) if a meeting of Unitholders fails to elect the minimum number of Trustees required by this Contract of Trust by reason of the disqualification of any nominee, the Trustees elected at the meeting may exercise all of the powers of the Trustees if the number of Trustees so elected constitutes a quorum.

### **3.3 Qualifications of Trustees; Independent Trustees**

- 3.3.1 A Trustee shall be an individual or a legal person authorized under the laws of the Province of Québec to act as a trustee as contemplated in Article 1274 of the Civil Code. The following persons are disqualified from being a Trustee of the Trust:
- (a) any individual who is less than eighteen (18) years of age;
  - (b) any individual who does not have the full exercise of his civil rights;
  - (c) any individual who is of unsound mind and has been so found by a Court in Canada or elsewhere;
  - (d) any individual who has been placed under protective supervision; and
  - (e) any person who is declared bankrupt or insolvent or enters into liquidation, whether compulsory or voluntarily, to wind up its affairs.
- 3.3.2 There shall be a majority of Independent Trustees provided, however, that if at any time Independent Trustees do not constitute a majority of the Trustees because of the death, resignation, bankruptcy, adjudicated incompetence, removal or change in circumstances of any Trustee who was an Independent Trustee, this requirement shall not be applicable for a period of 60 days thereafter, during which the remaining Trustees shall appoint a sufficient number of Independent Trustees to comply with this requirement

- 3.3.3 A majority of the Trustees, a majority of the Independent Trustees and a majority of any committee of the Trustees must be residents. If at any time a majority of the Trustees, a majority of the Independent Trustees, or a majority of any committee of Trustees are for any reason not residents or there are no Trustees who are residents, the Trustee or Trustees who are non-residents shall, immediately before that time, be deemed to have resigned and shall cease to be Trustees with effect from the time of such deemed resignation. If at any time the number of Trustees is less than the number required under this Contract of Trust and the remaining Trustee or Trustees fail or are unable to act in accordance with the Contract of Trust to appoint one or more additional Trustees or if, upon the resignation or deemed resignation of one or more Trustees there would be no Trustees, then the Initial Unitholder shall appoint one or more Trustees so that following such appointment a majority of the Trustees, a majority of the Independent Trustees and a majority of any committee of Trustees are residents and, failing such appointment, any remaining Trustee or Unitholder or officer of the Trust or the Auditors, as the case may be, may apply to the Court for an order appointing one or more Trustees so that following such appointment a majority of the Trustees, a majority of the Independent Trustees and a majority of any committee of Trustees are residents, to act until the next annual meeting of Unitholders or on such other terms as the Court may order. Any Trustee who is a resident who proposes to become a non-resident shall notify the other Trustees thereof as soon as reasonably practicable and shall resign as a Trustee effective upon the day of such notification and shall be replaced with a Trustee who is a resident.
- 3.3.4 Notwithstanding any other provisions of this Contract of Trust, and to the fullest extent permitted by applicable law, all the acts of the Trustees otherwise in accordance with this Contract of Trust shall be valid notwithstanding any temporary failure to comply with the provisions of this Section 3.3. Trustees are not required to hold Units.

### **3.4 Representations and Warranties of the Trustees**

- 3.4.1 By its acceptance to be a Trustee, each corporate Trustee, as the case may be, hereby represents and warrants to the Settlor and the Unitholders that: (a) it is incorporated under the laws of Canada or a province thereof; (b) it is authorized under the laws of the Province of Québec to act as a trustee as contemplated in Article 1274 of the Civil Code; and (c) it is at least 51% owned by residents.
- 3.4.2 By his acceptance to be a Trustee, each individual represents and warrants to the Settlor and the Unitholders that he satisfies all qualifications hereunder and under the laws of the Province of Québec to act as a trustee as contemplated in the Civil Code.

### **3.5 Election of Trustees**

- 3.5.1 Subject to the provisions of Sections 3.1, 3.3 and 3.7, the election of the Trustees shall be by the vote of Unitholders. The appointment or election of any Trustee (other than a person who is serving as a Trustee immediately prior to such appointment or election and other than the Initial Trustees whose consent to act is given by their signature hereto) shall not become effective unless and until such person has either before or after such appointment or election, executed and delivered to the Trust a Trustee's Acceptance substantially as follows:

“To: BTB Real Estate Investment Trust/  
Fonds de placement immobilier BTB (the “Trust”)  
And to: The Trustees thereof

The undersigned hereby accepts to act as a Trustee of the Trust and hereby agrees, upon the later of the date of this acceptance and the date of the undersigned's appointment or election as a Trustee of the Trust, to thereby become a party, as a Trustee, to the Contract of Trust made as of July 12, 2006, as amended, supplemented or restated from time to

time, constituting the Trust. The undersigned also certifies that he or she is [is not] a resident of Canada within the meaning of the *Income Tax Act (Canada)*.

And if the Trustee is to be an Independent Trustee by adding the following paragraph:

The undersigned hereby represents to and covenants with the Trust and the other Trustees thereof that he or she is, and will remain while he or she is a Trustee, an Independent Trustee, as defined in the Contract of Trust, and that should his or her status as an Independent Trustee change at any time while he or she is a Trustee, he or she will forthwith so notify the Trust in writing and thereafter will, if requested by the remaining Independent Trustees, forthwith resign as a Trustee.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

[Signature]

\_\_\_\_\_

[Print Name]"

- 3.5.2 Upon the later of a person being appointed or elected a Trustee hereunder and executing and delivering to the Trust a Trustee's Acceptance substantially as set forth above, such person shall become a Trustee hereunder and shall be deemed to be a party (as a Trustee) to this Contract of Trust, as amended or restated from time to time.
- 3.5.3 An act of a Trustee is valid notwithstanding an irregularity in the appointment or election of the Trustee or a defect in the qualifications of the Trustee.

### **3.6 Resignation, Removal and Death of Trustees**

- 3.6.1 A Trustee may resign at any time by an instrument in writing signed by him and delivered or mailed to the Secretary. Such resignation shall, in the case of a Trustee who is an individual, take effect on the date such notice is so given or at any later time specified in the notice, provided that if, upon the resignation becoming effective, the number of remaining Trustees would be less than the number necessary to constitute a quorum for a meeting of Trustees, the resignation of a Trustee who is an individual is not effective until the resigning Trustee's successor is duly appointed as and accepts to be a Trustee. In the case of a corporate Trustee, such resignation shall take effect on the earlier of 90 days after the date such notice is so given and the date a successor Trustee is appointed or elected.
- 3.6.2 Each Trustee hereby undertakes to give 30 days' prior written notice to the Secretary of the occurrence of any event which would result in the breach of any representation or warranty of such Trustee under Section 3.4 or to give forthwith such notice if he no longer qualifies as Trustee under Section 3.3 or as Independent Trustee, in order that such Trustee may be removed and a replacement Trustee may be appointed in accordance with the provisions hereof.
- 3.6.3 A Trustee may be removed at any time with or without cause by the affirmative vote of a majority of the votes cast at a meeting of Unitholders called for that purpose or with cause by resolution passed by an affirmative vote of not less than two-thirds ( $\frac{2}{3}$ ) of the remaining Independent Trustees. Any such removal of a Trustee shall take effect immediately following the aforesaid vote

or resolution and any Trustee so removed shall be so notified by the Secretary or any other officer of the Trust forthwith following such removal.

- 3.6.4 Upon the resignation or removal of any Trustee, or such Trustee otherwise ceasing to be a Trustee (the “**Retiring Trustee**”), such Retiring Trustee shall (a) cease to have rights, privileges, powers and authority of a Trustee hereunder; (b) execute and deliver such documents as the remaining Trustees shall reasonably require for the conveyance of any Trust Property held in such Retiring Trustee’s name; (c) account to the remaining Trustees as they may require for all Trust Property which he holds as Trustee; and (d) resign from all representative or other positions held by such Retiring Trustee on behalf on the Trust, including, as a director or officer (or any similar position) of any corporation or other person in which the Trust owns any securities (directly or indirectly), upon which resignation such Retiring Trustee shall be discharged from any future obligations as Trustee; provided however that, notwithstanding any other provision of this Contract of Trust, each such Retiring Trustee shall always continue to have the protections afforded to Trustees in ARTICLE 16.
- 3.6.5 Upon the incapacity or death of any Trustee, his legal representative shall execute and deliver on such Trustee’s behalf such documents as the remaining Trustees may require as provided in this Section 3.6. In the event that a Trustee or his legal representatives, as applicable, are unable or unwilling to execute and deliver such required documents, each of the remaining Trustees is hereby appointed as the attorney of such Trustee for the purpose of executing and delivering such required documents.

### **3.7 Vacancies**

- 3.7.1 The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, bankruptcy, adjudicated incapacity or other incapacity to exercise the duties of the office or upon the removal of a Trustee. No vacancy shall operate to annul this Contract of Trust or affect the continuity of the Trust. Until vacancies are filled, the remaining Trustee or Trustees (even if less than a quorum) may exercise the powers of the Trustees hereunder. In case of a vacancy, the Unitholders, so long as they constitute a quorum or a majority of the Trustees continuing in office may fill such vacancy. Any Trustee so elected by the Unitholders or appointed by the Trustees shall hold office for the remaining term of the Trustee he is succeeding.
- 3.7.2 A quorum of Trustees may fill a vacancy among the Trustees, except a vacancy resulting from an increase in the number of Trustees other than in accordance with this Section 3.7 or from a failure of the Unitholders to elect the minimum number of Trustees fixed by or pursuant to this Contract of Trust. If there is not a quorum of Trustees or if the vacancy has arisen from an increase in the number of Trustees other than in accordance with this Section 3.7 or from a failure by the Unitholders to elect the minimum number of Trustees required by or pursuant to this Contract of Trust, the Trustees then in office shall forthwith call a special meeting of Unitholders to fill the vacancy and, if they fail to call a meeting or if there are no Trustees then in office, the meeting may be called by any Unitholder. A Trustee appointed to fill a vacancy holds office, subject to the provisions of Sections 3.6 and 3.8, until the close of the next annual meeting of the Unitholders unless such Trustee is elected at the next annual meeting of Unitholders.

### **3.8 Successor and Additional Trustees**

The rights of the Trustees to control and exclusively administer the Trust and to have the titles to the Trust Property drawn up in their names and all other rights of the Trustees at law shall vest automatically in all persons who may hereafter become Trustees upon their due election or appointment and qualification without any further act and they shall thereupon have all the rights, privileges, powers, obligations and immunities of Trustees hereunder. Such rights shall vest in the Trustees whether or not conveyance or transfer documents have been executed and delivered pursuant to Section 3.6 or otherwise.

### **3.9 Compensation and Other Remuneration**

Trustees who are Independent Trustees and who are not employed by and do not receive salary from the Trust or the wholly-owned Subsidiary of the Trust or their respective affiliates or associates shall be entitled to receive for their services as Trustees such reasonable compensation as the Trustees may determine from time to time, as well as reimbursement of their out-of-pocket expenses incurred in acting as a Trustee. Such Independent Trustees, either directly or indirectly, shall also be entitled to receive remuneration for services rendered to the Trust in any other capacity. Such services may include services as an officer of the Trust, legal, accounting or other professional services or services as a broker, transfer agent, agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee. Trustees who are employed by and receive salary from the Trust or the wholly-owned Subsidiary of the Trust or their respective affiliates or associates shall not be entitled to receive any remuneration for their services as Trustees but shall be entitled to reimbursement from the Trust of their out-of-pocket expenses incurred in acting as a Trustee. The Trustees shall be eligible to participate in any incentive plan for employees, Trustees or officers adopted by the Trust.

### **3.10 Officers of the Trust**

The Trust may have a Chairman, a Lead Trustee, a President, a Chief Executive Officer, a Chief Financial Officer and a Secretary and such other officers as the Trustees may appoint from time to time. One person may hold two or more offices. Any officer of the Trust may, but need not, be a Trustee. The Chairman, if not a Trustee, shall be entitled to receive notice of and attend all meetings of the Trustees but, unless he is a Trustee, he shall not be entitled to vote at any such meeting. In the case of equality of votes, the Chairman or a Lead Trustee shall not be entitled to a casting vote. Officers of the Trust shall be appointed and discharged and their remuneration determined by the Trustees.

## **ARTICLE 4 TRUSTEES' POWERS AND DUTIES**

### **4.1 General Powers**

Subject only to the specific limitations contained in this Contract of Trust, including Sections 6.1 and 6.2, the Trustees shall have, without further or other authorization and free from any control or direction on the part of the Unitholders, full, absolute and exclusive power, control and authority over the Trust Property and over the affairs of the Trust to the same extent as if the Trustees were the sole owners of such properties in their own right, to do all such acts and things as in their sole judgment and discretion are necessary or incidental to, or desirable for, the carrying out of any of the purposes of the Trust or the conducting of the affairs of the Trust. In construing the provisions of this Contract of Trust, these shall be considered presumptions in favour of the granted powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the general powers or authority or any other specified power or authority conferred herein on the Trustees. Except as specifically required by laws which are of public order, the Trustees shall, in carrying out investment activities, not be in any way restricted by the provisions of the laws of any jurisdiction limiting or purporting to limit investments which may be made by trustees.

### **4.2 Offering**

For greater certainty and without limiting the generality of Section 6.1, but subject to the provisions of subsection 6.1.1, the Trust is authorized to complete the Offering upon the terms set forth in the Prospectus or such other terms that the Trustees may deem appropriate including the authorization to: (a) prepare, file, execute and deliver the Prospectus and all other documents, agreements and instruments as may be necessary or, in the Trustees discretion, desirable to complete the Offering; and (b) enter into those contracts listed in the Prospectus under the heading "Material Contracts" to which it is to be a party. For greater certainty, the Trust is not required to complete the Offering unless and until the Trustees are satisfied with the terms and conditions thereof.

### 4.3 Independent Trustee Matters

Notwithstanding anything herein to the contrary, the following matters (the “**Independent Trustee Matters**”) shall require the prior approval of a majority of the Independent Trustees holding office as such at the time (given by vote at a meeting of Trustees) or by a written resolution signed by all of the Independent Trustees, in order to become effective:

- 4.3.1 an acquisition of a property or an investment in a property, whether by co-investment or otherwise, from or with: (a) a Trustee who is not an Independent Trustee; (b) an officer of the Trust; (c) the Manager; or (d) any of their respective related parties, affiliates or associates in which they have any direct or indirect interest;
- 4.3.2 a material change to the Management Services Agreement or any renewal, extension or termination thereof or any increase in the fees or other consideration payable thereunder or in connection therewith (including transaction fees);
- 4.3.3 the entering into, waiver of or exercise of any rights or remedies under any agreement entered into by the Trust with: (a) a Trustee who is not an Independent Trustee; (b) an officer of the Trust; (c) the Manager; or (d) any of their respective related parties, affiliates or associates;
- 4.3.4 the refinancing or renewal of any indebtedness owing to: (a) any Trustee who is not an Independent Trustee; (b) an officer of the Trust; (c) the Manager; or (d) any of their respective related parties, affiliates or associates;
- 4.3.5 the making, directly or indirectly, of any co-investment with: (a) a Trustee who is not an Independent Trustee; (b) an officer of the Trust; (c) the Manager; or (d) any of their respective related parties, affiliates or associates;
- 4.3.6 the establishment or amendment of any Unit Option Plan for the Trustees, officers or employees of the Trust or any Subsidiary of the Trust;
- 4.3.7 the grant of options or issuing of Units under any Unit Option Plan or other purchase plan provided to any Trustee, any officer of the Trust or any of their respective related parties, affiliates or associates;
- 4.3.8 decisions relating to compensation of Trustees;
- 4.3.9 decisions relating to any claim by or against: (a) a Trustee who is not an Independent Trustee; (b) an officer of the Trust; (c) the Manager; or (d) any of their respective related parties, affiliates or associates (including any other Related Party);
- 4.3.10 to appoint, where permitted hereunder, an Independent Trustee to fill a vacancy among the Independent Trustees;
- 4.3.11 to recommend to the Unitholders that the number of Trustees be increased or decreased and, if applicable, to propose candidates for election by the Unitholders as Independent Trustees to fill any office as an Independent Trustee;
- 4.3.12 to increase the compensation of the Trust’s management and officers; and
- 4.3.13 to the extent that any of the foregoing involves a Subsidiary of the Trust, any decision of the Trust relating thereto in its capacity as a Unitholder thereof.

#### 4.4 Specific Powers and Authorities

Subject to the express limitations contained in this Contract of Trust, including Sections 2.9, 6.1 and 6.2, and in addition to any powers and authorities conferred by this Contract of Trust or which the Trustees may have by virtue of any present or future statute or rule or law, the Trustees, without any action or consent by the Unitholders, shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

- 4.4.1 to retain, invest and reinvest the capital or other funds of the Trust in immovable or movable property of any kind, all without regard as to whether or not any such properties are authorized by law for the investment of trust funds and to possess and exercise all the rights, powers and privileges pertaining to the ownership of the property of the Trust and to increase the capital of the Trust at any time by the issuance of additional Units for such consideration as they deem appropriate;
- 4.4.2 for such consideration as they deem proper, to invest in, purchase or otherwise acquire for cash or other property or through the issuance of Units or through the issuance of notes, debentures, bonds or other obligations or securities (including convertible securities and exchangeable securities) of the Trust and hold for investment the entire or any participating interest in any hypothecs or mortgages. In connection with any such investment, purchase or acquisition, the Trustees shall have the power to acquire a share of rents, lease payments or other gross income from or a share of the profits from or a share in the equity or ownership of immovable property;
- 4.4.3 to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any or all of the Trust Property by deeds, trust deeds, assignments, bills of sale, transfers, leases, hypothecs or mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or any nominee of the Trust;
- 4.4.4 to enter into leases, contracts, obligations and other agreements for a term extending beyond the term of office of the Trustees and beyond the possible termination of the Trust or for a lesser term;
- 4.4.5 without limit as to amount, or as to any type of debt securities, to borrow money from or incur indebtedness to any person; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, hypothecate, mortgage, subordinate, pledge, grant security interests in, or encumber, the Trust Property to secure any of the foregoing;
- 4.4.6 to lend money, whether secured or unsecured, or other Trust Property;
- 4.4.7 without limiting the amount, to issue any type of debt securities or convertible debt securities and to borrow money or incur any other form of indebtedness in order to carry out the purposes of the Trust or for other expenses incurred in connection with the Trust and for such purposes may draw, make, execute and issue promissory notes and other negotiable and non-negotiable instruments or securities and evidences of indebtedness, secure the payment of sums so borrowed or indebtedness incurred and hypothecate, mortgage, pledge, assign or grant a security interest in any money owing to the Trust or its property or engage in any other means of financing the Trust;
- 4.4.8 to incur and pay out of the Trust Property any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including, taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the

Trust Property or upon or against such property or any part thereof and for any of the purposes herein;

- 4.4.9 to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including any one or more Trustees, officers, agents or representatives) as the Trustees may determine;
- 4.4.10 to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any hypothecs or mortgages or securities, issued or created by, or interest in, any person, forming part of the Trust Property, to the same extent that an individual might, without limiting the generality of the foregoing, vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;
- 4.4.11 to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with the Trust Property and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any person (other than the Trust), any of the securities of which may at any time be held by the Trust or to the sale, hypothec, mortgage or lease of the property of any such person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- 4.4.12 subject to the provisions of Section 3.10, to elect, appoint, engage or employ officers for the Trust (including the Chairman of Trustees, Chief Executive Officer, President, Chief Financial Officer, Secretary and such vice-presidents and other officers as the Trustees may determine), who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the regulations; to engage, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, agents, underwriters, accountants, lawyers, real estate agents, Property Managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law, to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons;
- 4.4.13 to incur and pay out of the property of the Trust any charges or expenses and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the affairs of the Trust including taxes or other governmental levies, charges and assessments of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the property of the Trust or upon or against the property of the Trust or any part thereof and for any of the purposes herein;
- 4.4.14 to deposit funds of the Trust in banks, trust companies and other depositories, whether or not such deposits will earn interest, the same to be subject to withdrawal on such terms and in such manner and by such person or persons (including anyone or more Trustees, officers, agents or representatives) as the Trustees may determine;
- 4.4.15 to possess and exercise all the rights, powers and privileges appertaining to the ownership of or interest in all or any hypothecs or mortgages or securities, issued or created by, or interest in, any

person, forming part of the assets of the Trust, to the same extent that an individual might and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action and may include the exercise of discretionary power;

