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TALLAHASSEE FLORIDA

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CUSTOMER NO: 5024472
CUSTOMER: Andrew Kellner, Esq
Solomon And Weinberg LLP
685 Third Avenue
New York, NY 10017

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FOREIGN FILINGS

NAME: CDC POMPANO PROPERTY TRUST


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XXXX QUALIFICATION (TYPE: BST)

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- XX CERTIFIED COPY - 2
- XX PLAIN STAMPED COPY 2
- XX CERTIFICATE OF GOOD STANDING 1

CONTACT PERSON: Sara Lea -- EXT# 1114

EXAMINER:  10/19/01

AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE
TO FILE OR QUALIFY

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CDC POMPANO PROPERTY TRUST

SECRETARY OF STATE
TALLAHASSEE FLORIDA

A DELAWARE BUSINESS TRUST

In accordance with Section 609.02 of the Florida Statutes, pertaining to Common Law Declarations of Trust, the undersigned, the Chairman of the Board of Trustees of CDC Pompano Property Trust, a Delaware Business Trust, hereby affirms in order to file or qualify CDC Pompano Property Trust, in the State of Florida.

1. Two or more persons are named in the Trust.
2. The principal address is c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19890-0001
3. The registered agent and street address in the State of Florida are:
Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301
4. Acceptance by the registered agent: Having been named as registered agent to accept service of process of the above named Declaration of Trust at the place designated in this affidavit, I hereby accept the appointment as registered agent and agree to act in this capacity.

Laura R. Dunlap
as its agent

Laura R. Dunlap

(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of Trust under which the association proposes to conduct its business in Florida.

Sherry L. Keating

SHERRY L. KEATING
NOTARY PUBLIC-DELAWARE
My Commission Expires June 28, 2003

NOTARY

[Signature]
Name: Wilmington Trust Company,
not individually but in its
capacity as trustee

Filing Fee: \$350.00
Certified Copy: \$ 8.75 (optional)

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

CDC POMPANO PROPERTY TRUST

TRUST AGREEMENT

By and between

CDC MORTGAGE CAPITAL INC.,
Depositor

and

WILMINGTON TRUST COMPANY,
Owner Trustee

Dated as of October 18, 2001

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TRUST AGREEMENT

2001 OCT 19 PM 4:11
SECRETARY OF STATE
TALLAHASSEE FLORIDA

THIS TRUST AGREEMENT, dated as of October 18, 2001 (the "Trust Agreement"), by and between CDC MORTGAGE CAPITAL INC., a New York corporation ("CDC" or the "Depositor") and WILMINGTON TRUST COMPANY, a Delaware banking corporation (the "Owner Trustee"), with respect to the trust known as CDC Pompano Property Trust.

WHEREAS, pursuant to that certain Certificate of Trust of CDC Pompano Property Trust filed in the office of the Secretary of State of the State of Delaware on October 18, 2001, CDC and Owner Trustee formed CDC Pompano Property Trust.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.01. *Capitalized Terms.* For all purposes of this Agreement, the following terms shall have the meanings set forth below:

"Act" means the Delaware Business Trust Act, 12 Del. C. §3801, et seq.

"Affiliate" means, with respect to any Person, any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person and includes each officer, director or general partner of such Person, and each Person who is the beneficial owner of more than 10% of any class of voting stock of such Person and, with respect to CDC, any trust in which CDC owns 50% or more of the beneficial interest. For the purposes of this definition, "control" means the power to direct or cause the direction of management and policies of such Person, whether through ownership of voting securities or otherwise.

"Agreement" or "Trust Agreement" means this Trust Agreement, as it may be amended from time to time.

"Bank" means Wilmington Trust Company, a Delaware banking corporation, in its individual capacity and not as Owner Trustee.

"Bankruptcy Action" means:

- (i) Taking any action that might cause the Trust to become insolvent; or
- (ii) (A) Commencing any case, proceeding or other action on behalf of the Trust under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
- (B) Instituting proceedings to have the Trust adjudicated a bankrupt or insolvent;

(C) Consenting to, or acquiescing in, the institution of bankruptcy or insolvency proceedings against the Trust;

(D) Filing a petition or consenting to a petition seeking reorganization, arrangement, adjustment, or other relief on behalf of the Trust of its debts under federal or state law relating to bankruptcy;

(E) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Trust or a substantial portion of its property;

(F) Making any assignment for the benefit of the Trust's creditors; or

(G) Taking any action or causing the Trust to take any action in furtherance of any of the foregoing.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of Delaware or New York are authorized or obligated by law to be closed.

"Capital Account" of an Owner has the meaning ascribed in Section 3.02 hereof.

"CDC" means CDC Mortgage Capital Inc., a New York corporation.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time, any successor statute thereto, and applicable final or temporary Department of the Treasury regulations issued pursuant thereto.

"Delaware Code" means the Delaware Code, as amended from time to time.

"Depositor" means CDC.

"Designated Investments" means direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States.

"Designated Officer" means an employee of an Owner appointed by such Owner and identified to the Owner Trustee as being a duly authorized Designated Officer having the authority specified in Section 2.04 hereof.

"Distribution Date" means (i) the 11th day of each month, or if such day is not a Business Day, then next succeeding Business Day; or (ii) such other Business Day as the Owner Trustee is directed by a Designated Officer or the Owners to make a distribution to the Owners; provided, however, the Owner Trustee shall not be required to make such distributions more than 18 times per year.

"Distribution Date Statement" has the meaning ascribed in Section 6.03 hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute.

“Expenses” has the meaning ascribed in Section 11.02 hereof.

“Fiscal Year” means the taxable year of the Trust for federal income tax purposes, which shall be each period from January 1 to the following December 31, unless the Trust is required to adopt a different taxable year.

“Gross Income” and “Gross Deduction” mean with respect to a Fiscal Year, items of Trust gross income and gain or gross deduction and loss, respectively, for such Fiscal Year for federal income tax purposes determined subject to the adjustments (1), (2) and (3) described in the definition herein of “Net Profits” and “Net Loss.”

“Indemnified Party” has the meaning ascribed in Section 11.02 hereof.

“Majority Owners” means any number of Owners holding, in the aggregate, an Ownership Percentage in excess of 50%.

“Net Profits” and “Net Loss” mean, respectively, for each Fiscal Year, an amount equal to the Trust’s taxable income or loss, respectively, for federal income tax purposes for such Fiscal Year (determined without inclusion of Gross Income or Gross Deductions specially allocated pursuant to Sections 3.03, 3.04, 3.05, 3.06, 3.08 and 3.09 hereof), determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (1) any income of the Trust that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Loss pursuant hereto shall be included in income; (2) any expenditures of the Trust described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Loss pursuant hereto, shall be deducted from income; and (3) income, gain, loss and deduction of the Trust shall be computed (i) as if the Trust had purchased any property contributed by an Owner to the Trust on the date of such contribution at a price equal to its fair market value at that date, and (ii) as if the Trust had sold any property distributed to an Owner on the date of such distribution at a price equal to its fair market value on such date.

“Owner” means CDC and each of its successors as beneficiaries of the Trust pursuant to Article IV hereof.

“Ownership Interest” means the beneficial interest in the Trust held by an Owner and represented by such Owner’s Trust Certificate.

“Ownership Percentage” means for any Owner, the Ownership Interest in the Trust held by such Owner, expressed as a percentage of the aggregate Ownership Interest of all Owners.

“Owner Trustee” means Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as owner trustee under this Agreement, and any successor owner trustee hereunder.

“Partner Nonrecourse Debt” means a nonrecourse liability of the Trust with respect to which an Owner bears the economic risk of loss, as determined in accordance with Treasury Regulations Section 1.704-2(b)(4).

“Partner Nonrecourse Deductions” means any deductions described in Treasury Regulations Section 1.704-2(i)(2) and (j)(1)(i) that are attributable to Partner Nonrecourse Debt.

“Person” means any individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Securities Act” means the Securities Act of 1933, as amended, or any successor statute.

“Service” means the Internal Revenue Service.

“Tax Matters Partner” means the Owner designated as such by the Owners pursuant to Section 5.05 hereof.

“Transfer” means the sale, transfer or assignment of an Owner’s right, title and interest in all or any portion of its Ownership Percentage in the Trust; “Transferee,” “Transferor,” and “Transferred” have meanings correlative thereto.

“Treasury Regulations” means the regulations (including any temporary regulations) issued under the Code by the Department of the Treasury, as they may be amended from time to time, or any applicable successor regulations. Any reference herein to any particular section of the Treasury Regulations shall be deemed to refer to the corresponding provision of any applicable successor regulations.

“Treasury Securities” means U.S. obligations that are direct non-callable obligations of the United States of America which provide payments on or prior to, all successive scheduled payment dates upon which interest and principal payments are required under the related Loans.