- 4.4.16 to exercise any conversion privilege, subscription right, warrant or other right or option available in connection with any property of the Trust at any time held by it and to make payments incidental thereto; to consent, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation, merger or readjustment of the finances of any person (other than the Trust), any of the securities of which may at any time be held, directly or indirectly, by the Trust, or to the sale, mortgage or lease of the property of any such person; and to do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may consider necessary or advisable in connection therewith;
- 4.4.17 to elect, appoint, engage or employ officers for the Trust, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms as may be prescribed by the Trustees or by the Regulations; to engage, appoint, employ or contract with any persons as agents, representatives, employees or independent contractors or otherwise (including real estate advisors, investment advisors, registrars, agents, underwriters, accountants, lawyers, real estate agents, property managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such persons may be so engaged or employed; and, except as prohibited by law or this Contract of Trust, to delegate any of the powers and duties of the Trustees (including the power of delegation) to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other persons without regard to whether such power, authority or duty is normally granted or delegated by Trustees;
- 4.4.18 to collect, sue for and receive sums of money coming due to the Trust and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, demands or other litigation relating to the Trust, the Trust Property, or the Trust's affairs, to enter into agreements therefor whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding the arbitration or settlement thereof;
- 4.4.19 to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust;
- 4.4.20 to purchase and pay for, out of the Trust Property, insurance contracts and policies insuring the Trust Property against any and all risks and insuring the Trust or any or all of the Trustees, the Unitholders or officers of the Trust against any and all claims and liabilities of any nature asserted by any person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Unitholders or the officers of the Trust;
- 4.4.21 to cause title to any of the Trust Property to be drawn up in the name of the Trustees, or, to the extent permitted by applicable law, in the name of the Trust or one or more of the Trustees or any other person, on such terms, in such manner with such powers in such person as the Trustees may determine and with or without disclosure that the Trust or Trustees are interested therein provided, however, that should title to any of the Trust Property be held by or in the name of any person or persons other than the Trust as aforesaid, the Trustees shall require such person or persons to execute a contract acknowledging that title to such properties or assets is held for the benefit of the Trust;

- 4.4.22 to determine conclusively the allocation to capital, income or other appropriate accounts of all receipts, expenses, disbursements and Trust Property;
- 4.4.23 to prepare, sign and file or cause to be prepared, signed and filed a prospectus, offering memorandum or similar document, and any amendment thereto, relating to or resulting from an offering of the Units or other securities issued or held by the Trust and to pay the cost thereof and related thereto and any fees related thereto out of the Trust Property whether or not such offering is or was of direct benefit to the Trust or those persons (if any) who were Unitholders immediately prior to such offering;
- 4.4.24 to make or cause to be made an application for the listing on any stock exchange of any Units or other securities of the Trust, and to do all things which, in the opinion of the Trustees, may be necessary or desirable to effect or maintain such listing or listings;
- 4.4.25 to determine conclusively the value of any or all of the Trust Property from time to time and, in determining such value, to consider such information and advice as the Trustees, in their sole judgment, may deem material and reliable;
- 4.4.26 to grant mainlevées, radiations, discharges, waivers, releases, total or partial, under terms and for consideration, as the Trustees may deem appropriate;
- 4.4.27 in addition to the mandatory indemnification provided for in Section 16.1 to the extent permitted by law to indemnify, to enter into agreements with respect to the indemnification of, any person with whom the Trust has dealings including the Trustees, the Transfer Agent or any escrow agent, to such extent as the Trustees shall determine;
- 4.4.28 to purchase TB Subsidiary Trust Units and Series 1 Trust Notes;
- 4.4.29 to do all such acts and things and to exercise such powers which are delegated to the Trustees by any person who co-owns immovable property with the Trust;
- 4.4.30 to encroach on the capital of the Trust Property to make any capital distribution as provided in Section 11.1; and
- 4.4.31 to do all such other acts and things as are incidental to the foregoing and to exercise all powers which are necessary or useful to carry on the affairs of the Trust, to promote any of the purposes for which the Trust is formed and to carry out the provisions of this Contract of Trust.

#### **4.5 Further Powers of the Trustees**

- 4.5.1 The Trustees shall have the power to prescribe any form provided for or contemplated by this Contract of Trust. The Trustees may make, adopt, amend or repeal regulations containing provisions relating to the Trust, the conduct of its affairs, their rights or powers and the rights or powers of its Unitholders or officers not inconsistent with law or with this Contract of Trust. The Trustees shall also be entitled to make any reasonable decisions, designations or determinations not contrary to this Contract of Trust which they may determine are necessary or desirable in interpreting, applying or administering this Contract of Trust or in administering, managing or operating the Trust. To the extent of any inconsistency between this Contract of Trust and any regulation, decision, designation or determination made by the Trustees, this Contract of Trust shall prevail and such regulation, decision, designation or determination shall be deemed to be modified to eliminate such inconsistency. Any regulations, decisions, designations or determinations made pursuant to this Section 4.5 shall be conclusive and binding upon all persons affected thereby.

- 4.5.2 Subject to any agreement between the Trust and any Trustee and subject as otherwise herein provided, and to the furthest extent permitted by applicable law, the Trustees may from time to time in their discretion appoint, employ, invest in, contract or deal with any person including any affiliate of any of them and any person in which any one or more of them may be directly or indirectly interested and, without limiting the generality of the foregoing, any Trustee may purchase, hold, sell, invest in or otherwise deal with an immovable property or other property of the same class and nature as may be held by the Trustees as property of the Trust, whether for the Trustee's own account or for the account of another (in a fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of their duties and responsibilities hereunder.

#### **4.6 Standard of Care**

- 4.6.1 The exclusive standard of care required of the Trustees in exercising their powers and carrying out their functions hereunder shall be that they exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith, with a view to the best interests of the Trust and the Unitholders and that in connection therewith they exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A Trustee shall not be liable in carrying out his or her duties under this Contract of Trust except in cases where such Trustee fails to act honestly and in good faith with a view to the best interests of the Trust and the Unitholders or to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The duties and standard of care of the Trustees provided as aforesaid are intended to be similar to, and not to be any greater than, those imposed on an administrator of the property of others charged with full administration pursuant to Article 1309 of the Civil Code. Unless otherwise required by a provision of law that cannot be waived, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the affairs of the Trust.
- 4.6.2 For greater certainty, to the extent that the Trustees have contracted or delegated the performance of certain activities of the Trust to the Manager or a Property Manager, they shall be deemed to have satisfied the aforesaid standard of care in relation thereto.

#### **4.7 Reliance upon Trustees**

Any person dealing with the Trust in respect of any matters pertaining to the Trust Property and any right, title or interest therein or to the Trust or to securities of the Trust shall be entitled to rely on a certificate or statutory declaration (including a certificate or statutory declaration as to the passing of a resolution of the Trustees) executed by two (2) Trustees or officers of the Trust or, without limiting the foregoing, such other person as may be authorized by the Trustees as to the capacity, power and authority of the Trustees or any other person to act for and on behalf and in the name of the Trust. No person dealing with the Trustees or officers of the Trust shall be bound to see to the application of any funds, property or assets passing into the hands or control of the Trustees. The receipt by or on behalf of the Trustees or officers of the Trust for moneys or other consideration shall be binding upon the Trust.

#### **4.8 Determinations of Trustees Binding**

All determinations of the Trustees which are made with respect to any matters relating to the Trust, including whether any particular investment or disposition meets the requirements of this Contract of Trust, shall be final and conclusive and shall be binding upon the Trust and all Unitholders (and, where the Unitholder is a Deferred Income Plan, RESPs or registered pension fund or plan as defined in the Tax Act, or such other fund or plan registered under the Tax Act, upon plan beneficiaries and plan holders past, present and future) and Units of the Trust shall be issued and sold on the condition and understanding that any and all such determinations shall be binding as aforesaid.

## 4.9 Conflict of Interest

4.9.1 Subject to the provisions of Section 17.22, if a Trustee or an officer of the Trust or any of their respective related parties or affiliates:

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the Trust or an affiliate thereof (including a contract or transaction involving the making or disposition of any investment in an immovable property or a joint venture arrangement); or
- (b) is a director or officer of, or otherwise has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the Trust or an affiliate thereof,

such Trustee or officer of the Trust, as the case may be, shall disclose in writing to the Trustees or request to have entered in the minutes of meetings of the Trustees or the Governance Committee or such other applicable committee, as the case may be, the nature and extent of such interest.

4.9.2 The disclosure required in the case of a Trustee shall be made:

- (a) at the meeting of Trustees or applicable committee when the proposed contract or transaction is first considered;
- (b) if the Trustee was not then interested in a proposed contract or transaction, at the first such meeting after he becomes so interested;
- (c) if the Trustee becomes interested after a contract is made or a transaction is entered into, at the first meeting after he becomes so interested; or
- (d) if a person who is interested in a contract or transaction later becomes a Trustee, at the first meeting after he becomes a Trustee.

4.9.3 The disclosure required in the case of an officer of the Trust who is not a Trustee shall be made:

- (a) forthwith after such person becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of the Trustees, the Governance Committee or other applicable committee, as the case may be;
- (b) if such person becomes interested after a contract is made or a transaction is entered to, forthwith after he becomes so interested; or
- (c) if a person who is interested in a contract or transaction later becomes an officer of the Trust without being appointed as a Trustee, forthwith upon becoming an officer of the Trust.

4.9.4 Notwithstanding subsection 4.9.1, where this Section 4.9 applies to any person in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the affairs of the Trust, would not require approval by the Trustees or the Unitholders, such person shall disclose in writing to the Trustees or request to have entered into the minutes of meetings of the Trustees or the Governance Committee or other applicable committee, as the case may be, the nature and extent of such person's interest forthwith after such person becomes aware of the contract or transaction or proposed contract or transaction.

4.9.5 A Trustee referred to in this Section 4.9 shall not vote on any resolution to approve the said contract or transaction unless the contract or transaction is:

- (a) one relating primarily to his remuneration as a Trustee, officer, employee or agent of the Trust or a Subsidiary or an affiliate of the Trust; or
- (b) one for indemnity under Section 16.1 or the purchase of liability insurance,

provided however that the presence of such Trustee at the relevant meeting or the written recognition by such Trustee of any resolution in writing shall be counted towards any quorum requirement or requirement that at least a minimum number of Trustees or Independent Trustees act.

- 4.9.6 For the purposes of this Section 4.9, a general notice to the Trustees by a Trustee or an officer of the Trust disclosing that he is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. In the event that a meeting of Unitholders is called to confirm or approve a contract or transaction which is the subject of a general notice to the Trustees, the notice and extent of the interest in the contract or transaction of the person giving such general notice shall be disclosed in reasonable detail in the notice calling the said meeting of Unitholders or in any information circular required to be provided by this Contract of Trust or by law.
- 4.9.7 Where a material contract is made or a material transaction is entered into between the Trust and a Trustee or an officer of the Trust, or between the Trust and another person of which a Trustee or an officer of the Trust is a director or officer or in which he has a material interest:
- (a) such person is not accountable to the Trust or to the Unitholders for any profit or gain realized from the contract or transaction; and
  - (b) the contract or transaction is neither void nor voidable, by reason only of that relationship or by reason only that such person is present at or is counted to determine the presence of a quorum at the meeting of the Trustees or the Governance Committee or any applicable committee that authorized the contract or transaction, if such person disclosed his interest in accordance with this Section 4.9, and the contract or transaction was approved by the Trustees or the Unitholders and was reasonable and fair to the Trust at the time it was so approved.
- 4.9.8 Notwithstanding anything in this Section 4.9, but without limiting the effect of subsection 4.9.7, a Trustee or an officer of the Trust, acting honestly and in good faith, is not accountable to the Trust or to the Unitholders for any profit or gain realized from any such contract or transaction by reason only of his holding such office or position, and the contract or transaction, if it was reasonable and fair to the Trust at the time it was approved, is not by reason only of such person's interest therein void or voidable, where:
- (a) the contract or transaction is confirmed or approved at a meeting of Unitholders duly called for that purpose; and
  - (b) the nature and extent of such person's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in any information circular required to be provided by this Contract of Trust or by law.
- 4.9.9 Subject to the provisions of subsections 4.9.7 and 4.9.8, where a Trustee or an officer of the Trust fails to disclose his interest in a material contract or transaction in accordance with this Contract of Trust or otherwise fails to comply with this section, the Trustees or any Unitholder, in addition to exercising any other rights or remedies in connection with such failure exercisable at law, may apply to a court for an order setting aside the contract or transaction and/or directing that such person account to the Trust for any profit or gain realized.

#### 4.10 Related Party Transactions

4.10.1 Notwithstanding anything contained elsewhere in this Contract of Trust to the contrary, the provisions of this Section 4.10 shall apply at all times after the Closing:

- (a) to any person who is a Related Party; and
- (b) to any person who is:
  - (i) a Trustee or an associate of a Trustee;
  - (ii) a substantial security holder of the Trust or any affiliate of such substantial security holder (where the term “substantial security holder” shall have the meaning ascribed thereto in Part XXI of the *Securities Act* (Ontario)); or
  - (iii) an officer, director or employee of the Trust or of any of its Subsidiaries or affiliates,

(such persons being referred to herein as a Related Party).

4.10.2 Other than in respect of transactions pursuant to the Acquisition Agreement, in the event of any proposed purchase or sale of immovable property from or to a Related Party, the Trust shall comply with the provisions of Rule 61-501 requiring the preparation of and provision of an independent valuation.

4.10.3 Without limitation and other than in respect of transactions pursuant to the Acquisition Agreement, and in addition to the requirement, if any, under Rule 61-501 or this Contract of Trust to obtain the approval of Unitholders, or to obtain minority approval within the meaning of Rule 61-501, for any related party transaction within the meaning of Rule 61-501, the Trust shall not carry out a proposed purchase or sale of immovable property from or to a Related Party, or otherwise effect a related party transaction unless such transaction is determined to be on commercially reasonable terms and is approved by a majority of the Trustees who are not parties to such transaction, or who are not directors, officers or employees of, or who do not have a material interest in, any person (other than the Trust) who is a party to such transaction.

#### 4.11 Banking

The banking activities of the Trust or any part thereof, shall be transacted with such bank, trust company, or other person carrying on a banking or similar business as the Trustees may designate, appoint or authorize from time to time and all such banking activities, or any part thereof, shall be transacted on behalf of the Trust by the Trustees or by one or more officers of the Trust as the Trustees may designate, appoint or authorize from time to time including: (a) the operation of the accounts of the Trust; (b) the making, signing, drawing, accepting, endorsing, negotiation, lodging, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; (c) the giving of receipts for orders relating to the Trust Property; (d) the execution of any agreement or instrument relating to the Trust Property; and (e) the execution of any agreement relating to any of the foregoing and defining the rights and powers of the parties thereto, and the authorizing of any officer of such bank or other person to do any act or thing on the Trust’s behalf to facilitate such banking or other similar activities.

#### 4.12 Competition with the Trust

Subject to the provisions of Sections 4.9 and 4.10, the Manager, a Property Manager, the Trustees and officers of the Trust (and their respective affiliates and associates) and the directors and officers thereof may, from time to time, be engaged, directly or indirectly, for their own account or on behalf of others (including as trustee, administrator, manager or property manager of other trusts or portfolios) in real estate investments and other activities identical or

similar to and competitive with the activities of the Trust and its Subsidiaries. Neither the Manager, a Property Manager, a Trustee or officer of the Trust, nor any of their respective affiliates or associates (or their respective directors and officers) shall incur or be under any liability to the Trust, any Unitholder or any annuitant by reason of, or as a result of any such engagement or competition or the manner in which such person may resolve any conflict of interest or duty arising therefrom.

#### **4.13 Conditions Precedent**

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

#### **4.14 Fees and Expenses**

Without in any way limiting their powers, as part of the expenses of the Trust, the Trustees may pay or cause to be paid out of the Trust Property reasonable fees, costs and expenses incurred or to be incurred in connection with the administration and management of the Trust, including fees, costs and expenses of Auditors, accountants, lawyers, appraisers and other professional advisors employed by or on behalf of the Trust, fees of stock exchanges and the cost of reporting or giving notices to Unitholders. All costs, charges and expenses properly incurred by the Trustees on behalf of the Trust shall be payable out of the Trust Property.

### **ARTICLE 5 OFFICERS OF THE TRUST**

#### **5.1 General**

The Trust shall have a Chairman of Trustees and may have one or more other officers as the Trustees may appoint from time to time. Any officer of the Trust, other than the Chairman of Trustees or the Lead Trustee may, but need not, be a Trustee. One person may hold two or more offices. Officers of the Trust may be appointed and discharged and their powers, responsibilities and remuneration determined by the Trustees and, in the absence of such determination, their responsibilities shall be those usually applicable to the office held.

#### **5.2 Chairman of Trustees**

The Chairman of Trustees shall be appointed from among the Trustees. When present, the Chairman of Trustees shall be chairman of meetings of Trustees and Unitholders and shall have such other powers and duties as the Trustees may determine from time to time to manage the affairs of the board of Trustees and monitor the effectiveness of the Trustees, subject to the powers granted to the Lead Trustee (if any). In the case of equality of votes, the Chairman shall not be entitled to a casting vote.

#### **5.3 Lead Trustee**

The Lead Trustee shall be appointed from among the Trustees provided that the Lead Trustee shall be an Independent Trustee. The Lead Trustee is to act as an effective leader of the board of Trustees in respect of matters required to be considered by the Independent Trustees only, and ensure that the board of Trustee's agenda will enable it to successfully carry out its duties.

#### **5.4 Senior Management**

The responsibilities of senior management of the Trust shall include the following activities:

- (a) providing the board of Trustees with information and advice relating to the operation of the Trust's properties, acquisitions and financings;
- (b) establishing, at least on an annual basis, investment and operating plans for the ensuing period;
- (c) conducting and supervising the due diligence required in connection with proposed acquisitions and completing any acquisitions or dispositions;
- (d) maintaining the books and financial records of the Trust;
- (e) determining and preparing designations, elections and determinations to be made in connection with the income and capital gains of the Trust for tax and accounting purposes;
- (f) preparing reports and other information required to be sent to Unitholders and other persons, including investment dealers, lenders and professionals; and
- (g) administering or supervising the administration, on behalf of the board of Trustee, of the payment of Distributable Income and other distributions by the Trust.

#### **5.5 Term of Office**

The Chairman or the Lead Trustee and any officer appointed by the Trustees shall hold office until his successor is elected or appointed, provided that, without prejudice to rights under any employment contract, the Trustees may remove an officer from office at any time and in their sole discretion.

#### **5.6 Independent Contractors**

Any office of the Trust appointed by the Trustees may be held by an individual who is not an employee of the Trust but has been retained by the Trust to hold such office pursuant to an independent service agreement entered into between the Trust and that individual or that individual's employer. For greater certainty, any officer of the Trust appointed by the Trustees may be an individual whose services are provided to the Trust pursuant to the Management Services Agreement or a Property Management Agreement.

### **ARTICLE 6 INVESTMENT GUIDELINES AND OPERATING POLICIES**

#### **6.1 Investment Guidelines**

The Trust Property may be invested only with the approval of the Trustees and only in accordance with the following restrictions:

- 6.1.1 Notwithstanding any other provisions of this Contract of Trust, the Trust shall not make any investment or take any action or omit to take any action: (a) that would result in Units not being units of a "mutual fund trust" within the meaning of the Tax Act (or otherwise disqualify the Trust as a "mutual fund trust" within the meaning of the Tax Act); or (b) that would result in Units being disqualified for investment by Deferred Income Plans.

- 6.1.2 Except as otherwise prohibited in this Contract of Trust, the Trust may only, directly or indirectly, invest in:
- (a) interests (including ownership and leasehold interests) in income-producing immovable property that is capital property of the Trust;
  - (b) corporations, trusts or limited partnerships which principally have interests (including the ownership of leasehold interests) in income-producing immovable property (or activities relating or ancillary thereto); and
  - (c) such other activities as are consistent with the other investment guidelines of the Trust.
- 6.1.3 The Trust may, directly or indirectly, invest in a joint venture arrangement for the purposes of owning interests or investments otherwise permitted to be held by the Trust; provided that such joint venture arrangement contains terms and conditions which, in the opinion of management, are commercially reasonable, including such terms and conditions relating to restrictions on the transfer, acquisition and sale of the Trust's and any joint venturer's interest in the joint venture arrangement, provisions to provide liquidity to the Trust, provisions to limit the liability of the Trust and its Unitholders to third parties, and provisions to provide for the participation of the Trust in the management of the joint venture arrangement. For purposes hereof, a joint venture arrangement is an arrangement between the Trust and one or more other persons pursuant to which the Trust, directly or indirectly, conducts an undertaking for one or more of the purposes set out in the investment guidelines of the Trust and in respect of which the Trust may hold its interest jointly or in common or in another manner with others (subject to the provisions of subsection 6.1.1) either directly or through the ownership of securities of a corporation or other entity, including a limited partnership or a limited liability company.
- 6.1.4 Except for temporary investments held in cash, deposits with a Canadian chartered bank or trust company registered under the laws of a province of Canada, short-term government debt securities or receivables under instalment receipt agreements or money market instruments of, or guaranteed by, a Schedule 1 Canadian bank maturing prior to one year from the date of issue and except as otherwise permitted pursuant to the investment guidelines and operating policies of the Trust, the Trust may not hold securities of a person other than to the extent such securities would constitute an investment in immovable property (as determined by the Trustees), including securities of an entity wholly-owned, directly or indirectly, by the Trust formed and operated solely for the purpose of holding a particular immovable property or immovable properties and provided further that, notwithstanding anything contained in the Contract of Trust to the contrary, but subject to the provisions of Section 2.9 and subsection 6.1.1, the Trust may acquire securities of other real estate investment trusts.
- 6.1.5 The Trust shall not invest in rights to or interests in mineral or other natural resources, including oil and gas, except as incidental to an investment in immovable property.
- 6.1.6 The Trust shall not invest, directly or indirectly, in operating businesses unless such investment is an indirect investment and is incidental to a transaction:
- (a) where revenue will be derived, directly or indirectly, principally from an immovable property;
  - (b) where the operating businesses principally involve the ownership, maintenance, improvement, leasing or management, directly or indirectly, of an immovable property (in each case as determined by the Trustees); or
  - (c) where the operating businesses have a considerable underlying asset base in real estate.

- 6.1.7 The Trust shall not invest in raw land for development except for properties adjacent to existing properties of the Trust for the purpose of the renovation or expansion of existing properties that are capital property of the Trust or the development of new facilities which will be capital property of the Trust.
- 6.1.8 The Trust may invest in immovable hypothecs, mortgages, hypothecary bonds or mortgage bonds (including a participating or convertible immovable hypothec or mortgage) and similar instruments where the hypothec, mortgage, hypothecary bond or mortgage bond is issued by a Subsidiary.
- 6.1.9 The Trust may invest in immovable hypothecs, mortgages, hypothecary bonds or mortgage bonds (including a participating or convertible immovable hypothec or mortgage) and similar instruments where:
- (a) the immovable property, which is security therefor, is income-producing immovable property which otherwise complies with the other investment guidelines of the Trust adopted from time to time in accordance with this Contract of Trust and the guidelines set out herein;
  - (b) the immovable hypothec or mortgage is an immovable hypothec or mortgage registered on title to the immovable property which is security therefor; and
  - (c) the aggregate value of the investments of the Trust in these instruments, after giving effect to the proposed investment, will not exceed 20% of the Adjusted Unitholders' Equity.
- 6.1.10 Subject to the provisions of subsection 6.1.1, the Trust may invest in immovable hypothecs or mortgages which are not first ranking for the purposes of providing, directly or indirectly, financing in connection with a transaction in which the Trust is the vendor or with the intention of using such hypothec or mortgage as part of a method for subsequently acquiring an interest in or control of an immovable property or a portfolio of properties.
- 6.1.11 The Trust may invest an amount (which, in the case of an amount invested to acquire immovable property, is the purchase price less the amount of any debt incurred or assumed in connection with such investment) up to 15% of the Gross Book Value of the Trust in investments which do not comply with one or more of subsections 6.1.2, 6.1.3, 6.1.4, 6.1.7, 6.1.9, 6.1.10 and 6.2.3, but always subject to the provisions of Section 2.9 and subsection 6.1.1.

For the purpose of the foregoing guidelines, the properties, assets, liabilities and transactions of a corporation, trust or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidation basis. In addition, any references in the foregoing to investment in immovable property will be deemed to include an investment in a joint venture arrangement or a limited partnership. Except as specifically set forth in this Contract of Trust to the contrary, all of the foregoing prohibitions, limitations or requirements for investment shall be determined as at the date of investment by the Trust, but always subject to the provisions of Section 2.9 and subsection 6.1.1, and thus be constantly monitored for the purposes of the latter provisions.

## **6.2 Operating Policies**

The operations and affairs of the Trust shall be conducted in accordance with the following policies, the whole subject to the provisions of Section 2.9 and subsection 6.1.1:

- 6.2.1 The Trust shall not purchase, sell, market or trade in currency or interest rate future contracts otherwise than for hedging purposes where, for the purposes hereof, the term "hedging" shall have the meaning ascribed thereto by National Instrument 81-102 Mutual Funds of the Canadian Securities Administrators, as amended or replaced from time to time.

- 6.2.2 Any written instrument creating an obligation which is or includes the granting by the Trust of an hypothec or mortgage, and to the extent the Trustees determine to be practicable and consistent with their duty to act in the best interests of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Trustees, Unitholders, annuitants under a plan of which a Unitholder acts as a trustee or carrier, or officers, employees or agents of the Trust, but that only property of the Trust or a specific portion thereof shall be bound; the Trust, however, is not required, but shall use all reasonable efforts, to comply with this requirement in respect of obligations assumed by the Trust upon the acquisition of immovable property.
- 6.2.3 In addition to the provisions of subsection 6.1.7, the Trust may engage in construction or development of immovable property in order to maintain its immovable properties in good repair or to enhance the income-producing potential of properties that are capital property of the Trust.
- 6.2.4 The title to each immovable property shall be held by and registered in the name of the Trustees or, to the extent permitted by applicable law, in the name of the Trust or a corporation or other entity wholly-owned by the Trust or jointly by the Trust with joint venturers or a corporation which is a nominee of the Trust which holds a registered title to such immovable property pursuant to a nominee agreement with the Trust.
- 6.2.5 The Trust shall not incur or assume any indebtedness if, after giving effect to the incurring or assumption of the indebtedness, the total consolidated indebtedness of the Trust would be more than 75% of the Gross Book Value. For the purposes of this paragraph, the term “indebtedness” means any obligation of the Trust for borrowed money (excluding any premium in respect of indebtedness assumed by the Trust for which the Trust has the benefit of an interest rate subsidy, but only to the extent an amount receivable has been excluded in the calculation of Gross Book Value with respect to such interest rate subsidy), provided that:
- (a) an obligation will constitute indebtedness only to the extent that it would appear as a liability on the consolidated balance sheet of the Trust in accordance with GAAP;
  - (b) indebtedness excludes trade accounts payable, distributions payable to Unitholders, accrued liabilities arising in the ordinary course of business and short term acquisition credit facilities; and
  - (c) subordinate debentures will not constitute indebtedness.
- If as a result of a material acquisition or if as a result of a material variation in Gross Book Value the 75% limit is exceeded, the Trust shall reduce its indebtedness or issue additional Units, or take other action, in order to comply with such limit within the twelve months from the date such limit was exceeded, subject to such reasonable extensions beyond such 12-month period as approved by the Trustees.
- 6.2.6 The Trust shall not, directly or indirectly, guarantee any indebtedness or liabilities of any kind of any person, except indebtedness or liabilities assumed or incurred by a person in which the Trust holds an interest, directly or indirectly. The Trust is not required but shall use its reasonable best efforts to comply with this requirement (a) in respect of obligations assumed by the Trust pursuant to the acquisition of immovable property or (b) if doing so is necessary or desirable in order to further the initiatives of the Trust permitted under this Contract of Trust.
- 6.2.7 The Trust shall obtain or have received an independent appraisal of each property or an independent valuation of a portfolio of properties that it intends to acquire.

- 6.2.8 The Trust shall obtain and maintain at all times insurance coverage in respect of potential liabilities of the Trust and the accidental loss of value of Trust Property from risks, in amounts, with such insurers, and on such terms as the Trustees consider appropriate, taking into account all relevant factors including the practices of owners of comparable properties.
- 6.2.9 The Trust shall have obtained or have received a Phase I environmental audit of each immovable property to be acquired by it conducted within three years of the date of acquisition and, if the Phase I environmental audit report recommends or recommended that a Phase II environmental audit be conducted, the Trust shall have conducted a Phase II environmental audit, in each case by an independent and experienced environmental consultant; such audit as a condition to any acquisition, shall be satisfactory to the Trustees.

For the purpose of the foregoing policies, the properties, assets, liabilities and transactions of a corporation, trust or other entity wholly or partially owned by the Trust will be deemed to be those of the Trust on a proportionate consolidated basis. In addition, any references in the foregoing to investment in immovable property will be deemed to include an investment in a joint venture. Except as specifically set forth to the contrary in this Contract of Trust, all of the foregoing prohibitions, limitations or requirements pursuant to the foregoing policies shall be determined as at the date of investment or other action by the Trust, but always subject to the provisions of Section 2.9 and subsection 6.1.1, and thus be constantly monitored for the purposes of the latter provisions.

### **6.3 Amendments to Investment Guidelines and Operating Policies**

- 6.3.1 Subject to the provisions of Section 6.4, the investment guidelines set out under Section 6.1 and the operating policies contained in subsections 6.2.1, 6.2.5, 6.2.7, 6.2.8 and 6.2.9 may only be amended by Special Resolution of Unitholders.
- 6.3.2 The remaining operating policies may be amended with the approval of a majority of the votes cast by Unitholders at a meeting called for such purpose.

### **6.4 Regulatory Matters**

If at any time a government or regulatory authority having jurisdiction over the Trust or the Trust Property enacts any law, regulation or requirement which is in conflict with any investment guidelines of the Trust then in force (other than subsection 6.1.1), such guidelines in conflict shall, if the Trustees on the advice of legal counsel to the Trust so resolve, be deemed to have been amended to the extent necessary to resolve any such conflict and, notwithstanding any other provisions of this Contract of Trust, any such resolution of the Trustees shall not require the prior approval of Unitholders.

### **6.5 Application of Investment Guidelines and Operating Policies**

With respect to the investment guidelines and operating policies contained in Sections 6.1 and 6.2, where any maximum or minimum percentage limitation is specified in any of the guidelines and policies therein contained, such guidelines and policies shall be applied on the basis of the relevant amounts calculated immediately after the making of such investment, the whole always subject to the provisions of Section 2.9 and subsection 6.1.1. Any subsequent change relative to any percentage limitation which results from a subsequent change in the Gross Book Value or the amount of Adjusted Unitholders' Equity will not require divestiture of any investment.

## **ARTICLE 7 TRUST UNITS**

### **7.1 Units**

The beneficial interests in the Trust shall constitute a single class of Units. The number of Units which the Trust may issue is unlimited. When issued, each Unit shall vest indefeasibly in the holder thereof. The interest of each Unitholder shall be determined by the number of Units registered in the name of such Unitholder. The issued and outstanding Units may be subdivided or consolidated from time to time by the Trustees without Unitholder approval.

### **7.2 Ranking of Units**

Each Unit shall represent an equal undivided interest in the Trust with all other outstanding Units. All Units outstanding from time to time shall participate equally and rateably in any distributions by the Trust and, in the event of termination of the Trust, in the net assets of the Trust remaining after satisfaction of all liabilities and no Unit shall have any preference or priority over any other.

### **7.3 Units Non-Assessable**

No Unit shall be issued other than as fully paid and non-assessable. A Unit shall not be fully paid until the consideration therefor has been received in full by or on behalf of the Trust. The consideration for any Unit shall be paid in money or in property or in past services that are not less in value than the fair equivalent of the money that the Trust would have received if the Unit had been issued for money. In determining whether property or past services are the fair equivalent of consideration paid in money, the Trustees may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the Trust. Notwithstanding the foregoing, Units may be issued and sold on an instalment receipt basis, in which event beneficial ownership of such Units may be represented by instalment receipts, but shall otherwise be non-assessable. When Units are issued and sold on an instalment basis, the Trust may take security over such Units as security for unpaid instalments, including a hypothec or pledge as contemplated by an instalment receipt agreement.

### **7.4 No Pre-Emptive Rights**

There are no pre-emptive rights attached to the Units. No person shall be entitled, as a matter of right, to subscribe for or purchase any Units of the Trust.

### **7.5 Fractional Units**

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

### **7.6 Title to Trust Property**

The titles to the Trust Property and the right to conduct the affairs of the Trust are vested exclusively in the Trustees, subject to the provisions of this Contract of Trust, and the Unitholders shall have no interest therein other than the interest in the Trust conferred by their Units issued hereunder as described in Section 2.8 and they shall have no right to compel any partition, division, dividend or distribution (except as specifically provided in Section 15.2) of the Trust or any of the properties or assets of the Trust. The Units shall confer upon the holders thereof only the interest and rights, and impose upon the holders thereof only those liabilities and obligations, specifically set forth in this Contract of Trust. No Unitholder has or is deemed to have any right of ownership in any of the properties or assets of the Trust.

## **7.7 Allotment and Issue**

The Trustees may allot and issue Units at such time and in such manner (including pursuant to any plan established by the Trustees from time to time relating to reinvestment by Unitholders of distributions of the Trust in Units), and for such consideration and to such person or class of persons as the Trustees in their sole discretion shall determine. In the event that Units are issued in whole or in part for a consideration other than money, the resolution of the Trustees allotting and issuing such Units shall express the fair equivalent in money of the other consideration received by the Trust.

## **7.8 Rights and Warrants**

The Trustees may create and issue rights, warrants, options (other than options created under the Unit Option Plan) or other instruments or securities (including convertible securities and exchangeable securities) to subscribe for fully paid Units, which rights, warrants, options, instruments or securities may be exercisable at such subscription price and at such time as the Trustees may determine. The rights, warrants, options, instruments or securities so created may be issued for such consideration or for no consideration, all as the Trustees may determine. A right, warrant, option, instrument or security shall not be a Unit and a holder thereof shall not be a Unitholder.

Subject to the provisions of ARTICLE 6, the Trustees may create and issue indebtedness of the Trust in respect of which interest, premium or principal payable thereon may be paid, at the option of the Trust or the holder, in fully paid Units, or which indebtedness, by its terms, may be convertible into Units at such time and for such price as the Trustees may determine. Any indebtedness so created shall not be a Unit and a holder thereof shall not be a Unitholder unless and until fully paid Units are issued in accordance with the terms of such indebtedness.

## **7.9 Commissions and Discounts**

The Trustees may provide for the payment by the Trust of commissions or may allow discounts to persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or other securities issued by the Trust or of their agreeing to produce subscriptions therefor, whether absolute or conditional.

## **7.10 Transferability**

The Units are freely transferable and, except as stipulated in Section 7.11, the Trustees shall not impose any restriction on the transfer of Units. The Trustees shall use all reasonable efforts to obtain and maintain a listing for the Units on one or more stock exchanges in Canada.

## **7.11 Transfer of Units**

7.11.1 Subject to the provisions of this ARTICLE 7, the Units shall be for all purposes of the Trust and this Contract of Trust, personal and moveable property, and the Units shall be fully transferable without charge as between persons, but no transfer of Units shall be effective as against the Trustees or shall be in any way binding upon the Trustees until the transfer has been recorded on the Register maintained by the Trustees, the Trust or the Transfer Agent. No transfer of a Unit shall be recognized unless such transfer is of a whole Unit.

7.11.2 Subject to the provisions of this ARTICLE 7, Units shall be transferable on the Register only by the holders of record thereof or their executors, administrators or other legal representatives or by their agents or attorneys duly authorized in writing, and only upon delivery to the Trust or to the Transfer Agent of the certificate therefor, properly endorsed or accompanied by a duly executed instrument of transfer or power of attorney and accompanied by all necessary transfer or other taxes imposed by law, together with such evidence of the genuineness of such endorsement, execution and authorization and other matters that may reasonably be required by the Trustees or the Transfer Agent. Upon such delivery the transfer shall be recorded on the Register or branch transfer registers and a new Unit Certificate for the Units shall be issued to the transferee and a new Unit Certificate for the balance of Units not transferred shall be issued to the transferor.

- 7.11.3 Unit Certificates representing any number of Units may be exchanged without charge for Unit Certificates representing an equivalent number of Units in the aggregate. Any exchange of Unit Certificates may be made at the offices of the Trust or the Transfer Agent where registers are maintained for Unit Certificates pursuant to the provisions of this ARTICLE 7. Any Unit Certificates tendered for exchange shall be surrendered to the Trustees or appropriate Transfer Agent and then shall be cancelled.