“Trust” means the trust established by this Trust Agreement and known as CDC Pompano Property Trust.

“Trust Certificate” means a certificate evidencing the Ownership Interest of an Owner substantially in the form of Exhibit A hereto.

“Trust Property” means all right, title and interest of the Owner Trustee or the Trust in and to any property contributed to the Trust by the Depositor or the Owners from time to time, and includes, without limitation, all distributions, payments or proceeds thereon or therefrom, but does not include any property that has been sold by the Trust both for Federal income tax purposes and under generally accepted accounting principles.

ARTICLE II
ORGANIZATION

2.01. *Name.* The Trust created as of October 18, 2001, shall be known as "CDC Pompano Property Trust," in which name the Owner Trustee may enter into contracts and other documents and conduct the activities contemplated hereby. A Certificate of Trust forming CDC Pompano Property Trust was filed with the Secretary of State of the State of Delaware on October 18, 2001. A copy of such Certificate of Trust is attached hereto as **Exhibit B**.

2.02. *Office.* The office of the Trust shall be in care of the Owner Trustee, addressed to Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration, or at such other address within the State of Delaware as the Owner Trustee may designate by written notice to the Owners.

2.03. *Purposes and Powers.* The purpose of the Trust is to engage solely in the following activities:

(a) (i) to acquire, own, hold, sell, transfer, assign, operate, lease, manage and otherwise deal with that certain real property and the improvements thereon known as Pompano Square Mall, Pompano Beach, Florida and more particularly described on Schedule 1 annexed hereto and made a part hereof (the "Premises"); (ii) to obtain and enter into any loan in respect of the Premises, and performing the obligations of the borrower under such loan; (iii) to acquire, own, hold, sell, transfer or assign any other Trust Property pursuant to the terms of this Agreement; (iv) to authorize, issue, sell, transfer and assign one or more Trust Certificates representing trust ownership; (v) to enter into all documents as instructed pursuant to Section 5.01; and (vi) to transact any and all lawful business for which the Trust may be organized under Delaware law that is incident, necessary or appropriate to accomplish the foregoing or are incidental thereto or connected therewith or that may be required in connection with the conservation of the Trust Property and distributions to the Owners.

(b) The Trust shall observe all the legal formalities associated with maintaining a legal existence separate and independent of any Affiliate, Owner or any Affiliate of any Owner, including:

- i. to maintain books and records separate from any other Person;
- ii. to maintain its bank accounts separate from any other Person;
- iii. not to commingle its assets with those of any other Person and to hold all of its assets in its own name;
- iv. to conduct its own business in its own name;
- v. to maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person;
- vi. to pay its own liabilities and expenses only out of its own funds, except as otherwise provided in Sections 2.07, 11.01 and 11.02 of this Agreement;

- vii. to observe all organizational formalities;
- viii. to maintain an arm's length relationship with its Affiliates and to enter into transactions with Affiliates only on a commercially reasonable basis;
- ix. to pay the salaries of its own employees from its own funds;
- x. to maintain a sufficient number of employees in light of its contemplated business operations;
- xi. not to guarantee or become obligated for the debts of any other entity or person;
- xii. not to hold out its credit as being available to satisfy the obligations of any other Person;
- xiii. not to acquire the obligations or securities of its Affiliates, Owners, or Affiliates of Owners;
- xiv. not to make loans to any other Person or to buy or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities);
- xv. to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;
- xvi. to use separate stationery, invoices, and checks bearing its own name;
- xvii. not to pledge its assets for the benefit of any other Person;
- xviii. to hold itself out as a separate identity;
- xix. to correct any known misunderstanding regarding its separate identity;
- xx. not to identify itself as a division of any other Person; and
- xxi. to maintain adequate capital in light of its contemplated business operations.

(c) The Trust shall not incur indebtedness.

(d) The Trust shall not engage in any dissolution, liquidation, consolidation, merger or sale of assets.

(e) The Trust shall not take any Bankruptcy Action, except with the unanimous consent of each beneficiary of the Trust and the Owner Trustee.

(f) The Trust shall not enter into any transaction with Affiliates, Owners or Affiliates of Owners except for such transactions which are on an arm's length basis and are on commercially reasonable terms.

2.04 *Designated Officers.* (a) Each Owner shall appoint one or more Designated Officers who will act as the agent of such Owner, *provided, however*, that no Designated Officer may be a trader or other employee of a broker-dealer who deals with customers on a regular basis. Each Owner hereby grants its respective Designated Officer(s) the exclusive authority to act on behalf of such Owner in directing the Owner Trustee to implement the following activities, subject to the limitations of Section 2.03(a): (i) acquiring, owning, holding, and otherwise engaging in transactions with respect to the Trust Property with a view toward the maximization of the value of and disposition of such Trust Property; (ii) making such representations and warranties on behalf of the Trust regarding the Trust Property and entering into such agreements on behalf of the Trust as are customary for transactions of the type set forth in clause (i); and (iii) performing such activities on behalf of the Trust that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith or that may be required in connection with the conservation of the assets and distributions to the Owners; all on such terms and conditions as such Designated Officer(s) deem desirable, and evidenced by such instruments, agreements, powers of attorney, or other documents as such Designated Officer(s) may approve, as conclusively evidenced by the execution thereof; *provided, however*, that no Designated Officer may take any action(s) or instruct the Owner Trustee to take any action(s) that would cause the Trust (x) to become subject to registration as a broker or dealer under Section 15(a) of the Exchange Act, (y) to become subject to compliance with Section 15(c)(3) of the Exchange Act or (z) to become a "taxable mortgage pool" within the meaning of Code Section 7701(i). In connection therewith, each Designated Officer agrees that it will not (i) hold itself out as being willing to buy and sell securities on a regular basis; (ii) provide market quotes with respect to securities; (iii) furnish advice to third parties regarding the purchase, sale or value of securities; (iv) extend or arrange for the extension of credit in connection with the purchase by others of securities; (v) maintain a dealer inventory of securities; or (vi) attempt to obtain customers.

(b) The Owner(s) hereby respectively appoint the individuals named in **Exhibit C** hereto as a Designated Officer(s) who shall serve as Designated Officer(s) until his or their earlier resignation or removal by the respective Owner(s) and who shall have the authority specified in Section 2.04(a) hereof; *provided, however*, that the Owner(s) may, at any time, limit such authority by notification in writing to such Designated Officer(s) and the Owner Trustee. **Exhibit C** shall be amended from time to time to reflect any change by an Owner of its Designated Officer and the appointment by new Owners of their respective Designated Officers.

2.05. *Appointment of the Owner Trustee.* The Depositor appointed the Bank as trustee of the Trust effective as of October 18, 2001 to have all the rights, powers and duties set forth herein and in the Act. The Bank confirms the receipt in trust from the Depositor of \$10, constituting the initial Trust Property.

2.06. *Declaration of Trust.* The Bank hereby declares that it will hold as Owner Trustee the Trust Property in trust upon and subject to the conditions set forth herein for the use and benefit of the Owners. To the fullest extent permitted by law, no creditor of the Owner Trustee, in its individual capacity, shall have any right to obtain possession of, or otherwise

exercise legal or equitable remedies with respect to, the property of the Trust, except in accordance with the terms of this Trust Agreement.

2.07. *Liabilities of Owners of the Trust.* The liabilities and obligations of the Trust shall be limited to the Trust Property; *provided, however,* that the Owners shall be jointly and severally liable for all liabilities and obligations of the Trust to the Owner Trustee and that such liabilities and obligations shall not be limited to Trust Property and/or to the amount of distributions each Owner has received in respect of its Trust Certificate; *provided further, however,* that in any event an Owner shall be liable only for obligations of the Trust arising during the period of time in which such Owner was registered as an Owner in accordance with Section 4.02 hereof. The Owners shall have rights of contribution from each other with respect to such liabilities and obligations for which the Owners are jointly and severally liable, in proportion to their respective Ownership Percentages at the time the liabilities or obligations with respect to which contribution is sought arose. Such rights of contribution shall survive termination of this Agreement.

2.08. *Situs of Trust.* It is the intention of the parties hereto that the Trust constitute a business trust under the Act and that this Agreement constitute the governing instrument of the Trust. The Owner Trustee shall file a certificate of trust relating to the Trust with the Office of the Secretary of State of the State of Delaware. The Trust shall be administered in the State of Delaware. The Trust shall not have any employees and shall not have any real or personal property (other than the Trust Property) located in any state other than the State of Delaware. Receipts of the Trust shall be received by the Owner Trustee only in the State of Delaware, and payments by the Trust to Owners shall be made only from the State of Delaware. The Trust's principal office shall be at the office of the Owner Trustee as set forth in Section 2.02 hereof, and a Designated Officer may perform his duties in or outside of the State of Delaware.