## 7.12 Non-Resident Ownership Constraint

- 7.12.1 Not more than 49% of the Units outstanding at any time shall be held or beneficially owned, directly or indirectly, by persons who are non-residents, and the Trustees shall inform the Transfer Agent of this restriction. Furthermore, at no time shall non-residents hold or beneficially own, directly or indirectly, Units or any other rights or options, including convertible debentures, (for the purpose of this Section 7.12, such other rights and options being known as “**Options**”) that may entitle them (conditionally or otherwise) to acquire Units that would result in more than 49% of the Units, at any time, being held or beneficially owned, directly or indirectly, by non-residents.
- 7.12.2 The Trustees may, in their discretion, from time to time and at such time as they deem appropriate, require from the Unitholders and Optionholders, and the Unitholders and Optionholders shall furnish diligently to the Trustees, a declaration as to their residency and should any Unitholder or Optionholder not be the Beneficial Owner of the Units or Options registered in his name, the residency of the Beneficial Owner of such Units or Options. In the event that it appears from the Register or from the declarations of residency delivered to the Trustees that, or in the event that the Trustees otherwise determine that, there has been a contravention of the foregoing non-resident ownership constraint or that, after giving effect to any proposed subscription, issue or transfer of Units or Options to a non-resident, there would be a contravention of the non-resident ownership constraint, the Trustees shall cause a public announcement to be made to such effect and shall not accept any subscription for Units or Options from any non-resident, issue any Units or Options to any such person or register or otherwise recognize the transfer of any Units or Options to any non-resident.
- 7.12.3 Furthermore, in the event that it appears from the Register or from the declarations of residency delivered to the Trustees that, or in the event that the Trustees otherwise determine that, there has been a contravention of the foregoing non-resident ownership constraint or that a contravention of the foregoing non-resident ownership constraint is likely to occur or is imminent, the Trust shall send a written notice (a “**Sell Notice**”) to the registered holders of such of those Units or Options as shall be chosen on the basis of inverse order to the order of acquisition or registration of all non-residents, by law or by such other method that is authorized by the Trustees’ determination (each such selected registered holder to be hereinafter known as an “**Affected Holder**”). Such Sell Notice shall require that an Affected Holder sell to a person who is not a non-resident of Canada the total number of Units or Options specified in the Sell Notice (the “**Affected Units**”) within the prescribed period stipulated in the Sell Notice. Any such Sell Notice to be delivered to an Affected Holder shall be given by registered prepaid mail or delivered directly to the Affected Holder and shall specify a period, which shall not be more than 60 days, within which the Affected Units must be sold on a basis that does not result in the contravention of subsection 7.12.1. The Sell Notice shall also require the Affected Holder to notify the Trust of the sale or disposition requested when completed.
- 7.12.4 In the event that the Affected Units have not been sold by the Affected Holder on or prior to the date stipulated in the Sell Notice or the Affected Holder has not provided evidence satisfactory to the Trustees to the effect that it is not a non-resident prior to such date, the Trust may elect to sell the Affected Units on behalf of the Affected Holder without further notice on and subject to the terms herein contained and to forthwith suspend the rights of the Affected Holder to vote or to receive distribution in connection with the Affected Units. The Trust may sell Affected Units on any stock exchange or organized market on which the Units are then listed or traded as the

Trustees shall determine or, if the Units are not then listed on any stock exchange or traded on any organized market, in such other manner as the Trustees shall determine. For all purposes of such sale, the Trustees and the Transfer Agent shall be deemed to be the agents and lawful mandataries of the Affected Holder and any Beneficial Owner of the Affected Units. The net proceeds of any such sale of Affected Units shall be the net proceeds after deduction of any commission, tax or other cost of sale.

- 7.12.5 In the event of any such sale of Affected Units, the Affected Holder shall have the right only to receive the net proceeds of such sale, subject to its right to receive payment of any distribution declared by the Trustees which is unpaid and owing to such Affected Holder. The Trust shall deposit an amount equal to such net proceeds in a special account in any bank or trust company in Canada selected by it. The amount of such deposit, less the reasonable costs of the administration of the special account, shall be payable to the Affected Holder upon presentation of evidence acceptable to the bank or trust company of such person's interest in the Affected Units, including the Unit Certificates therefor, if any. Any interest earned on any amount so deposited shall accrue to the benefit of the Affected Holder. From and after the date of such deposit, the Affected Holder shall not be entitled to any of the rights of a registered Unitholder in respect of the Affected Units, other than the right to receive the funds so deposited as hereinabove stipulated.
- 7.12.6 The Trust shall, as soon as reasonably practical, and in any event, not later than 30 days after making a deposit pursuant to the terms of subsection 7.12.5, send a notice to the Affected Holder stating that the Affected Units have been sold, the amount of the net proceeds, respectively, to which the Affected Holder is entitled, the name and address of the bank or trust company at which the Trust has made the deposit and all other relevant particulars of the sale.
- 7.12.7 For greater certainty, the Trust may sell Units in accordance with the terms hereof despite the fact that the Trust does not possess the Unit Certificates, if any, representing the Affected Units at the time of the sale. Where, in accordance with this Section 7.12, Affected Units are sold by the Trust without possession of the Unit Certificates, if any, representing the same and, after the sale, a person establishes that it is a bona fide purchaser without notice of the Affected Units from the Affected Holder, then, subject to applicable law:
- (a) the Trust shall be entitled to treat the Units so purchased by the bona fide purchaser as validly issued and outstanding Units in addition to the Units sold by the Trust; and
  - (b) notwithstanding any other provisions of this Contract of Trust, the Trust is entitled to the deposit made with respect to such sale and shall add the amount of the deposit to the capital account maintained by the Trust in respect of outstanding Units.

### **7.13 Trustees' Determinations as to Non-Resident Status**

The Trustees shall have the sole right and authority to make any determination required or contemplated under Section 7.12. The Trustees shall make all determinations necessary for the administration of the provisions of Section 7.12 and, without limiting the generality of the foregoing, if the Trustees consider that there are reasonable grounds for believing that a contravention of the non-resident ownership restriction has occurred or will occur, the Trustees shall make a determination with respect to the matter. Any such determination shall be conclusive, final and binding except to the extent modified by any subsequent determination by the Trustees. Notwithstanding the foregoing, the Trustees may delegate, in whole or in part, their power to make a determination to any officer of the Trust.

### **7.14 Book Based System**

The provisions of this Section 7.14 shall not in any way alter the nature of Units or the relationships of a Unitholder to the Trustees and of one Unitholder to another but are intended only to facilitate the issuance of certificates evidencing the ownership of Units, if desirable to issue them to Unitholders, and the recording of all transactions in

respect of Units and Unit Certificates whether by the Trust, securities dealers, stock exchanges, transfer agents, registrars or other persons.

Except as otherwise provided below, the Units will be represented in the form of one or more fully registered global unit certificates (each a “**Global Unit Certificate**”) held by, or on behalf of, CDS, as depository of the Global Unit Certificates for the participants of CDS, registered in the name of CDS or its nominee, and registration of ownership and transfers of the Units will be effected only through the book-based system administered by CDS. On Closing, CDS will credit interests in the Global Unit Certificates representing the Units to the accounts of its participants as directed by the Agents (as defined in the Prospectus).

Except as described below, no purchaser of a Unit will be entitled to a certificate or other instrument from the Trust evidencing that purchaser’s ownership thereof, and no Beneficial Owner will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of the Beneficial Owners. CDS will be responsible for establishing and maintaining book-entry accounts for its participants having interests in the Global Unit Certificates. Sales of interests in the Global Unit Certificates can only be completed through participants in the depository services of CDS.

Units will be issued in fully registered form to holders or their nominees, other than CDS or its nominee, only if: (a) the Trust is required to do so by applicable law; (b) the depository system of CDS ceases to exist; (c) the Trust determines that CDS is no longer willing or able or qualified to discharge properly its responsibility as depository and the Trust is unable to locate a qualified successor; or (d) the Trust at its option elects to terminate the Book-Entry System in respect of the Units through CDS.

All references herein to actions by, notices given or payments made to Unitholders shall, where such Units are held through CDS, refer to actions taken by, or notices given or payments made to, CDS upon instruction from the CDS Participants in accordance with CDS’s rules and procedures. For the purposes of any provision hereof requiring or permitting actions with the consent of or at the direction of Unitholders evidencing a specified percentage of the aggregate Units outstanding, such direction or consent may be given by Unitholders acting through CDS and the CDS Participants owning Units evidencing the requisite percentage of the Units. The rights of a Unitholder whose Units are held through CDS shall be exercised only through CDS and the CDS Participants and shall be limited to those established by law and agreements between such Unitholders and CDS and/or the CDS Participants or upon instruction from the CDS Participants. Each of the Transfer Agent and the Trustees may deal with CDS for all purposes (including the making of payments) as the authorized representative of the respective Unitholders and such dealing with CDS shall constitute satisfaction or performance, as applicable, towards their respective obligations hereunder.

For so long as Units are held through CDS, if any notice or other communication is required to be given to Unitholders, the Trustees and the Transfer Agent will give all such notices and communications to CDS.

If CDS resigns or is removed from its responsibilities as depository and the Trustees are unable or do not wish to locate a qualified successor, CDS shall surrender the Global Unit Certificate to the Transfer Agent with instructions from CDS for registration of Units in the name and in the amounts specified by CDS and the Trust shall issue and the Trustee and Transfer Agent shall execute and deliver the aggregate number of Units then outstanding in the form of definitive Unit Certificates representing such Units.

## **7.15 Redemption of Units**

- 7.15.1 Each Unitholder shall be entitled to require the Trust to redeem at any time or from time to time at the demand of the Unitholder all or any part of the Units registered in the name of the Unitholder at the prices determined and payable in accordance with the conditions hereinafter provided.
- 7.15.2 To exercise a Unitholder’s right to require redemption under this Section 7.15, a duly completed and properly executed notice requiring the Trust to redeem Units, in a form reasonably acceptable to the Trustees, together with written instructions as to the number of Units to be redeemed, shall be sent to the Transfer Agent with a copy to the Trust at the head office of the Trust. A Unitholder

not otherwise holding a registered Unit certificate that wishes to exercise the redemption right will be required to obtain a redemption notice form from the Unitholder's investment dealer who will be required to deliver the completed redemption notice form to the Trust and to CDS. No form or manner of completion or execution shall be sufficient unless the same is in all respects reasonably acceptable to the Trustees and is accompanied by any further evidence that the Trustees may reasonably require with respect to the identity, capacity or authority of the person giving such notice.

7.15.3 Upon receipt by the Transfer Agent and the Trust of the notice to redeem Units, the Unitholder shall thereafter cease to have any rights with respect to the Units tendered for redemption (other than to receive the redemption payment therefor) including the right to receive any distributions thereon which are declared payable to the Unitholders of record on a date which is subsequent to the day of receipt by the Trust of such notice. Units shall be considered to be tendered for redemption on the date that the Trust has, to the satisfaction of the Trustees, received the notice and other required documents or evidence as aforesaid.

7.15.4 Upon receipt by the Transfer Agent and the Trust of the notice to redeem Units in accordance with this Section 7.15, the holder of the Units tendered for redemption shall be entitled to receive a price per Unit (the "**Redemption Price**") equal to the lesser of:

- (a) 90% of the "market price" of the Units calculated on the date (the "**Redemption Date**") on which the Units were surrendered for redemption; and
- (b) 100% of the "closing market price" on the principal market on which the Units are listed for trading, on the Redemption Date;

For the purposes of this calculation, "**market price**" as at a specified date will be:

- (a) an amount equal to the weighted average trading price of a Unit on the principal exchange or market on which the Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date;
- (b) an amount equal to the weighted average of the closing market prices of a Unit on the principal exchange or market on which the Units are listed or quoted for trading during the period of ten consecutive trading days ending on such date, if the applicable exchange or market does not provide information necessary to compute a weighted average trading price; or
- (c) if there was trading on the applicable exchange or market for fewer than five of the ten trading days, an amount equal to the simple average of the following prices established for each of the ten consecutive trading days ending on such date: the simple average of the last bid and last asking price of the Units for each day on which there was no trading; the closing price of the Units for each day that there was trading if the exchange or market provides a closing price; and the simple average of the highest and lowest prices of the Units for each day that there was trading, if the market provides only the highest and lowest prices of Units traded on a particular day.

The "**closing market price**" of a Unit for the purpose of the foregoing calculations, as at any date will be:

- (a) an amount equal to the weighted average trading price of a Unit on the principal exchange or market on which the Units are listed or quoted for trading on the specified date and the principal exchange or market provides information necessary to compute a weighted average trading price of the Units on the specified date;

- (b) an amount equal to the closing price of a Unit on the principal market or exchange if there was a trade on the specified date and the principal exchange or market provides only a closing price of the Units on the specified date;
- (c) an amount equal to the simple average of the highest and lowest prices of the Units on the principal market or exchange, if there was trading on the specified date and the principal exchange or market provides only the highest and lowest trading prices of the Units on the specified date; or
- (d) the simple average of the last bid and last asking prices of the Units on the principal market or exchange, if there was no trading on the specified date.

If Units are not listed or quoted for trading in a public market, the Redemption Price will be the fair market value of the Units, which will be determined by the Trustees in their sole discretion.

7.15.5 Subject to the provisions of subsections 7.15.6 and 7.15.7, the Redemption Price payable in respect of the Units tendered for redemption during any calendar month shall be paid by cheque, drawn on a Canadian chartered bank or a trust company in lawful money of Canada, payable at par to, or to the order of, the Unitholder who exercised the right of redemption within 30 days after the end of the calendar month in which the Units were tendered for redemption. Payments made by the Trust of the Redemption Price are conclusively deemed to have been made upon the mailing of a cheque in a postage prepaid envelope addressed to the former Unitholder unless such cheque is dishonoured upon presentment. Upon such payment, the Trust shall be discharged from all liability to the former Unitholder in respect of the Units so redeemed.

7.15.6 Subsections 7.15.4 and 7.15.5 shall not be applicable to Units tendered for redemption by a Unitholder, if:

- (a) the total amount payable by the Trust pursuant to subsection 7.15.4 in respect of such Units and all other Units tendered for redemption in the same calendar month exceeds \$50,000 (the “**Monthly Limit**”); provided that the Trustees may, in their sole discretion, waive such limitation in respect of all Units tendered for redemption in any calendar month and, in the absence of such a waiver, Units tendered for redemption in any calendar month in which the total amount payable by the Trust pursuant to subsections 7.15.4 and 7.15.5 exceeds the Monthly Limit will be redeemed for cash pursuant to subsections 7.15.4 and 7.15.5 and, subject to receipt of all necessary regulatory approvals, by a distribution *in specie* of assets held by the Trust on a *pro rata* basis;
- (b) at the time the Units are tendered for redemption, the outstanding Units are not listed for trading on the TSX or traded or quoted on any stock exchange or market which the Trustees consider, in their sole discretion, provides representative fair market value prices for the Units; or
- (c) the normal trading of the outstanding Units is suspended or halted on any stock exchange on which the Units are listed for trading or, if not so listed, on any market on which the Units are quoted for trading, on the Redemption Date for such Units or for more than five trading days during the 10 trading day period commencing immediately after the Redemption Date for such Units.

7.15.7 To the extent that subsections 7.15.4 and 7.15.5 are not applicable to all of the Units tendered for redemption by a Unitholder pursuant to subsection 7.15.6, the balance of the Redemption Price per Unit specified in subsections 7.15.4 and 7.15.5 shall, subject to receipt of all necessary regulatory approvals (which the Trust shall use reasonable commercial efforts to obtain forthwith), be paid and satisfied by way of a distribution *in specie* to such Unitholder of assets held by the Trust. To that extent, the Trust shall cause TB Subsidiary Trust to redeem that number of TB Subsidiary

Trust Units and Series 1 Trust Notes, respectively, equal to the product of (i) the number of Units tendered for redemption divided by the total number of Units outstanding on the date on which the Units were tendered for redemption, and (ii) the number of TB Subsidiary Trust Units and Series 1 Trust Notes (in the principal amount of \$100), respectively, held by the Trust on the date the Units were tendered for redemption, for redemption proceeds consisting of Series 2 Trust Notes and Series 3 Trust Notes, respectively. The balance of the Redemption Price payable pursuant to this Section 7.15 in respect of Units tendered for redemption during any month shall, subject to receipt of all necessary regulatory approvals, be paid by the transfer, to or to the order of the holder of Units who exercised the right of redemption, within 30 days (the “**Transfer Date**”) after the end of the calendar month in which the Units were tendered for redemption, of the number of Series 2 Trust Notes and Series 3 Trust Notes determined as aforesaid. Payments by the Trust of the balance of the Redemption Price are conclusively deemed to have been made upon the mailing of certificates representing the Series 2 Trust Notes and Series 3 Trust Notes by registered mail in a postage prepaid envelope addressed to the former holder of Units and/or any party having a security interest. Upon such payment, together with any cash payable to the Unitholder pursuant to subsections 7.15.4 and 7.15.5, the Trust shall be discharged from all liability to such former Unitholder and any party having a security interest in respect of the Units so redeemed. No Series 2 Trust Notes or Series 3 Trust Notes in integral multiples of less than \$100 will be distributed and, where notes to be received by a Unitholder includes a multiple less than that number, the number of notes shall be rounded to the next lowest integral multiple of \$100 and the balance shall be paid in cash. The Trust shall be entitled to all interest paid on the TB Subsidiary Trust Notes, if any, and distributions paid on the TB Subsidiary Trust Units on or before the date of distribution *in specie*. Where the Trust makes a distribution *in specie* of a *pro rata* number of securities of TB Subsidiary Trust on a redemption of Units pursuant to this Section 7.15, the Trustees may, in their sole discretion, designate and treat as having been paid to the redeeming Unitholders any amount of the capital gains or income realized by the Trust on or in connection with the distribution of such securities to the Unitholder, including any capital gain or income realized by the Trust upon the redemption of the TB Subsidiary Trust Units and Series 1 Trust Notes and for which the Trust received Series 2 Trust Notes and Series 3 Trust Notes.

- 7.15.8 All Units which are redeemed under this Section 7.15 shall be cancelled and such Units shall no longer be outstanding and shall not be reissued.

## **7.16 Unit Certificates**

Each Unitholder or his duly authorized agent shall be entitled to a certificate bearing an identifying serial number in respect of the Units held by him (a “**Unit Certificate**”), signed in the manner hereinafter prescribed. The Trust is not bound to issue more than one Unit Certificate in respect of a Unit or Units held jointly or in common by two or more persons and delivery of a Unit Certificate to one of them shall be sufficient delivery to all. No Unit Certificate shall be issued to evidence any fractional Units.

## **7.17 Execution of Unit Certificates**

Subject to the provisions hereof, Unit Certificates shall be signed by or on behalf of the Trustees and certified by the Transfer Agent, but such certification is not to be construed as being a warranty about the investment but simply to confirm that the Unit Certificates have been validly issued under this Contract of Trust. The signature of the Trustees or of an authorized representative thereof required on Unit Certificates may be printed or otherwise mechanically reproduced thereon and Unit Certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains the printed or mechanically reproduced signature of a person, then the Trust may issue the Unit Certificate even though such person has ceased to be a Trustee or an authorized representative thereof and such Unit Certificate is as valid as if such person continued to be a Trustee or an authorized representative thereof at the date of its issue.

### **7.18 Certificate Fee**

The Trustees may establish a reasonable fee to be charged for every Unit Certificate issued.

### **7.19 Form of Unit Certificate**

The form of certificate representing Units and the instrument of transfer, if any, on the reverse side thereof shall be in such form as is from time to time authorized by the Trustees.

### **7.20 Unit Certificates**

- 7.20.1 Unit Certificates shall, subject to the provisions hereof, be in such form as is authorized from time to time by the Trustees.
- 7.20.2 If issued, Unit Certificates are issuable only in fully registered form.
- 7.20.3 The definitive form of the Unit Certificates shall:
  - (a) be in the English language or in the English language and the French language;
  - (b) be dated as of the date of issue thereof; and
  - (c) contain such distinguishing letters and numbers as the Trustees shall prescribe.
- 7.20.4 In the event that the Unit Certificate is translated into the French language and any provision of the Unit Certificate in the French language shall be susceptible of an interpretation different from the equivalent provision in the English language, the interpretation of such provision in the English language shall be determinative.
- 7.20.5 Each Unit Certificate shall be signed on behalf of the Trustees and if so decided by the Trustees, signed or certified by the Transfer Agent of the Trust. The signature of the Trustees required to appear on such certificate may be printed, lithographed or otherwise mechanically reproduced thereon and, in such event, certificates so signed are as valid as if they had been signed manually. If a Unit Certificate contains the printed or mechanically reproduced signature of a person, then the Trust may issue the Unit Certificate even though such person has ceased to be a Trustee or an authorized representative thereof and such Unit Certificate is a valid as if such person continued to be a Trustee or an authorized representative thereof at the date of its issue.

### **7.21 Contents of Unit Certificates**

- 7.21.1 Until otherwise determined by the Trustees, each Unit Certificate shall legibly set forth on the face thereof, inter alia, the following:
  - (a) the name of the Trust and the words “A trust governed under the laws of the Province of Québec governed by a Contract of Trust made as of the 12th day of July, 2006, as amended from time to time” or words of like effect;
  - (b) the name of the person to whom the Unit Certificate is issued as Unitholder;
  - (c) the number of Units represented thereby and whether or not the Units represented thereby are fully paid;
  - (d) that the Units represented thereby are transferable;

- (e) “The Units represented by this certificate are issued upon the terms and subject to the terms and conditions of the Contract of Trust, which Contract of Trust is binding upon all holders of Units and, by acceptance of this certificate, the holder assents to the terms and conditions of the Contract of Trust. A copy of the Contract of Trust, pursuant to which this certificate and the Units represented thereby are issued, may be obtained by a Unitholder on demand and without fee from the head office of the Trust” or words of like effect; and
- (f) “For information as to personal liability of a Unitholder, see the reverse side of this certificate” or words of like effect.

7.21.2 Until otherwise determined by the Trustees, each such certificate shall legibly set forth on the reverse side thereof, inter alia, the following:

- (a) “The Contract of Trust provides that no Unitholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the assets of the Trust or the obligations or the affairs of the Trust and all such persons shall look solely to the assets of the Trust for satisfaction of claims of any nature arising out of or in connection therewith and the assets of the Trust only shall be subject to levy or execution”, or words of like effect; and
- (b) appropriate forms of notice of exercise of the right of redemption and of powers of attorney for transferring Units.

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

## **7.22 Register of Unitholders**

A register (the “**Register**”) shall be kept at the principal office in Montréal, Québec of the Trust, which Register shall contain the names and addresses of the Unitholders, the respective numbers of Units held by them, the certificate numbers of certificates representing such Units and a record of all transfers and redemptions thereof. Only Unitholders whose certificates are so recorded shall be entitled to receive distributions or to exercise or enjoy the rights of Unitholders hereunder. The Trustees shall have the right to treat the person registered as a Unitholder on the Register as the owner of such Units for all purposes, including payment of any distribution, giving notice to Unitholders and determining the right to attend and vote at meetings of Unitholders.

## **7.23 Successors in Interest to Unitholders**

Any person purporting to become entitled to any Units as a consequence of the death, bankruptcy or incompetence of any Unitholder or otherwise by operation of law, shall be recorded in the Register as the holder of such Units, but until such record is made, the Unitholder of record shall continue to be and shall be deemed to be the holder of such Units for all purposes whether or not the Trust, the Trustees or the Transfer Agent or registrar of the Trust shall have actual or other notice of such death, bankruptcy, incompetence or other event and any person becoming entitled to such Units shall be bound by every notice or other document in respect of the Units which shall have been duly given to the person from whom such person derives title to such Units. Once such record is made, the Trustees shall deal with the new holder of such units as Unitholder from thereon and shall have no liability to any other person purporting to have been entitled to the Units prior to the making of such record.

## **7.24 Units Held Jointly or in Fiduciary Capacity**

The Trust may treat two or more persons holding any Unit as joint tenants of the entire interest therein unless the ownership is expressly otherwise recorded in the Register, but no entry shall be made in the Register that any person is in any other manner entitled to any future, limited or contingent interest in any Unit; provided, however, that any person recorded in the Register as a Unitholder may, subject to the provisions herein contained, be described in the

Register as a fiduciary of any kind and any customary words may be added to the description of the holder to identify the nature of such fiduciary relationship.

### **7.25 Performance of Trusts**

None of the Trustees, the officers of the Trust, the Unitholders, the Transfer Agent, the registrar or other agent of the Trust or the Trustees shall have a duty to inquire into any claim that a transfer of a Unit or other security of the Trust was or would be wrongful or that a particular adverse person is the owner of or has an interest in the Unit or other security or any other adverse claim, or be bound to see to the performance of any trust, express, implied or of any charge, pledge or equity to which any of the Units or other securities or any interest therein are or may be subject, or to ascertain or inquire whether any sale or transfer of any such Units or other securities or interest therein by any such Unitholder or holder of such security or his personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein, except for the person recorded as Unitholder of such security.

### **7.26 Lost Unit Certificates**

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

### **7.27 Death of Unitholders**

The death of a Unitholder during the continuance of the Trust shall not terminate the Trust or give the personal representatives or the heirs of the estate of the deceased Unitholder a right to an accounting or to take any action in the courts or otherwise against other Unitholders or the Trustees, officers of the Trust or the Trust Property, but shall only entitle the personal representatives or the heirs of the estate or succession of the deceased Unitholder to demand and receive, pursuant to the provisions of Section 7.23, a new Unit Certificate in place of the Unit Certificate held by the deceased Unitholder, and upon the acceptance thereof such personal representatives or the heirs of the estate or succession of the deceased Unitholder shall succeed to all rights of the deceased Unitholder under this Contract of Trust.

### **7.28 Unclaimed Payments**

In the event that the Trustees hold any amounts to be paid to Unitholders under ARTICLE 11 or otherwise because such amounts are unclaimed or cannot be paid for any reason, neither the Trustees nor any distribution disbursing agent shall be under any obligation to invest or reinvest the same and shall only be obligated to hold the same in a current or other non-interest bearing account with a chartered bank or trust company, pending payment to the person or persons entitled thereto. The Trustees shall, as and when required by law, and may at any time prior to such required time, pay all or part of such amounts so held to a court in the province where the Trust has its office or to the Public Curator (or other similar government official or agency) in the province where the Trust has its office whose receipt shall be a good release and discharge of the obligations of the Trustees.

## 7.29 Purchase of Units

The Trust shall be entitled to purchase for cancellation at any time the whole or from time to time any part of the outstanding Units, at a price per Unit (or fraction of a Unit, if applicable), and on a basis determined by the Trustees, the whole in compliance with all applicable securities regulatory laws, regulations and policies and the rules and policies of any applicable stock exchange.

## 7.30 Take-Over Bids

- 7.30.1 If within 120 days after the date of a take-over bid, the bid is accepted by the Unitholders of not less than 90% of the outstanding Units, other than Units held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this section, to acquire the Units held by the dissenting offerees.
- 7.30.2 An offeror may acquire Units held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that:
- (a) the offerees holding more than 90% of the Units to which the bid relates accepted the take-over bid;
  - (b) the offeror is bound to take up and pay for or has taken up and paid for the Units of the offerees who accepted the take-over bid;
  - (c) a dissenting offeree is required to elect:
    - (i) to transfer his Units to the offeror on the terms on which the offeror acquired the Units of the offerees who accepted the take-over bid; or
    - (ii) to demand payment of the fair value of his Units in accordance with subsections 7.30.8 to 7.30.16 by notifying the offeror within 20 days after he receives the offeror's notice;
  - (d) a dissenting offeree who does not notify the offeror in accordance with subsection 7.30.2(c)(ii) is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid; and
  - (e) a dissenting offeree must send his Units to which the take-over bid relates to the Trust within 20 days after he receives the offeror's notice.
- 7.30.3 Concurrently with sending the offeror's notice under subsection 7.30.2, the offeror shall send to the Trust a notice of adverse claim disclosing the name and address of the offeror and the name of the dissenting offeree with respect to each Unit held by a dissenting offeree.
- 7.30.4 A dissenting offeree to whom an offeror's notice is sent under subsection 7.30.2 shall, within 20 days after he receives that notice, send his Unit Certificate(s) to the Trust.
- 7.30.5 Within 20 days after the offeror sends an offeror's notice under subsection 7.30.2, the offeror shall pay or transfer to the Trust the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subsection 7.30.2(c)(i).
- 7.30.6 The Trust is deemed to hold for the benefit of the dissenting offeree the money or other consideration it receives under subsection 7.30.5, and the Trust shall deposit the money in a

separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation (or any successor thereof) or guaranteed by the Québec Deposit Insurance Board (or any successor thereof), and shall place the other consideration in the custody of a chartered bank or trust company.

- 7.30.7 Within 30 days after the offeror sends an offeror's notice under subsection 7.30.2, the Trust shall:
- (a) issue to the offeror a Unit Certificate in respect of the Units that were held by the dissenting offerees;
  - (b) give to each dissenting offeree who elects to accept the take-over bid terms under subsection 7.30.2(c)(i) and who sends his Unit Certificates as required under subsection 7.30.4, the money or other consideration to which he is entitled, disregarding fractional Units, if any, which may be paid for in money; and
  - (c) send to each dissenting offeree who has not sent his Unit Certificates as required under subsection 7.30.4 a notice stating that: (i) his Units have been cancelled; (ii) the Trust or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his Units; and (iii) the Trust will, subject to the provisions of subsections 7.30.8 to 7.30.16, send that money or other consideration to him forthwith after receiving his Units.
- 7.30.8 If a dissenting offeree has elected to demand payment of the fair value of his Units under subsection 7.30.2(c)(ii), the offeror may, within 20 days after it has paid the money or transferred the other consideration under subsection 7.30.5, apply to a court to fix the fair value of the Units of that dissenting offeree.
- 7.30.9 If an offeror fails to apply to a court under subsection 7.30.8, a dissenting offeree may apply to a court for the same purpose within a further period of 20 days.
- 7.30.10 Where no application is made to a court under subsection 7.30.9 within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer his Units to the offeror on the same terms that the offeror acquired the Units from the offerees who accepted the take-over bid.
- 7.30.11 An application under subsections 7.30.8 or 7.30.9 shall be made to a court having jurisdiction in the place where the Trust has its office or in the province where the dissenting offeree resides if the Trust carries on its affairs in that province.
- 7.30.12 A dissenting offeree is not required to give security for costs in an application made under subsections 7.30.8 or 7.30.9.
- 7.30.13 On an application under subsections 7.30.8 or 7.30.9:
- (a) all dissenting offerees referred to in subsection 7.30.2(c)(ii) whose Units have not been acquired by the offeror shall be joined as parties and shall be bound by the decision of the court; and
  - (b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his right to appear and be heard in person or by counsel.
- 7.30.14 On an application to a court under subsections 7.30.8 or 7.30.9 the court may determine whether any other person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the Units of all dissenting offerees.

- 7.30.15 A court may, in its discretion, appoint one or more appraisers to assist the court to fix a fair value for the Units of a dissenting offeree.
- 7.30.16 The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount for his Units as fixed by the court.
- 7.30.17 In connection with proceedings under this Section 7.30, a court may make any order it thinks fit and, without limiting the generality of the foregoing, it may:
- (a) fix the amount of money or other consideration that is required to be held in trust under subsection 7.30.6;
  - (b) order that money or other consideration be held in trust by a person other than the Trust; and
  - (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his Unit Certificates under subsection 7.30.4 until the date of payment.

### **7.31 Power of Attorney**

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

- 7.31.1 this Contract of Trust, any amendment to this Contract of Trust and any other instrument required or desirable to qualify, continue and keep in good standing the Trust as a “mutual fund trust” for the purpose of the Tax Act;
- 7.31.2 any instrument, deed, agreement or document in connection with carrying on the activities and affairs of the Trust as authorized in this Contract of Trust;
- 7.31.3 all conveyances, transfers and other documents required in connection with the dissolution, liquidation or termination of the Trust in accordance with the terms of this Contract of Trust; and
- 7.31.4 any and all elections, determinations or designations whether jointly with third parties or otherwise, under the Tax Act or any other legislation or similar laws of Canada or of any other jurisdiction in respect of the affairs of the Trust or of a Unitholder’s interest in the Trust.

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

### **7.32 Unit Option Plan**

- 7.32.1 Subject to receipt of all necessary regulatory approvals and approval of a majority of the Independent Trustees pursuant to Section 4.3, the Trustees may, in their discretion, establish or amend any Unit Option Plan for the Trustees, officers or employees of the Trust or any Subsidiary of the Trust. Upon approval of any Unit Option Plan, the Governance Committee may, upon receiving authority from the Trustees, recommend to the Trustees the granting of options upon the terms and subject to the conditions set forth in such plan.
- 7.32.2 Immediately after the issuance of a Certificate of Arrangement to Capital ABTB Inc. under the *Canada Business Corporations Act*, and the approval of the Plan of Arrangement to be entered

into between Capital ABTB Inc., the Trust and TB Subsidiary Trust, the Trustees shall be authorized to issue Unit purchase options in exchange for outstanding common shares purchase options of Capital ABTB Inc. pursuant to the terms and conditions of the Plan of Arrangement.

### **7.33 Unitholders Right Plan**

Subject to receipt of all necessary regulatory approvals, the Trustees may, in their discretion, establish or amend any Unitholders right plan.

### **7.34 Distribution Reinvestment Plan**

Subject to receipt of all necessary regulatory approvals, the Trustees may, in their discretion, establish or amend any distribution reinvestment plan.

## **ARTICLE 8 MEETINGS OF UNITHOLDERS**

### **8.1 Annual Meeting**

There shall be an annual meeting of the Unitholders at such time and place in Canada as the Trustees shall prescribe for the purpose of electing Trustees, appointing or removing the Auditors, delivering the financial statements of the Trust for the Fiscal Year before the Unitholders and transacting such other business as the Trustees may determine or as may properly be brought before the meeting. The annual meeting of Unitholders shall be held after delivery to the Unitholders of the annual report referred to in Section 17.7 and, in any event, within 180 days after the end of each Fiscal Year.

### **8.2 Other Meetings**

- 8.2.1 The Trustees shall have power at any time to call special meetings of the Unitholders at such time and place in Canada as the Trustees may determine. Unitholders holding in the aggregate not less than 10% of the outstanding Units of the Trust may requisition the Trustees in writing to call a special meeting of the Unitholders for the purposes stated in the requisition. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Unitholders for the election of successor Trustees, failing which any interested person (including a Unitholder) may avail itself of its rights under the Civil Code to request a court of competent jurisdiction to appoint replacement Trustees. The requisition shall state in reasonable detail the business to be transacted at the special meeting and shall be sent to each of the Trustees.
- 8.2.2 Upon receiving the requisition, the Trustees or the officers, as the case may be, shall call a meeting of Unitholders to transact the business referred to in the requisition, unless:
- (a) a record date for a meeting of the Unitholders has been fixed and notice thereof has been given to each stock exchange in Canada on which the Units are listed for trading;
  - (b) the Trustees have called a meeting of the Unitholders and have given notice thereof pursuant to Section 8.3; or
  - (c) in connection with the business as stated in the requisition:
    - (i) it clearly appears to the Trustees, acting reasonably, that the matter covered by the requisition is submitted by the Unitholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the Trust, the Trustees, the officers of the Trust or its other Unitholders, or primarily for

the purpose of promoting general economic, political, racial, religious, social or similar causes;

- (ii) the Trust, at the Unitholder's request, previously included the matter covered by a requisition in an information circular relating to a meeting of Unitholders held within two years preceding the receipt of such request and the Unitholder failed to present the matter, in person or by proxy, at the meeting;
- (iii) substantially the same matter covered by the requisition was already submitted to Unitholders in an information circular (including a dissident's information circular) relating to a meeting of Unitholders held within two years preceding the receipt of the Unitholder's request and the matter covered by the requisition was defeated; or
- (iv) the rights conferred by this Section 8.2 are being abused to secure publicity.

8.2.3 Subject to the foregoing provisions, if the Trustees do not, within 21 days after receiving the requisition, call a meeting, any Unitholder who signed the requisition may call the meeting in accordance with the provisions of Sections 8.3 and 8.7 and the regulations, *mutatis mutandis*. The phrase "meeting of the Unitholders" wherever it appears in this Contract of Trust shall mean and include both an annual meeting and any other meeting of Unitholders.

### **8.3 Notice of Meeting of Unitholders**

Notice of all meetings of the Unitholders shall be mailed or delivered by the Transfer Agent or the Trustees to each Unitholder at his address appearing in the Register, to each Trustee and to the Auditors, not less than 21 days nor more than 50 days (or within such other delays as required by law or relevant stock exchange) before the meeting. Notice of any meeting of Unitholders shall state the time and place where the meeting is to be held and shall state briefly the general nature of the business to be transacted at such meeting, but it shall not be necessary for the notice to set out the terms of any resolution, and shall otherwise include such information as would be provided to shareholders of a corporation governed by the Canada Business Corporations Act in connection with a meeting of shareholders. Notice of any meeting of the Unitholders shall state the purposes of the meeting. Any adjourned meeting, other than a meeting adjourned for lack of a quorum under Section 8.4, may be held as adjourned without further notice. A Unitholder or any other person entitled to notice of a meeting of Unitholders may in any manner waive notice of the meeting, and such waiver, whether given before or after the meeting, shall cure any default in the giving of such notice. Attendance at a meeting of Unitholders shall constitute a waiver of notice unless the Unitholder or other person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not properly called.

### **8.4 Quorum and Chairman**

8.4.1 A quorum for any meeting of Unitholders shall be individuals present not being less than two in number (one before Closing) and being Unitholders or representing Unitholders by proxy who hold in the aggregate not less than 5% of the total number of outstanding Units, provided that if the Trust has only one Unitholder, the Unitholder present in person or by proxy constitutes a meeting and a quorum for such meeting. If a quorum of Unitholders is not constituted within 30 minutes within the time fixed for holding any meeting of Unitholders, the meeting, if convened upon the request of the Unitholders, shall be terminated, but in any other case the meeting shall be adjourned by the Chairman to such day being not less than 7 days later and to such place and time as may be determined by the Chairman of the meeting. It shall not be necessary to give notice of the adjourned meeting, other than by an announcement at the earlier meeting that is adjourned. If at such adjourned meeting a quorum as above defined is not present, the Unitholders present either personally or by proxy shall form a quorum, and any business may be brought before or dealt with at such an adjourned meeting which might have been brought or dealt with at the original meeting in accordance with the notice calling same.

- 8.4.2 If a quorum is present at the opening of a meeting, the Unitholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.
- 8.4.3 The chairman of any annual or special meeting of Unitholders shall be the chairman of the Trustees. In the absence of the Chairman of Trustees, any officer of the Trust or any Trustee determined by the Trustees shall be the chairman of any meeting of Unitholders. If there are neither any Trustees, nor officers of the Trust, any of the Unitholders calling the meeting pursuant to Section 8.2 may be the chairman. The chairman of the meeting shall appoint an individual, who need not be a Unitholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Unitholders, may be appointed by the chairman of the meeting.

## **8.5 Voting**

- 8.5.1 Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit shall entitle the Unitholder to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders shall, except as otherwise required by this Contract of Trust or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. Every question submitted to a meeting of Unitholders shall be decided in the first place by a majority of the votes cast on a show of hands, unless a poll is demanded, in which case a poll shall be taken. At any such meeting, unless a poll is demanded, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously or by a particular majority, or lost or not carried by a particular majority, shall be conclusive evidence of the fact. If a poll is demanded concerning the election of a chairman of the meeting or an adjournment, it shall be taken immediately upon request and, in any other case, it shall be taken at such time as the chairman of the meeting may direct. The poll shall be taken in such manner as the chairman of the meeting may direct. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 8.5.2 At any meeting of Unitholders, on a show of hands, every person who is present and entitled to vote, whether as a Unitholder or as a proxy, shall have one vote. At any meeting of Unitholders on a poll, each Unitholder present in person or represented by a duly appointed proxy shall have one vote for each Unit held on the applicable Record Date, except as otherwise set forth herein.
- 8.5.3 The chairman of a meeting shall be entitled to vote in respect of Units held by the chairman or represented by the chairman by proxy. In the case of an equality of votes, the chairman shall not have a casting vote and the resolution shall be deemed to be defeated.