2.09. *Contributions by Owners.* On September 26, 2001, CDC made a contribution to the Trust consisting of \$10.

ARTICLE III TRUST DISTRIBUTION OR CAPITAL ACCOUNTS AND ALLOCATIONS

3.01. *Trust Distributions.* For so long as there is only one Owner (holding 100% of the Trust Certificates representing the entire beneficial interest of the Trust), then (i) the Trust shall be disregarded as a separate entity for federal, state and local tax purposes, (ii) the Trust shall not have a separate tax identification number, but rather the tax identification number of the Owner or a parent of the Owner shall be used with respect to its assets or transactions, (iii) all items of gross income, deduction, loss or credit for a Fiscal Year, or applicable portion thereof, shall be allocated to such Owner and (iv) Section 3.02 through 3.11 hereof shall not be applicable to such Owner.

However, in the event that there is more than one Owner, then (i) the Trust shall be treated and taxed as a partnership and the Owners treated as partners in such partnership, for federal, state and local tax purposes (and each Owner and the Owner Trustee will act strictly in accordance therewith), (ii) the Trust shall apply for a separate tax identification number and

(iii) any Net Profit or Net Loss for a Fiscal Year or any applicable portion thereof shall be determined and allocated to the Owners according to Sections 3.02 through 3.11 hereof.

3.02. *Capital Accounts.* A separate Capital Account shall be established and maintained for each Owner. The Capital Account of each Owner: (a) shall be credited with (i) the amount of cash and the agreed upon fair market value of any property contributed by such Owner to the Trust (net of liabilities secured by such contributed property that the Trust is considered to assume or take subject to under Section 752 of the Code), (ii) such Owner's allocable share of any Net Profits and Gross Income, and (iii) such Owner's share of other items required to be credited thereto under Treasury Regulations Section 1.704-1(b)(2)(iv); and (b) shall be debited with (i) the amount of cash and the fair market value of any property distributed to such Owner (net of liabilities secured by such distributed property that such Owner is considered to assume or take subject to Section 752 of the Code) under Article VI, (ii) such Owner's allocable share of any Net Loss, and items of Gross Deduction, and (iii) such Owner's share of other items required to be debited thereto under Treasury Regulations Section 1.704-1(b)(2)(iv). Any adjustments to the tax basis of Trust Property under Code Sections 732, 734 or 743 will be reflected as adjustments to the Capital Accounts of the Owner only in the manner and to the extent provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(m). If any property of the Trust is to be distributed in kind, such property shall be distributed on the basis of its fair market value after the Owners' Capital Accounts have been adjusted to reflect the manner in which any unrealized gain and loss with respect to such property (that has not been reflected in the Capital Accounts previously) would be allocated among the Owners if there were a taxable disposition of the property for its fair market value in the manner provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(e).

In the event of (x) an additional capital contribution by an existing or an additional Owner of more than a de minimis amount which results in a shift in Ownership Percentages, (y) the distribution by the Trust to an Owner of more than a de minimis amount of property or cash as consideration for an interest in the Trust, or (z) the liquidation of the Trust within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), the book basis of the Trust Property shall be adjusted to fair market value and the Capital Accounts of all the Owners shall be adjusted simultaneously to reflect the aggregate net adjustment to book basis as if the Trust recognized gain and loss equal to the amount of such aggregate net adjustment; *provided, however,* that adjustments resulting from clauses (x) and (y) above shall be made only if and to the extent that the Majority Owners so agree and shall have reasonably determined that such adjustments are necessary or appropriate to reflect the relative economic interests of the Owners.

In the event that Trust Property is subject to Section 704(c) of the Code or is revalued on the books of the Trust in accordance with the preceding paragraph pursuant to Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, the Owners' Capital Accounts shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(g) of the Treasury Regulations for allocations to the Owners of depreciation, amortization and gain or loss, as computed for book purposes (and not tax purposes) with respect to such property.

These provisions and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such section of the Treasury Regulations. The Transferee of all or a portion of an Owner's Ownership Interest in the Trust shall

succeed to that portion of the Owner's Capital Account which is allocable to the portion of the Ownership Interest Transferred.

3.03. *Allocation of Net Profits and Net Loss.* Subject to Sections 3.04, 3.05, 3.06, 3.07, 3.08, 3.09 and 3.10 hereof, Net Profits and Net Loss for a Fiscal Year shall be determined and allocated to the Owners as follows:

(a) *Net Profits.* Net Profits for a Fiscal Year shall be allocated among the Owners in proportion to their respective Ownership Percentages.

(b) *Net Loss.* Net Loss for a Fiscal Year shall be allocated among the Owners in proportion to their respective Ownership Percentages.

3.04. *Minimum Gain.* Notwithstanding anything to the contrary in this Article III, if during any Fiscal Year of the Trust there is a net decrease in Trust minimum gain (as such term is defined by Treasury Regulations Sections 1.704-2(b)(2) and (d) with respect to partnership minimum gain), then each Owner shall be allocated Gross Income for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) in the manner provided in Treasury Regulations Sections 1.704-2(f) and (j). Likewise, if there is a net decrease during any Fiscal Year in the minimum gain attributable to a Partner Nonrecourse Debt (as defined in Treasury Regulations Section 1.704-2(i)(3) with respect to partner nonrecourse debt), then any Owner with a share of the minimum gain attributable to such debt at the beginning of such Fiscal Year shall be allocated items of Gross Income for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) in the manner provided in Treasury Regulations Section 1.704-2(i)(4). This Section 3.04 is intended to comply with, and shall be interpreted to be consistent with, the minimum gain chargeback requirements of Treasury Regulations Section 1.704-2.

3.05. *Partner Nonrecourse Deductions.* Gross Deductions which are Partner Nonrecourse Deductions for any Fiscal Year of the Trust shall be allocated to the Owner that bears the economic risk of loss with respect to the loan to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

3.06. *Nonrecourse Deductions.* Nonrecourse deductions for a Fiscal Year (as defined in Treasury Regulations Sections 1.704-2(c) and (j)(ii)) shall be allocated among the Owners in proportion to their respective Ownership Percentages.

3.07. *Loss Allocation Limitation.* Notwithstanding any other provision in this Article III, unless otherwise agreed to by such Owner, no Owner shall be allocated Net Losses or Gross Deductions in any taxable year which would cause or increase a Capital Account deficit (determined with the adjustments set forth in the last sentence of Section 3.09 hereof) for such Owner as of the end of such taxable year and any such Net Losses and Gross Deductions shall instead be specially allocated to the other Owners in proportion to their respective Ownership Percentages to the extent such allocation does not cause or increase such a deficit for such Owner. All Net Losses and Gross Deductions in excess of the limitation set forth in the preceding sentence shall be allocated to the Owners in proportion to their Ownership Percentages. If any Net Losses or Gross Deductions are specially allocated pursuant to the first sentence of this Section 3.07, future allocations of Net Profits in the amount of such Net Losses and Gross Deductions otherwise

allocable in accordance with Section 3.03(a) hereof shall be allocated to the Owners to whom such Net Losses and Gross Deductions were specially allocated, as provided in Section 3.10 hereof.

3.08. *Federal Taxable Income and Loss.* (a) *Allocation of Taxable Income.* Except as otherwise provided in paragraph (b) of this Section 3.08, taxable income, gain, loss or deduction of the Trust (as well as any credits and the basis of property to which such credits apply) as determined for federal income tax purposes shall be allocated in the same manner as the corresponding income, gain, loss or deduction is allocated for purposes of adjusting Capital Accounts under this Article III.

(b) *Section 704(c) Allocation.* Any item of income, gain, loss and deduction for federal income tax purposes with respect to any Trust property that has been contributed by an Owner to the capital of the Trust and which is required to be allocated for federal income tax purposes under Section 704(c) of the Code so as to take into account the variation between the adjusted tax basis of such property and its agreed upon fair market value at the time of its contribution shall be allocated to the Owners solely for federal income tax purposes in the manner so required. In the event of the occurrence of any event described in clause (x), (y) or (z) of the second paragraph of Section 3.02 hereof, subsequent allocations of income, gain, loss and deduction with respect to such property shall take account of any variation between the adjusted basis of such property to the Trust for federal income tax purposes and its fair market value immediately after the adjustment in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Majority Owners in a manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 3.08(b) are solely for income tax purposes and shall not affect, or in any way be taken into account in computing, for book purposes, any Owner's Capital Account pursuant to any provision of this Agreement.

3.09. *Qualified Income Offset.* In the event that at any time any Owner receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(5) or (6) that create or increase a deficit balance in its Capital Account, then the next allocation of Gross Income that would otherwise have been allocated to the other Owners shall be specially allocated to such Owner in an amount and in a manner sufficient to eliminate the deficit balance in such Capital Account created by such adjustments, allocations, or distributions as quickly as possible. Solely for purposes of this Section 3.09 (and Section 3.07), in determining whether an Owner has a deficit Capital Account at any time, such Owner's Capital Account shall be (x) increased by that amount that such Owner is treated as being obligated to restore pursuant to the next to last sentences of Treasury Regulations Sections 1.704-2(g)(1) and (i)(5) (determined after taking into account thereunder any changes during such Fiscal Year in any Trust minimum gain and in minimum gain attributable to any Partner Nonrecourse Debt, as described in Section 3.04 hereof) and (y) decreased by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii) (d), (5) and (6).

3.10. *Curative Allocation.* Any special allocations pursuant to Sections 3.07 and 3.09 hereof shall be taken into account in computing subsequent allocations pursuant to Article III, so that to the extent it is in accordance with the rules of the Treasury Regulations under Section 704(b), the net adjustment to the Capital Account of each Owner from allocations of Net Profits, Net Losses, Gross Income and Gross Deductions allocated to each Owner pursuant to Article III

shall be equal to the net adjustment to such Capital Account from the allocations of Net Profits and Gross Income and Gross Deductions that would have been allocated to each Owner pursuant to the provisions of Article III if the adjustments, allocations, or distributions and the resulting special allocations pursuant to such Sections had not occurred.

3.11. *Change of Trust Interest.* Subject to Section 706 of the Code and to any applicable Treasury Regulations, Net Profits, Gross Income, Net Loss, Gross Deductions and items of income, gain, loss, deduction and credit for federal income tax purposes for a Fiscal Year that are attributable to any Ownership Interest that is Transferred or assigned during such Fiscal Year shall be allocated between (i) the portion of the Fiscal Year during which the Ownership Interest in the Trust was held by the Transferor and (ii) the portion of the Fiscal Year during which the Ownership Interest was held by the Transferee on the basis of an interim closing of the books method or any other method chosen by the Majority Owners and permitted under Section 706 of the Code.

ARTICLE IV TRUST CERTIFICATES AND TRANSFER OF OWNERSHIP INTERESTS

4.01. *Initial Issuance of Trust Certificates.* On September 26, 2001, the Owner Trustee issued to CDC on behalf of CDC Pompano Property Trust, a Trust Certificate registered in the name of CDC evidencing a 100% Ownership Percentage.

4.02. *Registration and Transfer of Trust Certificates.* (a) The Owner Trustee shall maintain at its office referred to in Section 2.02 hereof, or at the office of any agent appointed by it and approved in writing by the Owners at the time of such appointment, a register showing a record of the initial issuance of Trust Certificates, a record of each Transfer of Trust Certificates including the time and date thereof, the names of the Owners of the Trust Certificates and their respective Ownership Percentages. Prior to due presentment for registration of Transfer of any Trust Certificate, the Owner Trustee may treat the person in whose name any Trust Certificate is registered as the owner of such Trust Certificate for the purpose of receiving payments on such Trust Certificate pursuant to Sections 6.02 and 6.06 hereof and for all other purposes whatsoever, whether or not the Owner Trustee shall have notice to the contrary. (For purposes of this Agreement, due presentment of a Trust Certificate requires presentation of all documents and instruments required by this Agreement as a condition to the registration of the Transfer of the Ownership Percentage evidenced by such Trust Certificate.)

No service charge shall be made to an Owner for any registration of Transfer of a Trust Certificate, but the Owner Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of Transfer of a Trust Certificate and any reasonable expenses of the Owner Trustee (including reasonable fees and expenses of counsel).

(b) Subject to the provisions of Section 4.03 hereof, the Owner of any Trust Certificate may Transfer all or any portion of the Ownership Percentage evidenced by such Trust Certificate upon the surrender of such Trust Certificate to the Owner Trustee or its agent accompanied by the written consent required pursuant to Section 4.03 hereof. Promptly upon the receipt of such documents, (i) the Owner Trustee shall cancel any Trust Certificate surrendered for

Transfer; (ii) if applicable, the Owner Trustee shall issue to the Transferor a new Trust Certificate representing an Ownership Percentage equal to the Ownership Percentage retained by the Transferor and dated the date of such Transfer; (iii) the Owner Trustee shall issue to each Transferee a new Trust Certificate representing an Ownership Percentage equal to the Ownership Percentage that was Transferred to such Transferee and dated the date of such Transfer; and (iv) the Owner Trustee shall register the new Trust Certificates in the name of the Transferor (if applicable) and each Transferee and record their respective Ownership Percentages existing after the Transfer in accordance with Section 4.02(a) hereof. Other than as provided in this paragraph (b), an Owner shall not have the right to surrender its Trust Certificate in exchange for two or more Trust Certificates evidencing lesser Ownership Interests.

(c) Upon Transfer of all of an Owner's Ownership Interest, the Transferor shall be released from all of the duties, liabilities and obligations of an Owner under this Agreement arising from and after the time of such Transfer; *provided, however*, that the Transferor shall remain obligated with respect to all duties, liabilities and obligations under this Agreement arising during the period commencing on the date such Owner became registered as an Owner in accordance with this Section 4.02 and terminating at the time such Transfer becomes effective in accordance with this Section 4.02, and the Transferee shall assume in writing all duties, liabilities and obligations of an Owner under this Agreement arising from and after the time of such Transfer (subject to any subsequent Transfers by it in accordance with the terms and conditions hereof).

(d) Upon reasonable notice, each Owner shall have the right to inspect the register of Trust Certificates during business hours of the Owner Trustee for the purpose, among other things, of communicating with the other Owners.

4.03. *Limitations on Transfer of Trust Certificates.*

(a) An Owner may Transfer all or a portion of its Ownership Interest only pursuant to a bona fide offer and, if there is more than one Owner, only upon the approval of the Majority Owners (calculated without regard to the Ownership Percentage of the Transferring Owner or of any Affiliate thereof).

In addition to the foregoing restrictions on Transfer, CDC (and any Transferee of CDC which is a wholly-owned subsidiary of CDC) may transfer all or a portion of its Ownership Interest to a Transferee (other than to CDC or a wholly-owned subsidiary of CDC for which these restrictions do not apply) having a net worth as of the end of its most recent fiscal year of less than \$10,000,000 (as evidenced to the satisfaction of the Owner Trustee), only upon the prior written approval of the Owner Trustee. In the event that the Owner Trustee fails to approve such Transfer, CDC may, at its sole option and without the consent of any other Owner, remove the Owner Trustee by an instrument in writing delivered to the Owner Trustee, such removal to be effective upon receipt of such notice.

(b) No Transfer of a Trust Certificate will be made, and the Owner Trustee shall not be obligated to register any Transfer of a Trust Certificate, unless such Transfer is made pursuant to an effective registration statement under the Securities Act and in compliance with each applicable state securities laws or is exempt from the registration requirements of the Securities Act and such laws. Each Owner, by purchasing or otherwise acquiring ownership of a

Trust Certificate, is deemed to have acknowledged and agreed that such Transfer complies with the registration provisions or exemptions from the Securities Act, applicable state securities laws or the Investment Company Act of 1940, as amended. The Owner Trustee shall not be responsible for ascertaining whether any Transfer complies with the registration provisions or exemptions from the Securities Act, applicable state securities laws or the Investment Company Act of 1940, as amended.

(c) Each Owner by purchase of a Trust Certificate is deemed hereby to have acknowledged and agreed that no employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) which is subject to the provisions of ERISA, no plan (as defined in Section 4975(e)(1) of the Code, other than a governmental or church plan described in Section 4975(g)(2) or (3) of the Code) which is subject to Section 4975 of the Code, no governmental plan subject to any federal, state or local law, which is, to a material respect, similar to the foregoing provisions of ERISA and the Code (a “Similar Law”), (each of the foregoing plans a “Plan”) and no entity whose underlying assets include “plan assets” by reason of a Plan’s investment in the entity may purchase or hold a Trust Certificate or such interest therein would not constitute or result in a non-exempt prohibited transaction under ERISA, Section 4975 of the Code or a Similar Law and documentation has been provided to the Owner Trustee sufficient to evidence that such acquisition will not constitute or result in a non-exempt prohibited transaction. Each prospective purchaser of a Trust Certificate or any interest therein, by purchasing a Trust Certificate or any interest therein, represents that (i) it is not a Plan or an entity whose underlying assets include “plan assets” by reason of a Plan’s investment in the entity or (ii) such acquisition will not constitute or result in a non-exempt prohibited transaction under ERISA, Section 4975 of the Code or a Similar Law and that it has provided the Owner Trustee with documentation sufficient to evidence that such acquisition will not constitute or result in a non-exempt prohibited transaction.