## **8.6 Matters on which Unitholders Shall Vote**

None of the following shall occur unless the same has been duly approved by the Unitholders at a meeting duly called and held:

- 8.6.1 except as provided in Sections 3.1, 3.6 or 3.7, the appointment, election or removal of Trustees;
- 8.6.2 except as provided in Section 17.5, the appointment or removal of the Auditors;
- 8.6.3 any amendment to the Contract of Trust (except as provided in Sections 6.4, 13.1 or 13.4);
- 8.6.4 the sale or transfer of the properties or assets of the Trust as an entirety or substantially as an entirety (other than as a part of an internal reorganization of the properties or assets of the Trust as approved by the Trustees);
- 8.6.5 an increase or decrease by the Unitholders in the number of Trustees pursuant to Section 3.1 (or any authorization by the Unitholders to the Independent Trustees to effect such increase or decrease and, if applicable, to appoint additional Independent Trustees pursuant to Section 3.1;

- 8.6.6 the distribution pursuant to Section 15.2 of all the Trust Property;
- 8.6.7 the termination of the Trust; or
- 8.6.8 any action upon any matter, which under applicable law (including policies of Canadian securities commissions) or applicable stock exchange rules or policies, would require approval of a majority of the votes cast by the holders of TB Subsidiary Trust Units had TB Subsidiary Trust been a reporting issuer (or the equivalent) in the jurisdictions in which the Trust is a reporting issuer (or the equivalent) and had TB Subsidiary Trust Units been listed on the stock exchanges where the Units are listed for trading, respectively.

Except with respect to the foregoing matters specified in this Section 8.6 or Sections 3.1, 13.2, 13.3, 13.4 or 15.2 or matters submitted to a vote of the Unitholders by the Trustees, no vote of the Unitholders shall in any way bind the Trustees. However, nothing in this section shall prevent the Trustees from submitting any matter which they deem appropriate to a vote of Unitholders.

### **8.7 Record Dates**

For the purpose of determining the Unitholders who are entitled to receive notice of and vote at any meeting or any adjournment thereof, or who are entitled to receive any distribution, or for the purpose of any other action, the Trustees may from time to time, without notice to Unitholders, close the transfer books for such period, not exceeding 35 days, as the Trustees may determine; or with or without closing the transfer books the Trustees may fix a date not more than 60 days prior to the date of any meeting of the Unitholders or distribution or other action as the Record Date for the determination of Unitholders entitled to receive notice of and to vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as Unitholders of record for purposes of such other action, as the case may be, and any Unitholder who was a Unitholder at the time so fixed shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution, even though he has since that date disposed of his Units, and no Unitholder becoming such after that date shall be entitled to receive notice of and vote at such meeting or any adjournment thereof or to receive such distribution or to be treated as a Unitholder of record for purposes of such other action. If, in the case of any meeting of Unitholders, no Record Date with respect to voting has been fixed by the Trustees, the record date for voting shall be 5:00 p.m. on the last business day before the meeting.

### **8.8 Proxies**

- 8.8.1 Whenever the vote or consent of Unitholders is required or permitted under this Contract of Trust, such vote or consent may be given either directly by the Unitholder or by a proxy. The instrument appointing a proxy must be in writing and either substantially in a form which may be approved by the Trustees acting reasonably or as may be satisfactory to the chairman of the meeting at which it is sought to be exercised. The instrument of proxy must be executed by the Unitholder giving the proxy or his mandatory duly authorized in writing and, if given on behalf of joint holders, must be executed by all of them and may be revoked by any of them, and, if given by a Unitholder which is a body corporate, must be executed on its behalf by a person duly authorized in writing. Any person may be appointed a proxy, whether or not that person is a Unitholder. The Trustees, on behalf of the Trust, may solicit instruments of proxy from the Unitholders or any of them in respect of any matter requiring or permitting the Unitholders' vote or consent. An instrument of proxy shall be deposited with the chairman of the meeting before any vote is cast under its authority or at such earlier time or in such manner as the Trustees may prescribe from time to time.
- 8.8.2 An instrument of proxy executed in compliance with the foregoing shall be valid unless challenged at the time of or prior to its exercise and the person challenging the instrument shall have the burden of proving, to the satisfaction of the chairman of the meeting at which the instrument is proposed to be used, that the instrument of proxy is invalid. Any decision of the chairman of the meeting in respect of the validity of an instrument of proxy shall be final and

binding upon all persons. An instrument of proxy shall be valid only at the meeting with respect to which it was solicited or any adjournment thereof.

- 8.8.3 A vote cast in accordance with any proxy shall be valid notwithstanding the death, incapacity, insolvency or bankruptcy of the Unitholder giving the proxy or the revocation of the proxy unless written notice of the death, incapacity, insolvency, bankruptcy or revocation of the proxy has been received by the chairman of the meeting prior to the time the vote is cast.
- 8.8.4 The Trustees may adopt, amend or repeal such rules relating to the appointment of proxy holders and the solicitation, execution, validity, revocation and deposit of proxies, as they in their discretion from time to time determine.

### **8.9 Resolution in Lieu of Meeting**

A resolution signed in writing by all of the Unitholders entitled to vote on that resolution at a meeting of Unitholders is as valid as if it had been passed at a meeting of Unitholders.

### **8.10 Personal Representatives**

If a Unitholder is deceased, his personal representative, upon filing with the secretary of the meeting such proof of his appointment as the secretary considers sufficient, shall be entitled to exercise the same voting rights at any meeting of Unitholders as the Unitholder would have been entitled if he were living and for the purpose of the meeting shall be considered to be a Unitholder. Subject to the provisions of the will of a deceased Unitholder, if there is more than one personal representative, the provisions of Section 7.24 relating to joint holders shall apply. When any Unit is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Unit, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote purporting to be executed by or on behalf of a Unitholder shall be deemed valid unless challenged at or prior to its exercise, and the burden or proving invalidity shall rest on the challenger.

### **8.11 Attendance by Others**

Any Trustee, officer of the Trust, representative of the Auditors or other individual approved by the Trustees may attend and speak at any meeting of Unitholders.

### **8.12 Conduct of Meetings**

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

### **8.13 Binding Effect of Resolutions**

Every resolution passed at a meeting in accordance with the provisions of this ARTICLE 8 shall be binding upon all Unitholders, whether present at or absent from the meeting. Subject to the provisions of Section 8.6, no action taken by Unitholders at any meeting of Unitholders shall in any way bind the Trust or the Trustees without the approval of the Trustees.

### **8.14 Actions by Unitholders**

Any action, change, approval, decision or determination required or permitted to be taken or made by the Unitholders hereunder shall be effected by a resolution passed by the Unitholders at a duly constituted meeting (or a Special Resolution in lieu thereof) in accordance with this ARTICLE 8.

### 8.15 Meaning of Special Resolution

- 8.15.1 The expression “**Special Resolution**” when used in this Contract of Trust means a resolution passed as a special resolution at a meeting of Unitholders (including an adjourned meeting) duly convened for that purpose and held in accordance with the provisions of this section at which two or more individuals present in person either holding personally or representing as proxies not less in aggregate than 5% of the total number of votes attached to Units then outstanding and passed by the affirmative votes of the holders of not less than 66 2/3% of the Units represented at the meeting and voted on a poll upon such resolution.
- 8.15.2 Notwithstanding subsection 8.15.1, if at any meeting at which a Special Resolution is proposed to be passed, the holders of 5% of the aggregate number of votes attached to Units outstanding are not present in person or by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Unitholders, shall be dissolved. In any other case, it shall stand adjourned to such date, being not less than 21 nor more than 60 days later and to such place and time as may be appointed by the chairperson of the meeting. Not less than 10 days' prior notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 8.3. Such notice shall state that at the adjourned meeting the Unitholders present in person or by proxy shall form a quorum but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Unitholders present in person or by proxy shall form a quorum and may transact the business for which the meeting was originally convened and a resolution proposed at such adjourned meeting and passed by the requisite vote as provided in subsection 8.15.1 shall be a Special Resolution within the meaning of this Contract of Trust, notwithstanding that the holders of less than 5% of the aggregate number of Units then outstanding are present in person or by proxy at such adjourned meeting.
- 8.15.3 Votes on a Special Resolution shall always be given on a poll and no demand for a poll on a Special Resolution shall be necessary.

### 8.16 Meaning of Outstanding

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

- 8.16.1 when a new certificate has been issued in replacement of a Unit Certificate which has been lost, stolen, mutilated or destroyed, only one of such Unit Certificates shall be counted for the purposes of determining the number of Units outstanding; and
- 8.16.2 for the purpose of any provision of this Contract of Trust entitling holders of outstanding Units to vote, sign consents, requisitions or other instruments or take any action under this Contract of Trust, Units owned, directly or indirectly, by the Trust or any Subsidiary thereof shall be disregarded, except that:
- (a) for the purpose of determining whether the Trustees shall be protected in relying on any such vote, consent, requisition or other instrument or action only the Units which the Trustees know are so owned shall be so disregarded; and
  - (b) Units so owned which have been hypothecated, mortgaged or pledged in good faith other than to the Trust or a Subsidiary thereof shall not be so disregarded if the hypothecatee, mortgagee or pledgee can establish to the satisfaction of the Trustees that the hypothecatee, mortgagee or pledgee's right to vote such Units in his or her discretion is free from the control of the Trust or any affiliate thereof.

## **ARTICLE 9 MEETINGS OF THE TRUSTEES**

### **9.1 Trustees May Act Without Meeting**

The Trustees (or, when only the approval of a majority of all of the Independent Trustees is required, the Independent Trustees) may act with or without a meeting. Any action of the Trustees (or the Independent Trustees in the circumstances mentioned in the preceding sentence) may be taken at a meeting by vote or without a meeting by written consent or resolution signed by all of the Trustees, or all of the Independent Trustees, as the case may be. Any such consent or resolution may be signed in counterpart.

### **9.2 Notice of Meeting**

Meetings of the Trustees may be held from time to time upon the giving of notice by the Chairman, the Secretary or other officer of the Trust or any Trustee. Regular meetings of the Trustees may be held without call or notice at a time and place fixed in accordance with the regulations. Notice of the time and place of any other meetings shall be mailed or otherwise verbally, by telephone or by other means of communication given not less than 24 hours before the meeting, but may be waived in writing by any Trustee either before or after such meeting. Notice of a meeting of Trustees need not specify the purpose of or the business to be transacted at the meeting. If a quorum of Trustees is present, the Trustees may, without notice, hold a meeting immediately following an annual meeting of Unitholders. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Each committee of Trustees appointed by the Trustees may adopt its own rules or procedures for the calling, conduct, adjournment and regulation of the meetings of such committees as it sees fit and may amend or repeal such rules or procedures from time to time; provided, however, that the regulations and any such rules or procedures shall not be inconsistent with this Contract of Trust.

### **9.3 Place of Meeting**

Meetings of the Trustees shall be held at any place in Canada. A Trustee who attends a meeting of Trustees, in person or by telephone or other communication facilities by means of which all persons participating in the meeting can hear each other, is deemed to have consented to the location of the meeting except when he or she attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not lawfully called or convened.

### **9.4 Chairman**

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

### **9.5 Quorum**

Subject to the provisions hereof relating to Independent Trustee Matters, a quorum for all meetings of the Trustees or any committee thereof shall be a majority of the Trustees or of the Trustees on such committee, as the case may be, present in person, provided that at least one of whom shall, except for the Audit Committee and the Governance Committee (a majority of whose members must be Independent Trustees), be an Independent Trustee and that a majority of the Trustees comprising the quorum be residents. Notwithstanding any vacancy among the number of Trustees, a quorum of Trustees may exercise all of the powers of the Trustees. In addition, in order to transact any Independent Trustee Matter, a majority of the Independent Trustees or of the Independent Trustees on such committee, as the case may be, must be present at the meeting of the Trustees or of the committee and must be residents.

## 9.6 Adjourned Meeting

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

## 9.7 Voting at Meetings

Questions arising at any meeting of the Trustees or of a committee of Trustees shall, unless otherwise specified herein, be decided by a majority of the votes cast provided, however, that the approval required with respect to any Independent Trustee Matter shall require only the approval of a majority of all of the Independent Trustees who have no interest in such matter. In the case of an equality of votes at any meeting of Trustees or of a committee of Trustees, the chairman of the meeting, who shall be the Chairman if present, shall not have a second or casting vote in addition to his original vote, if any.

## 9.8 Meeting by Telephone

Any Trustee may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and a Trustee so participating shall be considered for the purposes of this Contract of Trust to be present in person at that meeting.

# ARTICLE 10 COMMITTEES OF TRUSTEES

## 10.1 General

The Trustees may appoint from among their number one or more committees of Trustees for any purpose the Trustees deem advisable from time to time and may, subject to applicable law and to any provision hereof to the contrary, delegate to such committee or committees any of their powers. Subject to the provisions hereof which may require that a committee be comprised of a majority of Independent Trustees, all committees shall be comprised of a majority of Trustees, provided that a majority of the Trustees appointed to any committee shall be residents. The Trustees shall have the power to appoint, employ or contract with any person for any matter relating to the Trust or its properties or assets or affairs. The Trustees may, acting in good faith and with prudence and diligence, grant or delegate such authority to a Property Manager as the Trustees may, subject to applicable law, in their sole discretion deem necessary or desirable without regard to whether such authority is normally granted or delegated by trustees. The Trustees shall have the power to determine the term and compensation of a Property Manager or any other person whom they may employ or with whom they may contract. In no event shall the Trustees delegate authority with respect to any Independent Trustee Matter. The Trustees shall have the power to grant powers of attorney as required in connection with any financing or security relating thereto.

## 10.2 Audit Committee

- 10.2.1 The Trustees shall, subject to applicable law, appoint an audit committee (the “**Audit Committee**”) to consist of not less than three Trustees, all of whom shall be Independent Trustees and who shall meet any requirements imposed by applicable law for the purpose of membership on such committee.
- 10.2.2 The Auditors are entitled to receive notice of every meeting of the Audit Committee and, at the expense of the Trust, to attend and be heard thereat and, if so requested by a member of the Audit Committee, shall attend any meeting of the Audit Committee held during the term of office of the

Auditors. Questions arising at any meeting of the Audit Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Audit Committee. The Auditors or any member of the Audit Committee may call a meeting of the Audit Committee upon not less than 24-hours' notice.

- 10.2.3 Where for any reason a member of the Audit Committee is disqualified from voting on or participating in a decision (and no such member shall be disqualified with respect to any matter referred to in subsection 4.9.5), any other Trustee who is disinterested and is not already a member of the Audit Committee may be designated by the Trustees to act as an alternate, only in regard to such specific matter.
- 10.2.4 Subject to the provisions hereof relating to Independent Trustee Matters and notwithstanding the appointment of the Audit Committee, the Trustees may consider and approve any matter which the Audit Committee has the authority to consider or approve.

### 10.3 Governance Committee

- 10.3.1 The Trustees shall, subject to applicable law, appoint a governance committee (the "**Governance Committee**") to consist of not less than three Trustees, the majority of whom shall be Independent Trustees.
- 10.3.2 Questions arising in any meeting of the Governance Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Governance Committee. Any member of the Governance Committee may call a meeting of the Governance Committee upon not less than 24-hours' notice.
- 10.3.3 Where for any reason a member of the Governance Committee is disqualified from voting on or participating in a decision (and no such member shall be disqualified with respect to any matter referred to in subsection 4.9.5), any other Trustee who is disinterested and is not already a member of the Governance Committee may be designated by the Trustees to act as an alternate.
- 10.3.4 Subject to the provisions hereof relating to Independent Trustee Matters and notwithstanding the appointment of the Governance Committee, the Trustees may consider and approve any matter which the Governance Committee has the authority or responsibility to consider or approve.

### 10.4 Investment Committee

- 10.4.1 The Trustees may, subject to applicable law, appoint an investment committee (the "**Investment Committee**") to consist of not less than three Trustees.
- 10.4.2 The duties of the Investment Committee will be to recommend to the Trustees whether or not to approve or reject proposed transactions, including proposed acquisitions and dispositions of investments by the Trust and borrowings (including the assumption or granting of any immovable hypothec or mortgage by the Trust). Subject to the provisions hereof relating to Independent Trustee Matters, the Trustees may delegate to the Investment Committee the power to approve or reject proposed acquisitions, dispositions or borrowings, as the case may be, provided that the Trustees must approve any transaction where the acquisition, disposition or borrowing, as the case may be, would be in or for an amount in excess of 15% of Adjusted Unitholders' Equity. Investment Committee approval is not required for the renewal, extension or modification of any existing immovable hypothec.
- 10.4.3 Subject to the provisions hereof relating to Independent Trustee Matters, questions arising at any meeting of the Investment Committee shall be decided by a majority of the votes cast. Decisions may be taken by written consent signed by all of the members of the Investment Committee. Any

member of the Investment Committee may call a meeting of the Investment Committee on upon not less than 24-hours' notice.

- 10.4.4 Where for any reason a member of the Investment Committee is disqualified from voting on or participating in a decision (and no such member shall be disqualified with respect to any matter referred to in subsection 4.9.5), any Trustee who is disinterested and is not already a member of the Investment Committee may be designated by the Independent Trustees to act as an alternate.
- 10.4.5 Subject to the provisions hereof relating to Independent Trustee Matters and notwithstanding the appointment of the Investment Committee, the Trustees may consider and approve any matter which the Investment Committee has the authority to consider or approve.

### **10.5 Additional Committees**

The Trustees may create such additional committees as they, in their discretion, determine to be necessary or desirable for the purposes of properly governing the affairs of the Trust.

### **10.6 Management Services**

- 10.6.1 The Trustees may, in good faith and acting with prudence and diligence, exercise broad discretion in allowing the Manager to manage the affairs of the Trust, including, providing key personnel and administrative services and to act as agent for the Trust in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust.
- 10.6.2 The initial Manager shall be AMTB Management and the Trustees and officers shall be authorized to execute the Management Services Agreement and settle the terms and conditions of the appointment of AMTB Management. Such person who is appointed as Manager may also be a Trustee or an officer of the Trust, or any of their respective affiliates or associates.

### **10.7 Property Management**

The Trustees may, in good faith and acting with prudence and diligence, exercise broad discretion in allowing any Property Manager to manage the immovable properties of the Trust, including operating, maintaining, leasing and marketing the said properties, to act as agent for the Trust in respect thereof and to execute documents on behalf of the Trustees in respect thereof, all subject to the overriding authority of the Trustees over the management and affairs generally of the Trust. The Property Manager may include the Trustees and officers of the Trust, AMTB Management or their respective associates and affiliates.

### **10.8 Procedure**

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

## **ARTICLE 11 DISTRIBUTIONS**

### **11.1 Distributions by the Trust**

The Trust may distribute to Unitholders on each Distribution Date such percentage of the Distributable Income of the Trust for the month immediately preceding the month in which the Distribution Date falls, as the Trustees determine in their discretion, and, in the case of a distribution made on December 31st, the Trust may distribute an amount at least equal to its taxable income calculated prior to such distributions, in accordance with the next succeeding paragraph hereof.

On the last day of each Taxation Year, an amount equal to the net income of the Trust for such Taxation Year, determined in accordance with the provisions of the Tax Act other than Paragraph 82(1)(b) and Subsection 104(6) thereof, including net realized capital gains (other than (a) income and taxable capital gains of the Trust arising on or in connection with an *in specie* redemption of Units which are paid or payable by the Trust to redeeming Unitholders, (b) capital gains the tax on which may be offset by capital losses carried forward from prior years or is recoverable by the Trust and (c) net income and net realized capital gains of the Trust for the Taxation Year otherwise distributed or made payable to the Unitholders during such Taxation Year) and the non-taxable portion of net realized capital gains of the Trust, may be payable to Unitholders of record at the close of business on such day (whether or not such day is a Business Day).

The Trustees may designate and make payable any income or capital gains realized by the Trust as a result of the redemption of Units (including any income or capital gains realized by the Trust on the redemption of Units *in specie*) pursuant to Section 7.15 to the redeeming Unitholders in accordance with subsection 7.15.7.

Distributions, if any, payable to Unitholders pursuant to this ARTICLE 11 shall be deemed to be distributions of income of the Trust (including dividends), net realized taxable capital gains of the Trust, Trust capital or other items in such amounts as the Trustees, in their absolute discretion determine and shall be allocated to the Unitholder in the same proportions as distributions received by the Unitholder, subject to the discretion of the Trustees to adopt an allocation method which the Trustees consider to be more reasonable in the circumstances, including in accordance with subsection 7.15.7. For greater certainty it is hereby declared that any distribution of net realized capital gains of the Trust shall include the non-taxable portion of the capital gains of the Trust which are included in such distribution.

Distributions, if any, may be made on a Distribution Date proportionately to persons who are Unitholders as of the close of business on the record date for such distribution which shall be the last Business Day of the month immediately preceding the month in which the Distribution Date falls or such other date, if any, as is fixed by the Trustees in accordance with Section 8.7. Each year the Trust may deduct such amounts as are paid or payable to Unitholders for the year as is necessary to ensure that the Trust is not liable for income tax under Part I of the Tax Act in the related Taxation Year.

Distributions, if any, may be adjusted for amounts paid in prior periods if the actual Distributable Income for the prior periods is greater than or less than the estimates for the prior periods.

For greater certainty, it is hereby expressly declared that a Unitholder shall have the legal right to enforce payment of any amount which is stated to be payable to a Unitholder hereunder at the time such amount is made payable

### **11.2 Allocation**

Subject to the provisions of subsection 7.15.7, unless the Trustees otherwise determine, the: (a) net income of the Trust for a Taxation Year, determined in accordance with the provisions of the Tax Act other than paragraph 82(1)(b) and subsection 104(6) and (b) net realized capital gains of the Trust payable to Unitholders shall be allocated to the Unitholders for the purposes of the Tax Act in the same proportion as the total distributions made to Unitholders in the Taxation Year under Section 11.1. The Trustees shall in each year make such other

designations for tax purposes in respect of Distributable Income and other distributions that the Trustees consider to be reasonable in all of the circumstances.

### **11.3 Payment of Distributions**

- 11.3.1 Distributions shall be made by cheque payable to or to the order of the Unitholder or by electronic fund transfer or by such other manner of payment approved by the Trustees from time to time. The payment, if made by cheque, shall be conclusively deemed to have been made upon hand-delivery of a cheque to the Unitholder or to his agent duly authorized in writing or upon the mailing of a cheque by prepaid first-class mail addressed to the Unitholder at his address as it appears in the Register unless the cheque is not paid on presentation.
- 11.3.2 The Trust shall deduct or withhold from the distributions payable to any Unitholder such taxes as are required by law to be deducted or withheld from such distribution and the Trust shall remit such taxes to the appropriate governmental authorities within the times prescribed by law. Unitholders who are non-residents will be required to pay all withholding taxes payable in respect of any distributions of income by the Trust, whether such distributions are in the form of cash or additional Units. In the event of a distribution in the form of additional Units, the Trustees may sell Units of such non-resident Unitholder to pay the withholding taxes and to pay all of the Trustees' reasonable expenses with regard thereto and the Trustees shall have the power of attorney of such non-resident Unitholder to do so. Any such sale shall be made on any stock exchange on which the Units are then listed and upon such sale, the affected Unitholder shall cease to be the holder of such Units.
- 11.3.3 If the Trustees determine that the Trust does not have cash in an amount sufficient to make payment of the full amount of any distribution, the payment may include the issuance of additional Units having a value equal to the difference between the amount of such distribution and the amount of cash which has been determined by the Trustees to be available for the payment of such distribution.

### **11.4 Income Tax Matters**

For greater certainty, in computing the net income of the Trust for income tax purposes for any year, the Trust may claim the maximum amount available to it as deductions under the relevant law, including but not limited to maximum capital cost allowance, unless the Trustees determine otherwise.

### **11.5 Designations**

Subject to the foregoing, the Trustees shall make such designations, determinations and allocations for income tax purposes in respect of amounts paid or payable to Unitholders for such amounts that the Trustees consider to be reasonable, including designations relating to taxable dividends received by the Trust in the year on shares of taxable Canadian corporations, net taxable capital gains of the Trust in the year and foreign source income of the Trust for the year. Where permitted by the Tax Act, the Trustees will make designations under the Tax Act so that the amount distributed to a Unitholder but not deducted by the Trust would not be included in the Unitholder's income for the purposes of the Tax Act.

### **11.6 Distribution Reinvestment and Unit Purchase Plans**

Subject to receipt of all necessary regulatory approvals, the Trustees may in their sole discretion establish one or more distribution reinvestment plans or Unit purchase plans at any time providing for the voluntary investment by Unitholders of Distributable Income. Such plan may entitle those Unitholders that elect to participate to a bonus distribution as a reduction of capital of the Trust.

## **ARTICLE 12 FEES AND EXPENSES**

### **12.1 Expenses**

The Trust shall pay all expenses incurred in connection with the administration and management of the Trust and its investments out of the property of the Trust Property, including:

- 12.1.1 interest and other costs related to borrowed money;
- 12.1.2 fees and expenses of lawyers, accountants, Auditors, appraisers and other agents or consultants employed by or on behalf of the Trust or the Trustees;
- 12.1.3 fees and expenses of the Trustees;
- 12.1.4 fees and expenses connected with the acquisition, disposition and ownership of immovable property interests or secured loans or other property;
- 12.1.5 insurance as considered necessary by the Trustees (including liability insurance for the Trustees and Unitholders);
- 12.1.6 expenses in connection with payments of distributions of Units of the Trust;
- 12.1.7 expenses in connection with communications to Unitholders and other bookkeeping and clerical work necessary in maintaining relations with Unitholders;
- 12.1.8 expenses of changing or terminating the Trust;
- 12.1.9 fees and charges of stock exchanges, transfer agents, registrars, indenture trustees and other trustees and custodians;
- 12.1.10 all fees, expenses, taxes and other costs incurred in connection with the issuance, distribution, transfer and qualification for distribution to the public of Units and other required governmental filings;
- 12.1.11 all costs and expenses in connection with the incorporation or establishment, organization and maintenance of corporations and other entities formed to hold immovable property or other property of the Trust; and
- 12.1.12 any fees and expenses payable by the Trust under the Management Services Agreement and the Property Management Agreement.

### **12.2 Payment of Immovable Property and Brokerage Commissions**

The Trust may pay immovable property and brokerage commissions at commercial rates in respect of the acquisition and disposition of any investment acquired or disposed of by it.

### **12.3 Property Management, Leasing and Financing Fees**

The Trust may pay property management fees, leasing fees and financing fees in respect of any property forming part of the Trust Property.

**ARTICLE 13**  
**AMENDMENTS TO THE CONTRACT OF TRUST**

**13.1 Amendments by the Trustees**

The provisions of this Contract of Trust may be amended at any time by the Trustees without the consent, approval or ratification of or any prior notice to Unitholders, the Settlor or any other person:

- 13.1.1 for the purpose of ensuring continuing compliance with applicable laws, regulations, requirements or policies of any governmental authority having jurisdiction over the Trustees or over the Trust, including with respect to its status as a “unit trust”, a “mutual fund trust” and a “registered investment” under the Tax Act or the distribution of its Units;
- 13.1.2 to effect amendments that the Trustees consider necessary or desirable as a result of changes in taxation laws from time to time, including, without limiting the generality of the foregoing, amendments which may affect the Trust, the Unitholders or annuitants under a plan of which a Unitholder acts as trustee or carrier or which may permit the Trust to qualify for any status under the Tax Act which would benefit the Trust or Unitholders;
- 13.1.3 which, in the opinion of the Trustees, provide additional protection for the Unitholders;
- 13.1.4 to remove any conflicts or inconsistencies in this Contract of Trust or to make minor corrections which are, in the opinion of the Trustees, necessary or desirable and not prejudicial to the Unitholders;
- 13.1.5 which, in the opinion of the Trustees, are necessary or desirable to remove conflicts or inconsistencies between the disclosure in the Prospectus and this Contract of Trust;
- 13.1.5A which in the opinion of the Trustees, are necessary or desirable as a result of changes in accounting standards (including, without limitation, International Financial Reporting Standards) from time to time, which may affect the Trust or the Unitholders, including without limitation to ensure that the Units qualify as equity for purposes of International Financial Reporting Standards for January 1, 2010 and thereafter;
- 13.1.6 to effect amendments that the Trustees consider necessary or desirable to enable the Trust to issue Units for which the purchase price is payable on an instalment basis or to implement a unit option, purchase plan or rights plan, or a distribution reinvestment plan;
- 13.1.7 to create one or more additional classes of units solely to provide voting rights to holders of shares, units or other securities that are exchangeable for Units entitling the holder thereof to a number of votes not exceeding the number of Units into which the exchangeable shares, units or other securities are exchangeable or convertible but that do not otherwise entitle the holder thereof to any rights with respect to the Trust’s property or income other than a return of capital;
- 13.1.8 to effect amendments of a minor or clerical nature or to correct typographical mistakes, ambiguities or manifest omissions or errors, which amendments, in the opinion of the Trustees, are necessary or desirable and not prejudicial to the Unitholders; and
- 13.1.9 for any purpose (except one in respect of which a Unitholder vote is specifically otherwise required) if the Trustees are of the opinion that the amendment is not prejudicial to Unitholders and is necessary or desirable.

Notwithstanding the foregoing, no such amendment shall modify the right to vote attached to any Unit or the entitlement to distributions from the Trust provided hereunder (including those provided for in ARTICLE 11 and Section 15.2) without the consent of the holder of such Unit.

In addition, notwithstanding the foregoing, this Contract of Trust may be amended prior to Closing, for any purpose in the sole discretion of the Trustees.

### **13.2 Amendments by Unitholders**

Subject to the provisions of Sections 13.3 and 13.4, this Contract of Trust may be amended by the vote of a majority of the votes cast at a meeting of Unitholders called for that purpose.

### **13.3 Unitholder Vote by Special Resolution**

None of the following shall occur unless the same has been duly approved by Special Resolution of Unitholders at a meeting of Unitholders duly called and held for that purpose:

- 13.3.1 any amendment to this Section 13.3;
- 13.3.2 any exchange, reclassification or cancellation of all or part of the Units;
- 13.3.3 any amendment to change a right with respect to any outstanding Units of the Trust or to reduce the amount payable thereon upon termination of the Trust or to diminish or eliminate any voting rights pertaining thereto, including the removal or change of rights to distributions to Unitholders, the addition or removal or change of conversion privileges, options, transfer or pre-emptive rights, or the reduction or removal or a distribution preference or liquidation preference;
- 13.3.4 any amendment to the duration or term of the Trust;
- 13.3.5 any amendment to increase the maximum number of Trustees (to more than fifteen (15) Trustees) or to decrease the minimum number of Trustees (to less than five (5) Trustees), any change by the Unitholders in the number of Trustees within the minimum and maximum number of Trustees provided under Section 3.1, or any authorization by the Unitholders to the Trustees to effect such change and, if applicable, to appoint additional Independent Trustees within such minimum and maximum number of Trustees;
- 13.3.6 subject to the provisions of subsection 13.1.1, any constraint on the issue, transfer or ownership of Units or the change or removal of such constraints;
- 13.3.7 any amendment relating to the powers, duties, obligations, liabilities or indemnification of the Trustees;
- 13.3.8 any sale or transfer of the properties and assets of the Trust as an entirety or substantially as an entirety (other than as part of an internal reorganization of the Trust Property as approved by the Trustees);
- 13.3.9 any approval pursuant to subsection 8.6.6 or Section 15.2;
- 13.3.10 the combination, merger, amalgamation or arrangement of the Trust, directly or indirectly, with any other person or entity;
- 13.3.11 any amendment to Sections 6.1 or 6.2, except for any amendment set out in Section 6.3 or contemplated by subsection 13.1.9; or
- 13.3.12 any matter required to be passed by a “Special Resolution” under the Contract of Trust of TB Subsidiary Trust.

### **13.4 Amendment by the Sole Unitholder**

Notwithstanding the foregoing, so long as the Settlor is the sole Unitholder of the Trust, the Settlor may make any amendment to this Contract of Trust including this Section 13.4.

### **13.5 No Termination**

No amendment to or amendment and restatement of this Contract of Trust, whether pursuant to this ARTICLE 13 or otherwise, shall be construed as a termination of the Trust and the establishment of a new trust.

### **13.6 Notification of Amendment**

As soon as shall be practicable after the making of any amendment pursuant to this ARTICLE 13, the Trustees shall furnish written notification of the substance of such amendment to each Unitholder.

### **13.7 Trustees to Sign Amendment**

When a vote of the Unitholders approves an amendment to this Contract of Trust or when the Trustees may amend the Contract of Trust alone as provided herein, then the Trustees shall sign such documents as may be necessary to effect such amendment.

## **ARTICLE 14 SUPPLEMENTAL INDENTURES**

### **14.1 Provision for Supplemental Indentures for Certain Purposes**

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

- 14.1.1 modifying or amending any provisions of this Contract of Trust in the circumstances set forth in Section 13.1 where the Trustees may do so without the consent, approval or ratification of the Unitholders or any other person; and
- 14.1.2 modifying or amending any provisions of this Contract of Trust where the modification or amendment has been approved by resolution of a majority of votes cast at a meeting, or by Special Resolution of the Unitholders or, if required, with the consent of the Unitholders.

## **ARTICLE 15 TERMINATION OF THE TRUST**

### **15.1 Term of the Trust**

The term of the Trust shall commence on the date hereof and shall continue in full force and effect until no Trust Property is held by the Trustees, and the Trustees shall have throughout such term all the powers and discretions, expressed and implied, conferred upon them by law or by this Contract of Trust.

### **15.2 Distribution of Trust Property by Vote of Unitholders**

Notwithstanding the provisions of Section 13.1, but subject to applicable law, if there is an affirmative vote of Unitholders by Special Resolution at a meeting called for that purpose requiring that the Trustees distribute to the Unitholders all Trust Property, the Trustees will be bound and obligated to make such distribution to the Unitholders.

### **15.3 Effect of Termination**

Upon the termination of the Trust or the affirmative vote referred to in Section 15.2, the liabilities of the Trust shall be discharged with due speed and the net assets of the Trust shall be liquidated and the proceeds distributed proportionately to the Unitholders. Such distribution may be made in cash or in kind or partly in each, all as the Trustees in their sole discretion may determine.

### **15.4 Procedure Upon Termination**

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

### **15.5 Powers of the Trustees Upon Termination**

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

### **15.6 Further Notice to Unitholders**

In the event that less than all of the Unitholders have surrendered their Units for cancellation within six months after the time specified in the notice referred to in Section 15.4, the Trustees shall give further notice to the remaining Unitholders to surrender their Units for cancellation and if, within one year after the further notice, all the Units shall not have been surrendered for cancellation, such remaining Units shall be deemed to be cancelled without prejudice to the rights of the holders of such Units to receive their *pro rata* share of the remaining property of the Trust, and the Trustees may either take appropriate steps, or appoint an agent to take appropriate steps, to contact such Unitholders (deducting all expenses thereby incurred from the amounts to which such Unitholders are entitled as aforesaid) or, in the discretion of the Trustees, may pay such amounts into Court or to the Public Curator (or other appropriate government official or agency) whose receipt shall be a good discharge and release of the Trustees.

### **15.7 Responsibility of the Trustees after Sale and Conversion**

The Trustees shall be under no obligation to invest the proceeds of any sale of investments or other assets or cash forming part of the Trust Property after the date referred to in Section 15.4 and, after such sale, the sole obligation of the Trustees under this Contract of Trust shall be to hold such proceeds or assets in trust for distribution under Section 15.3.

## **ARTICLE 16 LIABILITIES OF THE TRUSTEES AND OTHERS**

### **16.1 Liability and Indemnification of the Trustees**

The Trustees shall at all times including, for the purposes of this ARTICLE 16, the time after they have ceased to be Trustees, be indemnified and saved harmless out of the Trust Property from and against all liabilities, damages,

losses, debts, claims, actions, suits and proceedings whatsoever, including costs, charges and expenses in connection therewith, sustained, incurred, brought, commenced or prosecuted against them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of their duties as Trustees and also from and against all other liabilities, damages, losses, debts, claims, costs, charges, and expenses (including legal fees and disbursements on a solicitor and client basis) which they sustain or incur in or about or in relation to the affairs of the Trust including any and all liability (whether accrued, actual, contingent or otherwise), claims, costs, charges or expenses arising out of or in connection with the presence, release, discharge or disposal of any hazardous substance or any adverse environmental conditions at, on, under or near any immovable property or any investigation, remediation or clean up action required to be undertaken in connection with any immovable property. Further, the Trustees shall not be liable to the Trust or to any Unitholder or annuitant for any loss or damages relating to any matter regarding the Trust, including any loss or diminution in the value of the Trust or the Trust Property. The foregoing provisions in favour of any Trustee do not apply unless:

- 16.1.1 the Trustee has acted honestly and in good faith with a view to the best interests of the Trust and the Unitholders and with prudence and diligence; and
- 16.1.2 in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Trustee had reasonable grounds for believing his conduct was lawful.

The provisions of this Section 16.1 with respect to indemnification and saving harmless shall apply, *mutatis mutandis*, to any former Trustee and to any officer or former officer of the Trust.

## **16.2 Limitations on Liability of Trustees**

- 16.2.1 None of the Trustees nor any officers, employees or agents of the Trust shall be liable to any Unitholder or any other person for fault, in tort, contract or otherwise for any action taken or not taken in good faith in reliance on any documents that are, *prima facie*, properly executed; for any depreciation of, or loss to, the Trust incurred by reason of the sale of any security; for the loss or disposition of monies or securities; for any action or failure to act by any person to whom the Trustees are permitted to delegate and have delegated any of their duties hereunder; or for any other action or failure to act including the failure to compel in any way any former Trustee to redress any breach of trust or any failure by any person to perform obligations or pay monies owed to the Trust, unless such liabilities arise out of a breach of the standard of care, diligence and skill as set out in Section 4.6. If the Trustees have retained an appropriate expert, advisor or legal counsel with respect to any matter connected with their duties under this Contract of Trust, the Trustees may act or refuse to act based on the advice of such expert, advisor or legal counsel and, notwithstanding any provision of this Contract of Trust, including the standard of care, diligence and skill set out in Section 4.6, the Trustees shall not be liable for and shall be fully protected from any action or refusal to act based on the advice of any such expert, advisor or legal counsel which it is reasonable to conclude is within the expertise of such expert or advisor to give.
- 16.2.2 The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustees for or in respect to the affairs of the Trust unless such Trustee shall have failed to meet the standard of care, diligence and skill set out in Section 4.6. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any obligations under this Contract of Trust or under any other related agreements unless such Trustee shall have failed to meet the standard of care, diligence and skill set out in Section 4.6. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator, shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees unless such Trustee shall have failed to meet the standard of care, diligence and skill set out in Section 4.6. The Trust shall be solely liable therefor and resort shall be had solely to the Trust

Property for payment or performance thereof unless such Trustee shall have failed to meet the standard of care, diligence and skill set out in Section 4.6.

- 16.2.3 In the exercise of the powers, authorities or discretion conferred upon the Trustees under this Contract of Trust, the Trustees are and shall be conclusively deemed to be acting as trustees of the Trust Property.