The Owner Trustee shall not be required to register any Transfer of a Trust Certificate within ten Business Days preceding any Distribution Date.

4.04. *Lost, Stolen, Mutilated or Destroyed Trust Certificates.* If (i) any mutilated Trust Certificate is surrendered to the Owner Trustee, or (ii) the Owner Trustee receives evidence to its satisfaction that any Trust Certificate has been destroyed, lost or stolen, and upon proof of ownership satisfactory to the Owner Trustee together with such security or indemnity as may be requested by the Owner Trustee to hold it harmless, the Owner Trustee shall execute and deliver a new Trust Certificate representing the same Ownership Percentage as the Trust Certificate so mutilated, destroyed, lost or stolen, bearing a different certificate number, with such notations, if any, as the Owner Trustee shall determine.

Any duplicate Trust Certificate issued pursuant to this Section 4.04 shall constitute complete and infeasible evidence of ownership of such Trust Certificate, as if originally issued, whether or not the lost, stolen or destroyed Trust Certificate shall be found at any time.

4.05. *Pledge of Rights to Distributions.* An Owner may pledge, encumber or hypothecate all or any part of its rights to receive distributions hereunder; provided that the right to receive distributions with respect to each separate Trust Certificate may not be so pledged, encumbered or hypothecated to more than one person or entity. Any such pledge, encumbrance or

hypothecation shall not constitute a Transfer of an Ownership Interest in the Trust. Unless the foreclosure of any such pledge, encumbrance or hypothecation meets the requirements of Section 4.03 hereof and is registered in accordance with Section 4.02 hereof, such foreclosure shall not constitute a Transfer of an Ownership Interest in the Trust and the holder of the related Trust Certificate following such foreclosure shall not be entitled to any rights as an Owner under this Agreement, other than the right to receive distributions under this Agreement as contemplated by the first sentence of this Section.

4.06. *Section 754 Election.* In the event a Transfer of a Trust Certificate occurs which satisfies the provisions of Section 743 of the Code, the Trust shall, if requested to do so by the Transferee, and the Majority Owners deem doing so advisable, elect, pursuant to Section 754 of the Code, to adjust the basis of the Trust Property to the extent allowed by such Section 743 and shall cause such adjustments to be made and maintained. Any additional accounting expenses incurred by the Trust in connection with making or maintaining such basis adjustment shall be reimbursed to the Trust by the Transferee of such Trust Certificate who benefits from the making and maintenance of such basis adjustment.

ARTICLE V

ACTIONS OF THE OWNER TRUSTEE SUBJECT TO POWER OF THE OWNERS

5.01. *Action Upon Instructions.* (a) It is the intention of the Owners that the powers and duties of the Owner Trustee are to be ministerial only, and that the Owners shall have the power to direct the Owner Trustee as to all nonministerial matters concerning the administration of the Trust. Accordingly, subject to Sections 5.01(b) and (c) hereof, the Owners, through their respective Designated Officers, shall direct the Owner Trustee in the management of the Trust and the Trust Property, including, without limitation, any actions to be taken by the Trust that are consistent with the purposes and powers of the Trust set forth in Section 2.03 hereof. Such direction may be exercised at any time by written instruction given by a Designated Officer of each of the Majority Owners pursuant to this Article V.

(b) The Owner Trustee shall take such action or actions as may be specified in any instructions delivered in accordance with Section 5.01(a) hereof; *provided, however*, that the Owner Trustee shall not be required to take any such action if (i) the Bank shall have reasonably determined, or shall have been advised by counsel, that such action (A) is contrary to the terms hereof or of any document contemplated hereby to which the Owner Trustee is a party or is otherwise contrary to law or (B) is likely to result in liability on the part of the Bank, unless the Owners shall have provided to the Bank indemnification or security reasonably satisfactory to the Bank against all costs, expenses and liabilities arising from the Owner Trustee's taking such action or (ii) for so long as a Loan is outstanding, if such action is a Bankruptcy Action.

(c) Neither an Owner nor a Designated Officer shall direct the Owner Trustee to take or refrain from taking any action contrary to this Agreement, nor shall the Owner Trustee be obligated to follow any such direction, if given.

(d) In the event that the Owner Trustee is unsure as to the application of any provision of this Agreement, or such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision, or this Agreement permits any determination

by the Owner Trustee or is silent or is incomplete as to the course of action which the Owner Trustee is required to take with respect to a particular set of facts, the Owner Trustee shall promptly give notice (in such form as shall be appropriate under the circumstances) to each Owner, requesting instructions as to the course of action to be adopted, and to the extent the Owner Trustee acts in good faith in accordance with written instructions received from the Majority Owners through their respective Designated Officers, the Owner Trustee shall not be liable on account of such action to any Person. If the Owner Trustee shall not have received appropriate instructions within fifteen days of such notice (or within such shorter period of time as reasonably may be specified in such notice) it may, but shall be under no duty to, take or refrain from taking such action, not inconsistent with this Agreement, as it shall deem to be in the best interests of the Owners, and shall have no liability to any Person for such action or inaction; *provided, however*, that the Owner Trustee may not file or cause to be filed income tax returns for the Trust for federal, state and local income tax purposes as other than a partnership, unless it has received the unanimous written consent of Owners holding, in the aggregate, an Ownership Percentage of 100%. Upon reasonable request of any Owner, the Owner Trustee shall communicate with the other Owners, if any, concerning any instructions or actions sought by such Owner pursuant to this Section 5.01.

(e) The Owner Trustee shall, subject to this Section 5.01 and Section 10.01 hereof, act in accordance with the instructions given to it by the Majority Owners through their respective Designated Officers, and to the extent the Owner Trustee acts in good faith in accordance with such instructions, the Owner Trustee shall not be liable on account of such action to any Person.

5.02. *Action by Owners with Respect to Certain Matters.* In the event that there is more than one Owner and any adverse determination is made by the Service or by any court with respect to the classification of the Trust as a partnership for federal income tax purposes, the Tax Matters Partner shall, by written notice to each Owner, describe the circumstances and seek instructions as to the course of action to be followed. The Tax Matters Partner shall contest such adverse determination if so instructed by the Majority Owners and, to the extent the Tax Matters Partner acts in accordance with such instructions, the Tax Matters Partner shall not be liable on account of such action to any Person. If the Owners instruct the Tax Matters Partner to contest any such adverse determination, the costs thereof shall be borne by all Owners, in proportion to their respective Ownership Interests. If the Owners decide not to contest any such adverse determination, but an Owner, acting in its individual capacity, instructs the Tax Matters Partner to contest any such adverse determination, all costs thereof shall be borne by such Owner personally.

5.03. *Majority Consent.* Except where a different percentage or amount is specified herein, any action which requires the consent of, or permits the direction by, the Owners under this Agreement, must be approved or directed by the Majority Owners.

5.04. *Resolution of Disputes; Deadlock.* If at any time there is more than one Owner and any matter requires approval of the Owners, and the Majority Owners are unable to agree as to such matter, either of the two following clauses may be used:

(a) The Owners shall have the right to invoke a binding mediation process in which either (A) the Owners select a third-party expert to assess the situation and make a

recommendation to the Owners, or (B) each Owner appoints a third party expert and the third party experts so appointed jointly select an independent third party expert to assess the situation and make a recommendation to the Owners. In either event, the recommendation of the third party expert shall be final and binding on the Owners at the election of any of them; or

(b) Subject to the approval of the Owners under Section 4.03 hereof, each Owner may elect to sell its aggregate Ownership Interest to a third party at a price agreed by the Owners. If the dispute is not resolved as a result of such election, if such election is not made or if the Owners withhold approval, then any Owner may deliver a written notice (the first Owner to deliver such notice is referred to as the "Offering Owner") to another Owner (the "Accepting Owner") specifying a single dollar amount as the price for each one percent of Ownership Interest held by an Owner (the "Buy-Sell Price") at which the Offering Owner will (i) buy the Accepting Owner's Ownership Interest, or (ii) sell its Ownership Interest to the Accepting Owner. The Accepting Owner may, within 30 days, accept either the offer to sell or the offer to buy, and the Transfer shall be made at the Buy-Sell Price. If the Accepting Owner fails to elect to buy or sell within the 30-day period, then the Offering Owner shall, within five days after expiration of such 30 day period, designate whether it is a seller to or a buyer from the Accepting Owner at the Buy-Sell Price. Any Transfer to be made pursuant to this Section 5.04(b)(ii) will be made not more than 30 days from the date of the acceptance by the Accepting Owner of the offer to buy or sell or the designation by the Offering Owner of whether it is a buyer or seller.

5.05. *Tax Matters Partner.* If at any time there is more than one Owner, the Tax Matters Partner (as defined in Section 6231 of the Code) of the Trust shall be CDC or such other Person as the Majority Owners shall appoint, and notice of any such appointment shall be given in writing to the Owner Trustee and the other Owners. Each Owner shall give prompt notice to the other Owners upon receipt of advice that the Service intends to examine or audit any partnership income tax returns of the Trust. The Tax Matters Partner shall promptly notify the Owners of the commencement of any administrative or judicial or similar proceedings involving the tax treatment of items of Trust income, loss, deductions and credits, and shall further keep the Owners fully informed of all material developments involved in such proceedings.

Nothing in this Section 5.05 shall limit the ability of the Owners to take any action in their individual capacity relating to tax audit matters that are left to the determination of an individual Owner under Sections 6222-6232 of the Code.

The Tax Matters Partner, at the expense of the Trust, shall cause to be prepared by a preparer approved by the Majority Owners all Federal, state and local income tax returns and other returns or statements required of the Trust by applicable law and upon the approval of such returns or statements by the Majority Owners, the Tax Matters Partner shall timely file such returns or statements. The Tax Matters Partner shall not have any liability for acts of any agent in connection with such returns and statements. The Trust shall, in accordance with applicable federal or state laws or regulations, claim all deductions and make such elections for Federal or state income tax purposes which the Majority Owners reasonably believe will produce the most favorable tax results for the Owners. In addition, the Tax Matters Partner shall be responsible for the maintenance of Capital Accounts under Section 3.02.

The Tax Matters Partner shall (i) cause to be prepared and delivered to each Owner such financial statements of the Trust, and other reports or information, as are necessary to enable each Owner to prepare such Owner's state and federal income tax returns, (ii) until such time as the Tax Matters Partner has received the written unanimous consent of the Owners concerning any change in the tax classification of the Trust, file or cause to be filed tax returns as a partnership for federal, state and local income tax purposes, (iii) prepare or cause to be prepared reports of foreclosure or abandonment of property securing a mortgage loan as required by Section 6050J of the Code, and (iv) cause to be mailed to an Owner copies of any or all of such tax returns of the Trust when requested to do so by such Owner.

The Tax Matters Partner shall not be required to take any action or incur any expenses for the prosecution of any administrative or judicial remedies in its capacity as Tax Matters Partner unless the Tax Matters Partner is satisfied that the Trust will bear any and all such expenses. As long as the Tax Matters Partner is not grossly negligent or does not act in bad faith, or if the Tax Matters Partner acts pursuant to instructions of or approved by the Majority Owners, the Trust shall indemnify and hold harmless the Tax Matters Partner from and against any and all liabilities incurred by the Tax Matters Partner in connection with any activities or undertakings taken by it in its capacity as Tax Matters Partner. Any Owner that enters into a settlement or closing agreement with the Service or state or local tax authority in respect of any Trust item shall notify the Tax Matters Partner of such agreement and its terms within ten days of the execution of such agreement.

With respect to the making of distributions and other tax and accounting matters, the Owner Trustee shall be entitled to rely upon, and shall have no liability for relying upon, the instructions of or information supplied by the Tax Matters Partner without any obligation to verify the information in such instructions.

5.06. *Books and Records; Financial Reports.* (a) At all times during the existence of the Trust, CDC, or such other Person as the Owners shall appoint (the "Recordkeeper"), shall maintain, or cause to be maintained, full and true books of account, which shall reflect all Trust transactions and be appropriate and adequate for the Trust's business. Such books of account shall be maintained at the principal place of business of the Recordkeeper.

(b) The Recordkeeper shall be entitled to full reimbursement for all reasonable costs and expenses, including, but not limited to, out-of-pocket expenses associated with maintenance of the books of account of the Trust. The amount of costs and expenses to be reimbursed pursuant to the preceding sentence shall be estimated each year by the Recordkeeper and communicated by the Recordkeeper to the Owners prior to the incurrence of such costs and expenses. So long as the Recordkeeper is not grossly negligent or does not act in bad faith, or if the Recordkeeper acts pursuant to instructions of the Owners, the Trust shall indemnify and hold harmless the Recordkeeper from and against any and all liabilities incurred by the Recordkeeper in connection with any activities or undertakings taken by it in its capacity as Recordkeeper.

(c) The Recordkeeper shall deliver to each Owner, by the fifteenth day of the month immediately succeeding the month being reported upon, a balance sheet as of the end of each month and related financial statements for the month then ended, all of which shall be prepared in accordance with such accounting principles as the Recordkeeper shall determine are

appropriately reflective of the transactions contemplated by this Agreement. If the Majority Owners so determine, the balance sheet as of the end of the Fiscal Year and related financial statements for the year then ended, shall be examined and reported upon, with an opinion expressed by, an independent public accountant engaged by the Trust and approved by the Majority Owners. The Recordkeeper shall not have any liability for acts of the independent public accountant appointed in accordance herewith in connection with such examination and report.

ARTICLE VI
INVESTMENT AND APPLICATION OF TRUST FUNDS

6.01. *Investment of Trust Funds.* Unless otherwise directed in writing by the Owners, proceeds of the Trust Property received by the Owner Trustee more than one day prior to a Distribution Date will be invested, using its best efforts and at the risk and expense of the Owners, by the Owner Trustee at the written direction of the Owners in investments purchased through and held by such entity as instructed by the Depositor, maturing not later than such Distribution Date. In the event that the Owner Trustee does not receive such direction by the close of business on the day preceding the day on which such proceeds are received by the Owner Trustee, the Owner Trustee shall invest, using its best efforts and at the risk and expense of the Owners, such proceeds in Designated Investments purchased through and held by such entity as instructed by the Depositor, maturing not later than the next succeeding Distribution Date. On each Distribution Date, income earned on funds invested pursuant to this Section 6.01 shall be distributed to the Owners pro rata based on their respective Ownership Percentages on such Distribution Date.

6.02. *Application of Funds.* (a) All amounts received by or on behalf of the Trust by the Owner Trustee in connection with the sale or any other disposition of Assets held by the Trust and any investment income earned thereon shall be applied in the following order:

(i) *first*, to pay reasonable and necessary operating expenses of the Trust, including the payment of any amounts owing to the Owner Trustee under this Agreement; and

(ii) *second*, to distribute any net amounts remaining on each Distribution Date to the Owners based on their respective Ownership Percentages as reflected in the register maintained by the Owner Trustee pursuant to Section 4.02 hereof as of the close of business on the Business Day immediately preceding the Distribution Date; *provided, however*, if the Majority Owners through their respective Designated Officers have instructed the Owner Trustee to retain such funds, then the retained funds shall thereafter be applied according to the further written instructions of the Majority Owners. The Bank shall not be liable for any amounts payable pursuant to this Section 6.02 and, except as specifically provided in Section 6.05 hereof and the third sentence of Section 10.01 hereof, is not subject to any liability under this Agreement.

(b) In the event that any withholding tax is imposed on the Trust's payment (or allocations of income) to an Owner, such tax shall reduce the amount otherwise distributable to the Owner in accordance with this Section 6.02. The Owner Trustee is hereby authorized and directed to retain from amounts otherwise distributable to the Owners sufficient funds for the payment of

any tax that is legally owed by the Trust (but such authorization shall not prevent the Owner Trustee, at the direction of the Owners, or the Tax Matters Partner from contesting any such tax in appropriate proceedings, and shall not prevent the Owner Trustee from withholding payment of such tax, if permitted by law, pending the outcome of such proceedings). The amount of any withholding tax imposed with respect to an Owner shall be treated as cash distributed to such Owner at the time it is withheld by the Trust and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a distribution (such as a distribution to a non-U.S. Owner), the Owner Trustee may in its sole discretion withhold such amounts in accordance with this paragraph (b). In the event that an Owner wishes to apply for a refund of any such withholding tax, the Owner Trustee shall reasonably cooperate with such Owner in making such claim so long as such Owner agrees to reimburse the Owner Trustee for any out-of-pocket expenses incurred. In the event that the Owner Trustee or the Trust is liable for any failure to withhold in respect of a distribution to an Owner, then such Owner shall indemnify the Owner Trustee or the Trust for any amount (including penalties and interest) paid by the Owner Trustee or the Trust in respect of such liability.

(c) Any Owner which is organized under the laws of a jurisdiction outside the United States shall, on or prior to the date such Owner becomes an Owner, (i) so notify the Owner Trustee and (ii) either (A) provide the Owner Trustee with Internal Revenue Service Form 1001, 4224 or W-8, as appropriate, or (B) notify the Owner Trustee that it is not entitled to an exemption from United States withholding tax or a reduction in the rate thereof on payments of interest.