### **16.3 Liability of Unitholders and Others**

- 16.3.1 No Unitholder or annuitant under a plan which a Unitholder acts as trustee or carrier shall be held to have any personal liability as such, and no resort shall be had to, nor shall recourse or satisfaction be sought from, the private property of any Unitholder or annuitant (including any property consisting of or arising from a distribution of any kind or nature by the Trust) for any liability whatsoever, in delict, tort, contract or otherwise, to any person in connection with the Trust Property or the affairs of the Trust, including for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation of the Trust or of the Trustees or any obligation which a Unitholder or annuitant would otherwise have to indemnify a Trustee for any personal liability incurred by the Trustee as such, but rather the properties and assets of the Trust only are intended to be liable and subject to levy or execution for satisfaction of such liability. Each Unitholder and annuitant under a plan of which a Unitholder acts as trustee or carrier shall be entitled to be reimbursed out of the Trust Property in respect of any payment of a Trust obligation made by such Unitholder or annuitant. Without limiting the generality of the foregoing, each Unitholder or annuitant shall be entitled to the benefits of the second sentence of Article 1322 of the Civil Code in respect of the obligations therein referred to.
- 16.3.2 Any written instrument creating an obligation which is or includes the granting by the Trust of a lease, sublease, hypothec or mortgage to the extent the Trustees determine to be practicable and consistent with their obligations to act in the best interests of the Unitholders, any written instrument which is, in the judgment of the Trustees, a material obligation, shall contain a provision or be subject to an acknowledgement to the effect that the obligation being created is not personally binding upon, and that resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the Unitholders or annuitants under a plan of which a Unitholder acts as trustee or carrier (including any property consisting of or arising from a distribution of any kind or nature by the Trust), but the property of the Trust or a specific portion thereof only shall be bound. If the Trust acquires any immovable property subject to existing contractual obligations, including obligations under immovable hypothecs or mortgages, the Trustees shall use all reasonable efforts to have any such obligations, other than leases, modified so as to achieve the aforesaid disavowal of contractual liability. Further, the Trustees shall cause the operations of the Trust to be conducted in such a way and in such jurisdictions as to avoid, to the extent which they determine to be practicable and consistent with their obligations to act in the best interests of the Unitholders, any material risk of liability on the Unitholders for claims against the Trust, and shall, to the extent available on terms which they determine to be possible and reasonable, including in the cost of premiums, cause the insurance carried by the Trust, to the extent applicable, to cover the Unitholders and annuitants as additional insured. Any potential liability of the Trustees with respect to their foregoing obligations or their failure to perform the same shall be governed by the foregoing provisions of this ARTICLE 16.

## **ARTICLE 17 GENERAL**

### **17.1 Execution of Instruments**

The Trustees shall have power from time to time to appoint any Trustee or any Trustees, or officer or officers of the Trust or any person or persons on behalf of the Trust either to sign instruments in writing generally or to sign specific instruments in writing. Provisions respecting the foregoing may be contained in the Regulations.

### **17.2 Manner of Giving Notice**

- 17.2.1 Any notice or other document required or permitted by the provisions of this Contract of Trust to be given to a Unitholder, a Trustee or the Auditors shall be deemed conclusively to have been given if given either by hand delivery or by prepaid first-class mail addressed to the Unitholder at his address shown on the Register, to the Trustee at the last address provided by such Trustee to the Secretary of the Trust, or the Auditors at the last address provided by such Auditors to the Secretary of the Trust, as the case may be, provided that if there is a general discontinuance of postal service due to strike, lockout or otherwise, such notice may be given by publication in the Report on Business Section of the National Edition of The Globe and Mail or a similar Section of any other newspaper having national circulation in Canada; provided further that if there is no such newspaper having national circulation, then by publishing twice in the business Section of a newspaper in the city where the Register is maintained. Any notice so given shall be deemed to have been given on the day of hand delivery or the second business day following that on which the notice was mailed or, in the case of notice being given by publication, after publishing such notice twice in the designated newspaper or newspapers. In proving notice or other document was mailed, it shall be sufficient to prove that such notice or other document was properly addressed, stamped and mailed. Notice to any one of several joint holders of Units shall be deemed effective notice to the other joint holders.
- 17.2.2 Any written notice or written communication given to the Trustees shall be addressed to the Trustees at the principal office of the Trust, and shall be deemed to have been given on the date of delivery or date sent by facsimile or other means of prepaid, transmitted or recorded communications or, if mailed, five (5) days from the date of mailing. If any such notice or communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities, such notice or communication shall be deemed to have been received 48 hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted any notice or other communication shall be given by personal delivery or by facsimile or other means of prepaid, transmitted or recorded communication.
- 17.2.3 Service of a notice or document on any one of several joint holders of Units shall be deemed effective service on the other joint holders.
- 17.2.4 Any notice or document sent by post to or left at the address of a Unitholder pursuant to this Section 17.2 shall, notwithstanding the death or bankruptcy of such Unitholder, and whether or not the Trustees have notice of such death or bankruptcy, be deemed to have been fully served and such service shall be deemed sufficient service on all persons having an interest in the Units concerned.

### **17.3 Failure to Give Notice**

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

#### **17.4 Electronic Documents**

Any requirement under this Contract of Trust, as amended from time to time, or any applicable law that a notice, statement, document or other information be created or provided is satisfied by the creation or provision of an electronic document to the extent permitted by law.

#### **17.5 Trust Auditors**

The Auditors shall be appointed at each annual meeting, save that, until the first such annual meeting, such Auditors shall be appointed by the Trustees. If at any time a vacancy occurs in the position of the Auditors, the Trustees may appoint a firm of chartered accountants to act as the Auditors until the next annual meeting of Unitholders. The Auditors shall report to the Trustees and the Unitholders on the annual financial statements of the Trust and shall fulfil such other responsibilities as they may properly be called upon by the Trustees to assume. The Auditors shall have access to all records relating to the affairs of the Trust.

#### **17.6 Fiscal Year**

The Fiscal Year of the Trust shall terminate on December 31<sup>st</sup> in each year.

#### **17.7 Reports to Unitholders**

The Trust will furnish to Unitholders such financial statements (including quarterly and annual reports and financial statements) and other reports and documents as are from time to time required by applicable law within the delays prescribed therein, including prescribed forms needed for the completion of the Unitholders' tax returns under the Tax Act. The Trustees will supply Unitholders with any information that may be required by them in connection with their obligations under the Tax Act. Such financial statements shall be prepared in accordance with generally accepted accounting principles applied consistently, provided that such statements may vary from such principles to the extent required to comply with applicable securities laws or securities regulatory requirements or to the extent permitted by applicable securities regulatory authorities. The financial statements shall be signed by or on behalf of the Trust and may be sent electronically to Unitholders in accordance with the provisions of Section 17.4.

#### **17.8 Trust Property to be Kept Separate**

The Trustees shall maintain the Trust Property separate from all other property in their possession.

#### **17.9 Trustees May Hold Units**

Any Trustee or associate of a Trustee may be a Unitholder or may be an annuitant.

#### **17.10 Taxation Information**

On or before March 30 in each year, or such earlier day as is required by applicable legislation or regulation, the Trust will provide to Unitholders who received distributions from the Trust in the prior calendar year, such information required by Canadian law to be submitted to Unitholders for income tax purposes to enable Unitholders to complete their tax returns in respect of such distributions. In particular, each Unitholder shall be informed each year of the composition of the amounts payable by the Trust to such Unitholder in terms of net income, taxable dividends, net taxable gains, foreign source income and return of capital, and will be informed of the portion of such net income that has been designated as taxable dividends on shares of taxable Canadian corporations and taxable capital gains and of the amount of any foreign taxes paid by the Trust in respect of which the Unitholder may claim a credit for tax purposes to the extent permitted by the Tax Act, where those items are applicable. Neither the Trust nor the Trustees shall be accountable or liable to any Unitholder by reason of any act or acts of the Trustees consistent with any such obligations or responsibilities.

### **17.11 Tax Act: Elections**

In respect of the first Taxation Year, the Trust shall, within the time prescribed, elect pursuant to subsection 132(6.1) of the Tax Act that the Trust be deemed to be a mutual fund trust for the entire year.

### **17.12 Trust Records**

The Trustees shall prepare and maintain, at the principal office of the Trust or at any other place in Canada designated by the Trustees, records containing: (a) the Contract of Trust; (b) the regulations; (c) minutes of meetings and resolutions of Unitholders; (d) minutes of meetings and resolutions of the Trustees and any committee thereof; and (e) the Register. The Trust shall also prepare and maintain adequate accounting records. Such records shall be kept at the principal office of the Trust or at such other place as the Trustees think fit and shall at all reasonable times be open to inspection by the Trustees.

### **17.13 Right to Inspect Documents**

A Unitholder and any agent, consultant or creditor of the Trust shall have the right to examine the Contract of Trust, the regulations, the minutes of meetings and resolutions of Unitholders, the Register and any other documents or records which the Trustees determine should be available for inspection by such persons, during normal business hours at the principal office of the Trust or at any other place in Canada designated by the Trustees. Unitholders and creditors of the Trust shall have the right to obtain or make or cause to be made a list of all or any of the registered holders of Units, to the same extent and upon the same conditions as those which apply to shareholders and creditors of a corporation governed by the Canada Business Corporations Act, *mutatis mutandis*.

### **17.14 Execution and Effect of Restated Contract of Trust**

Subject to the provisions of ARTICLE 13, an amended and restated Contract of Trust, setting forth the terms of this Contract of Trust, as amended to the time of execution, may be executed at any time or from time to time by the Trustees and such amended and restated Contract of Trust as so executed shall thereafter be effective and may thereafter be referred to in lieu of the original Contract of Trust as so amended and restated; provided, however, that no such execution of an amended and restated Contract of Trust shall be deemed to constitute a termination of the Trust or this Contract of Trust.

### **17.15 Consolidations**

Any one or more Trustees or the Secretary may prepare consolidated copies of the Contract of Trust as it may from time to time be amended or amended and restated and may certify the same to be a true consolidated copy of the Contract of Trust, as amended or amended and restated.

### **17.16 Counterparts**

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

### **17.17 Severability**

- 17.17.1 The provisions of this Contract of Trust are severable and if any provisions are in conflict with any applicable law, the conflicting provisions shall be deemed never to have constituted a part of the Contract of Trust and shall not affect or impair any of the remaining provisions thereof. If any provision of this Contract of Trust shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Contract of Trust in any jurisdiction.

17.17.2 Notwithstanding the provisions of Section 2.11, but without limiting the generality of subsection 17.17.1, to the extent any provision hereof contravenes a requirement of public order contained in the Civil Code, such provision hereof shall be severed as aforesaid from this Contract of Trust without thereby affecting or impairing any remaining provision hereof and should any applicable provision of public order contained in the Civil Code not be included herein, such provision shall nonetheless apply hereto, the whole without in any way affecting or impairing any other provision hereof which is not in contravention of such provision of public order.

#### **17.18 Headings for Reference Only and Preamble**

The headings preceding the articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Contract of Trust. The preamble and recitals hereto (and all definitions therein contained) shall form an integral part of this Contract of Trust.

#### **17.19 Successors and Assigns**

The provisions of this Contract of Trust shall inure to the benefit of, and be binding upon, the parties and their heirs, executors, administrators, personal representatives, successors and assigns.

#### **17.20 Time of the Essence**

Time shall be of the essence for this Contract of Trust. The mere lapse of time in the performance of the terms of this Contract of Trust by any person shall have the effect of putting such person in default.

#### **17.21 Inconsistency**

In the event of any conflict, inconsistency or contradiction between the provisions of the Prospectus and this Contract of Trust, the provisions of this Contract of Trust shall prevail.

#### **17.22 Transition**

Notwithstanding any other provision hereof, if otherwise applicable, the approval of the Governance Committee or a majority of the Independent Trustees shall not be required, and the provisions of Sections 4.3, 4.12, 10.2, 10.3 and 10.4 shall not be operative or effective, with respect to the entering into of, any material contract or transaction or proposed material contract or transaction disclosed under the heading "Material Contracts" in the Prospectus.

#### **17.23 Execution by the Settlor**

The Settlor hereby acknowledges that it has taken cognizance of this amended and restated Contract of Trust and hereby agrees that: (i) pursuant to subsection 2.11.2 of the Initial Contract of Trust, the Settlor has waived any right it may have in its capacity as Settlor of the Trust to be a party or to participate in any amendment of the Contract of Trust; and (ii) for greater certainty only and without any obligation so to do, the Settlor hereby confirms its agreement to the present amended and restated Contract of Trust.

4360648 Canada Inc., as the sole Unitholder, also for greater certainty only and without any obligation to do so, hereby confirms its agreement to the present Amended and Restated Contract of Trust.

#### **17.24 Governing Law**

This Contract of Trust and the Unit Certificates shall be interpreted and governed by and take effect exclusively in accordance with the laws of the Province of Québec. Any and all disputes arising under this Contract of Trust, whether as to interpretation, performance or otherwise, shall be subject to the exclusive jurisdiction of the courts of the Province of Québec and each of the Trustees hereby irrevocably attorns, and each Unitholder shall be deemed to hereby irrevocably attorn, to the exclusive jurisdiction of the courts of such province.

**17.25 Language**

The parties acknowledge that they have requested that this agreement and all documents, notices, correspondence and legal proceedings arising from this agreement or relating hereto be drawn up in English only. Les parties reconnaissent qu'elles ont exigé que cette convention ainsi que tout document, avis, correspondance et procédure légale découlant de cette convention soient rédigés en anglais seulement.

**IN WITNESS WHEREOF** each of the parties has caused these presents to be executed in the place and as of the date hereinabove mentioned.

*(Signatures appear on the following page)*

**SIGNATURES**

(s) Michel G. Beaudin  
Witness

(s) Normand Beauchamp  
Normand Beauchamp

(s) Michel G. Beaudin  
Witness

(s) Claude Garcia  
Claude Garcia

(s) Michel G. Beaudin  
Witness

(s) Jean-Pierre Janson  
Jean-Pierre Janson

(s) Jacqueline Loiselle  
Witness

(s) Luc Lachapelle  
Luc Lachapelle

(s) Jacqueline Loiselle  
Witness

(s) Michel Lord  
Michel Léonard

(s) Marjolaine Fournier  
Witness

(s) Richard Lord  
Richard Lord

(s) Michel G. Beaudin  
Witness

(s) Peter Polatos  
Peter Polatos

(s) Jacqueline Loiselle  
Witness

(s) Jocelyn Proteau  
Jocelyn Proteau

(s) Jacqueline Loiselle  
Witness

(s) Fernand Perreault  
Fernand Perreault

**4360648 CANADA INC.**

\_\_\_\_\_  
Witness

(s) Grant White  
By: Grant White

**SCHEDULE 1.1.66**  
**BTB REAL ESTATE INVESTMENT TRUST**  
**TRUSTEES' REGULATIONS**

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Interpretation**

In these regulations, unless the context otherwise specifies or requires:

- 1.1.1 all terms used in these regulations not otherwise defined herein shall have the meanings given to such terms in the Contract of Trust;
- 1.1.2 words importing the singular number only shall include the plural and vice versa and words importing a specific gender shall include the other gender; and
- 1.1.3 the headings used in these regulations are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions.

**ARTICLE 2**  
**FOR THE PROTECTION OF TRUSTEES AND OFFICERS**

**2.1 For the Protection of Trustees and Officers**

- 2.1.1 The provisions of ARTICLE 16 of the Contract of Trust pertaining to the liability and indemnification of Trustees and officers of the Trust shall apply *mutatis mutandis* to the former Trustees or officers of the Trust, or persons who act or acted at the Trust's request as a director or officer of a body corporate of which the Trust is or was a shareholder or creditor, and his heirs and legal representatives.
- 2.1.2 The Trust shall also indemnify any such person in such other circumstances as the Contract of Trust or law permits or requires, subject to the provisions of the Contract of Trust. Nothing in these regulations shall limit the right of any person entitled to indemnify to claim indemnity apart from the provisions of these regulations to the extent permitted by the Contract of Trust or law.

**ARTICLE 3**  
**OFFICERS**

**3.1 Powers, Duties and Delegation**

- 3.1.1 Subject to the provisions of the Contract of Trust, all officers of the Trust shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incident to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the Trustees.

- 3.1.2 Subject to the provisions of the Contract of Trust, in case of the absence or inability to act of any officer of the Trust or for any other reason that the Trustees may deem sufficient, the Trustees may delegate all or any of the powers of such officer to any other officer or to any Trustee for the time being.

#### **ARTICLE 4 VOTING SHARES AND SECURITIES IN BODIES CORPORATE**

##### **4.1 Voting Shares and Securities in Bodies Corporate**

- 4.1.1 All of the shares or other securities carrying voting rights of any body corporate held from time to time by the Trust may be voted at any and all meetings of shareholders or holders of other securities (as the case may be) of such body corporate and in such manner and by such person or persons as the Trustees shall from time to time execute and deliver for and on behalf of the Trust proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the Trustees.

#### **ARTICLE 5 CHEQUES, DRAFTS AND NOTES**

##### **5.1 Cheques, Drafts and Notes**

- 5.1.1 All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officer or officers of the Trust or person or persons, whether or not officers of the Trust, and in such manner as the Trustees may from time to time designate.

#### **ARTICLE 6 CUSTODY OF SECURITIES**

##### **6.1 Custody of Securities**

- 6.1.1 All shares and other securities owned by the Trust shall be lodged (in the name of the Trust) with a chartered bank or a trust company, in a safety deposit box or with a law firm acting on behalf of the Trust or, if so authorized by resolution of the Trustees, with such other depositories or in such other manner as may be determined from time to time by the Trustees.
- 6.1.2 All shares and other securities belonging to the Trust may be issued or held in the name of a nominee or nominees of the Trust (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and any shares or other securities so issued or held shall be endorsed in blank with endorsement guaranteed in order to enable transfer to be completed and registration to be effected.

**ARTICLE 7**  
**EXECUTION OF INSTRUMENTS**

**7.1 Execution of Instruments**

- 7.1.1 All contracts, documents or instruments in writing requiring the signature of the Trust may be signed by any officer or Trustee of the Trust and all contracts, documents and instruments in writing so signed shall be binding upon the Trust without any further authorization or formality. The Trustees shall have power from time to time to appoint any officer or officers, or any person or persons, on behalf of the Trust either to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.
- 7.1.2 The term “contracts, documents or instruments in writing” as used in these regulations shall include security certificates, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations and conveyances, transfers and assignments of shares, share warrants, stocks, bonds, debentures or other securities, regulatory forms and all paper writings.
- 7.1.3 Without limiting the foregoing, any officer or Trustee of the Trust shall have authority to sell, assign, transfer, exchange, convert or convey any and all shares, bonds, debentures, rights warrants or other securities owned by or registered in the name of the Trust and to sign and execute all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights warrants or other securities.
- 7.1.4 The signature or signatures of the officers and Trustees of the Trust and/or of any other person or persons appointed as aforesaid by the Trustees may, if specifically authorized by the Trustees, be printed, engraved, lithographed or otherwise mechanically reproduced upon any contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust executed or issued by or on behalf of the Trust and all contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust on which the signature or signatures of any one or more of the foregoing officers or Trustees or the officers of persons authorized as aforesaid shall be so reproduced pursuant to such authorization by the Trustees shall be deemed to have been manually signed by each such officer, Trustee or person whose signature is so reproduced and shall be as valid for all intents and purposes as if they had been signed manually and notwithstanding that any such officer, Trustee or person whose signature is so reproduced may have ceased to hold office at the date of the delivery or issue of such contracts, documents or instruments in writing or bonds, debentures or other securities of the Trust.