6.03. *Statements.*

(a) *Distribution Date Statements.* With each distribution to an Owner pursuant to Section 6.02 hereof, the Owner Trustee shall deliver a statement to the Designated Officers (a "Distribution Date Statement") setting forth, for the period since the preceding Distribution Date (or since the execution and delivery of this Agreement in the case of the first Distribution Date):

- (i) the amounts received by the Owner Trustee with respect to the Trust Property;
- (ii) the amount of fees and expenses paid to the Owner Trustee since the preceding Distribution Date; and
- (iii) the amounts paid to Owners.

(b) *Designated Officer Reports.* The Designated Officers shall deliver copies of all remittance reports to their respective Owners and, if requested by their respective Owners, shall provide analysis and consolidation of such reports in such form as such Owners may request.

6.04. *Method of Payment.* All amounts payable to an Owner pursuant to this Agreement shall be paid by the Owner Trustee to such Owner, as the Owner elects (and so instructs the Owner Trustee) from time to time, by check payable to such Owner in next day funds, mailed first class to the address of such Owner appearing on the register maintained pursuant to Section 4.02(a) hereof, or by credit in immediately available funds to an account maintained by such Owner with the Owner Trustee or by wire transfer in immediately available funds to a banking institution with bank wire transfer facilities for the account of such Owner. The Owner

Trustee may require an Owner to pay any wire transfer fees incurred in connection with any wire transfer made to such Owner and may collect such fees by deducting them from the amount so transferred.

6.05. *No Segregation of Moneys; No Interest.* Moneys received by the Owner Trustee hereunder need not be segregated in any manner except to the extent required by law or as otherwise provided herein and may be deposited under such general conditions as may be prescribed by law, and neither the Owner Trustee nor the Bank shall be liable for any interest thereon (unless such funds are invested in interest-bearing investments of the Bank).

6.06. *Distributions Upon Termination of Trust.* Upon the dissolution, winding up and termination of the Trust (or such other date as agreed to by the Majority Owners and the Owner Trustee), the Trust Property or the cash proceeds therefrom shall be distributed in the following order of priority:

(a) First, to creditors, including the Owner Trustee and any Owners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Trust (whether by payment or by making of reasonable provision for payment) other than liabilities for distributions to Owners on account of their respective interests in the Trust, and in the setting up of such reserves as the Majority Owners may reasonably deem necessary or appropriate for any contingent, conditional or unmatured liabilities or obligations of the Trust, and when all such liabilities are satisfied, the balance of such reserves, if any, shall be distributed as hereinafter provided; and

(b) Second, to the Owners in accordance with and to the extent of their respective Capital Account balances after taking into account the allocation of all Net Profits, Net Loss, Gross Income and Gross Deduction pursuant to this Agreement for the Fiscal Year in which the Trust is terminated; *provided, however,* that if at the time of termination there shall be one Owner, then any amount remaining after Section 6.06(a) shall be distributed to such Owner.

(c) If, after giving effect to the allocations of Net Profits, Net Loss, Gross Income, Gross Deduction or credit under Article III and all contributions and distributions for all taxable years, any Owner shall have a deficit balance in such Owner's Capital Account, such Owner shall have no obligation to restore such deficit balance, or to make any contribution to the capital of the Trust by reason thereof, and such deficit balance shall under no circumstances be considered a liability owed to the Trust.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEPOSITOR

7.01. *Title to Trust Property.* The Depositor hereby represents and warrants to the Owner Trustee on behalf of the Trust that upon the transfer of the Trust Property conveyed by such Depositor to the Trust, such Depositor will have conveyed to the Trust good title to such Trust Property, free and clear of any lien, encumbrance or defect created by and relating to the Depositor.

7.02. *Binding Effect.* The Depositor hereby represents and warrants to the Owner Trustee and the Bank that (i) the Depositor is a corporation organized under the laws of the State

of New York, validly existing and in good standing under the laws of the State of New York and (ii) this Agreement has been duly and validly authorized, executed and delivered by, and constitutes a valid and legally binding agreement of, such Depositor and is enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

7.03. *Trust Certificates.* The Depositor hereby represents and warrants to the Owner Trustee that such Depositor is acquiring its Trust Certificate for its own account as principal and not with a view to the distribution thereof in whole or in part.

7.04. *Investment Company.* The Depositor hereby represents and warrants to the Owner Trustee that the Trust will not be an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF THE BANK

8.01. *Good Standing.* The Bank represents and warrants to the Depositor, for the benefit of the Owners, that the Bank is a bank and trust company organized under the laws of the State of Delaware, validly existing and in good standing under the laws of the State of Delaware and has all corporate powers and all material governmental licenses, authorizations, consents and approvals required under the laws of the State of Delaware to carry on its trust business as now conducted.

8.02. *Binding Effect.* The Bank represents and warrants to the Depositor, for the benefit of the Owners, that the execution, delivery and performance by the Bank of this Agreement and the issuance of the Trust Certificates by the Owner Trustee on behalf of the Trust pursuant to this Agreement are within the corporate power of the Bank and have been duly authorized by all necessary corporate action on the part of the Bank (no action by its shareholders being required), and this Agreement constitutes the valid and legally binding agreement of the Bank, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles; and such actions do not and will not (i) violate or contravene any judgment, injunction, order or decree binding on the Bank, (ii) violate, contravene or constitute a default under any provision of the certificate of incorporation or by-laws of the Bank or of any material agreement or instrument binding on the Bank, or (iii) result in the creation or imposition of any lien attributable to the Bank on the Trust Property except as contemplated by this Agreement.

8.03. *Consents and Approvals.* The Bank represents and warrants to the Depositor, for the benefit of the Owners, that no consent, approval, authorization, or order of, or filing with, any court or regulatory, supervisory or governmental agency or body is required under Delaware law or federal law governing the banking and trust powers of the Bank in connection with the execution, delivery and performance by the Bank, in its individual capacity, of this Agreement other than the filing of the certificate of trust under the Act.

ARTICLE IX
AUTHORITY AND DUTIES OF OWNER TRUSTEE

9.01. *General Authority.* (a) The Owner Trustee is authorized to take all actions required to be taken by it pursuant to the terms of this Agreement. The Owner Trustee is further authorized to take such further actions as are permitted but not required under this Agreement as the Owners may direct pursuant to Article V hereof.

(b) The Owner Trustee is authorized and directed to execute and deliver and is authorized to perform on behalf of the Trust such agreements to which the Trust is a party as shall be specified in writing by the Majority Owners through their respective Designated Officers; *provided, however,* the Owner Trustee shall not be responsible or liable for monitoring or ensuring the compliance of the Trust with its obligations, representations, warranties or agreements under the foregoing documents. In connection with the execution and delivery of such specified documents, the Owner Trustee is authorized to grant, upon the request of the Majority Owners through their respective Designated Officers, a power of attorney to one or more individuals designated by the Majority Owners for such purpose.

9.02. *General Duties.* Subject to Section 5.01 hereof, it shall be the duty of the Owner Trustee to discharge (or cause to be discharged) all of its responsibilities pursuant to the terms of this Agreement and to administer the Trust in the interest of the Owners, in accordance with the provisions of this Agreement.

9.03. *No Duties Except as Specified in this Agreement or in Instructions.* The Owner Trustee shall not have any liability, duty or obligation to manage, inspect, insure, make any payment with respect to, register, record, sell, dispose of, create, maintain or perfect title or a security interest in, or otherwise deal with the Trust Property, prepare, file or record any document or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Trust is a party, except as expressly provided by the terms of this Agreement or in any written instruction received by the Owner Trustee pursuant to Article V hereof; and no implied powers, duties or obligations shall be read into this Agreement against the Owner Trustee. The Bank nevertheless agrees that it will, at its own cost and expense, promptly take all such action as may be necessary to discharge any liens on any part of the Trust Property which result from actions by, or claims against, the Bank that are not related to the ownership of the Trust Property or the transactions contemplated hereby.

9.04. *No Action Except Under Specified Documents or Instructions.* The Owner Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any part of the Trust Property except (i) in accordance with the powers granted to and the authority conferred upon the Owner Trustee pursuant to this Agreement, and (ii) in accordance with the express terms hereof or with any instruction delivered to the Owner Trustee pursuant to Article V hereof.

ARTICLE X
CONCERNING THE OWNER TRUSTEE

10.01. *Acceptance of Trusts and Duties.* The Owner Trustee accepts the trusts hereby created and agrees to perform its duties hereunder with respect to the same but only upon

the terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Property upon the terms of this Agreement. The Bank shall not be answerable or accountable under any circumstances, except (i) for its own willful misconduct or gross negligence, (ii) in the case of the inaccuracy of any representation or warranty contained in Article VIII hereof expressly made by the Bank, (iii) for liabilities arising from the failure by the Bank to perform obligations expressly undertaken by it pursuant to the last sentence of Section 9.03 hereof, or (iv) for taxes, fees or other charges based on or measured by any fees, commissions or compensation received by the Owner Trustee in connection with any of the transactions contemplated by this Agreement. In particular, but not by way of limitation:

(a) The Bank shall not be liable for any judgment made in good faith by a responsible officer of the Owner Trustee;

(b) The Bank shall not be liable with respect to any action taken or omitted to be taken by the Owner Trustee in good faith in accordance with the instructions of the Owners or a Designated Officer rendered pursuant to this Agreement;

(c) No provision of this Agreement shall require the Bank to expend or risk funds or otherwise incur any financial liability in the performance of any of its or the Owner Trustee's rights or powers hereunder, if the Bank shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(d) The Bank shall not be responsible for or in respect of the sufficiency of this Agreement or for the due execution hereof by the Depositor or for the form, character, genuineness, sufficiency, value or validity of any Trust Property, and the Bank shall in no event assume or incur any liability, duty or obligation to the Depositor or to any Owner, other than as expressly provided for herein; and

(e) The Bank shall not be liable for any representation, warranty, debt, agreement or other obligation of the Trust.

10.02. *Reliance; Advice of Counsel.* The Owner Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

10.03. *Agents.* In the exercise or administration of the trusts hereunder, the Owner Trustee (i) may act directly or, at the reasonable expense of the Trust, through agents or attorneys

pursuant to agreements entered into with any of them, and the Owner Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Owner Trustee with reasonable care; and (ii) may, at the reasonable expense of the Trust, consult with counsel, accountants and other skilled persons to be selected with reasonable care and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

10.04. *Doing Business.* Notwithstanding anything contained herein to the contrary, neither the Bank nor the Owner Trustee shall be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware; (ii) result in any fee, tax or other governmental charge under the laws of any jurisdiction or any political subdivisions thereof in existence as of the date hereof other than the State of Delaware becoming payable by the Bank; or (iii) subject the Bank to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by the Bank or the Owner Trustee, as the case may be, contemplated hereby.

10.05. *Not Acting in Individual Capacity.* Except as provided in this Article X, in accepting the trusts hereby created the Bank acts solely as Owner Trustee hereunder and not in its individual capacity and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust for payment or satisfaction thereof.

ARTICLE XI COMPENSATION OF OWNER TRUSTEE

11.01. *Owner Trustee's Fees and Expenses.* The Owner Trustee shall receive as compensation for its services hereunder such fees as have been separately agreed upon prior to the date hereof between the Depositor and the Bank, and the Owner Trustee shall be entitled to be reimbursed for its reasonable expenses hereunder, including, without limitation, the reasonable compensation, expenses and disbursements of such agents, representatives, experts and counsel as the Owner Trustee may employ in connection with the exercise and performance of its rights and duties hereunder. Such fees shall be paid by the Owners or in accordance with Section 6.02(a) hereof.

11.02. *Indemnification.* (a) The Owners shall be liable for, and hereby agree to indemnify the Bank and any other trustee of the Trust and their successors, assigns, agents and servants (each, an "Indemnified Party"), from and against any and all liabilities, obligations, losses, damages, taxes, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted at any time against an Indemnified Party (whether or not indemnified against by other parties) in any way relating to or arising out of this Agreement, the administration of the Trust Property or the action or inaction of an Indemnified Party hereunder, except only that (i) the Owners shall not be required to indemnify an Indemnified Party for expenses arising or

resulting from any of the matters described in the third sentence of Section 10.01 hereof, and (ii) the indemnity by any particular Owner shall relate only to liabilities arising during the period of time in which such Owner was registered as an Owner in accordance with Section 4.02.

(b) The obligations of the Owners pursuant to this Section 11.02 shall be joint and several; *provided, however*, that the Owners, as among themselves, shall have rights of contribution from each other in proportion to their respective Ownership Percentages at the time the Expenses with respect to which contribution is sought arose, except that if one or more persons who were Owners at the time the Expenses with respect to which contribution is sought arose shall be insolvent, each remaining person who was an Owner at the time the Expenses with respect to which contribution is sought arose shall be entitled to contribution from each other Owner which is not insolvent in an amount equal to the product of (i) a fraction, of which the numerator is such Owner's Ownership Percentage at the time the Expenses with respect to which contribution is sought arose and the denominator is the Ownership Percentage at the time the Expenses with respect to which contribution is sought arose of all of the Owners except the Owner or Owners which are insolvent and (ii) the amount of the Expenses with respect to which contribution is sought.

(c) The indemnities set forth in this Section 11.02 shall be in addition to any other rights the Indemnified Parties may have. The indemnities and obligations contained herein shall survive the termination of the Trust, any disposition by the Owner Trustee of its interests in the Trust Property or any other event.

(d) For purposes of this Section 11.02, the following term shall have the following meaning:

"Expenses" means the amounts described in paragraphs (a) and (b) of this Section 11.02 for which the Owners have indemnified the Indemnified Parties.

11.03. *Lien on Trust Property.* The Bank shall have a lien on the Trust Property for any compensation and indemnity due hereunder.

11.04. *Payments to the Owner Trustee or the Bank.* Any amounts paid to the Owner Trustee or the Bank pursuant to this Article XI shall be deemed not to be a part of the Trust Property immediately after such payment.

ARTICLE XII TERMINATION OF TRUST AGREEMENT

12.01. *Trust Termination.* This Agreement shall terminate and the Trust created hereby shall wind up, dissolve and terminate and the Trust Property shall be distributed to the Owners in accordance with Section 6.06 hereof, and this Agreement shall be of no further force or effect, upon the later of (i) the sale or other final disposition by the Owner Trustee of the Trust Property pursuant to the instruction of the Owners and the final distribution by the Owner Trustee of all moneys or other property or proceeds of the Trust and (ii) the date on which no Loan is outstanding. Upon the termination of the Trust and the completion of the winding up of the Trust's affairs, the Owner Trustee shall file a certificate of cancellation pursuant to Section 3810 of the Act.

ARTICLE XIII
SUCCESSOR OWNER TRUSTEES AND ADDITIONAL TRUSTEES

13.01. *Resignation of Owner Trustee; Appointment of Successor.* (a) The Owner Trustee may resign at any time by giving at least 60 days' prior written notice to the Owners, such resignation to be effective on the acceptance of appointment by a successor Owner Trustee under Section 13.01(b) hereof approved by the Owners. In addition, the Owners may at any time remove the Owner Trustee without cause by an instrument in writing delivered to the Owner Trustee, such removal to be effective upon the acceptance of appointment by a successor Owner Trustee under Section 13.01(b) hereof approved by the Owners. In case of the resignation or removal of the Owner Trustee, the Owners shall use their best efforts promptly to appoint a successor Owner Trustee by an instrument signed by the Owners. If a successor Owner Trustee shall not have been appointed within 30 days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, each of the Owners shall appoint a Person to act as trustee and to be a member of the board of trustees, in which case all references herein to the "Owner Trustee" shall be deemed to refer to the board of trustees. The board of trustees shall act by majority vote, with each member of the board having voting rights in proportion to the Ownership Percentage of the Owner appointing such member.

(b) Any successor Owner Trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee and all of the Owners an instrument accepting such appointment, and thereupon such successor Owner Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named the Owner Trustee herein; but nevertheless, upon the written request of such successor Owner Trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor Owner Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor Owner Trustee all moneys or other property then held or subsequently received by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Notwithstanding anything herein to the contrary, the Trust shall at all times have at least one trustee which meets the requirements of Section 3807(a) of the Act.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred shall, subject to the terms of Section 13.01(c) hereof, be the Owner Trustee under this Agreement without further action.

13.02. *Appointment of Additional Trustees.* (a) At any time or times for the purpose of meeting any legal requirements of any jurisdiction in which any of the Trust Property may at the time be located, or if the Owner Trustee otherwise deems such appointment necessary for its own protection, the Owners and the Owner Trustee shall have the power to appoint one or more individuals or corporations either to act as co-trustee, or co-trustees, jointly with the Owner Trustee of all or any part of the Trust Property or to act as separate trustee or separate trustees of

all or any part of the Trust Property and to vest in such Person or Persons, in such capacity, such title to the Trust Property or any part thereof, and such rights, powers, duties, trusts or obligations as the Owner Trustee may consider necessary or desirable, subject to the other provisions of this Section 13.02.

(b) Unless otherwise provided in the instrument appointing such co-trustee or separate trustee, every co-trustee or separate trustee shall, to the extent permitted by law, be appointed subject to the following terms, namely:

(i) All rights, powers, trusts, duties and obligations by this Agreement conferred upon the Owner Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property, shall be exercised solely by the Owner Trustee;

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Owner Trustee, or by the Owner Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees jointly, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees;

(iii) Any request in writing by the Owner Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee;

(iv) Any co-trustee or separate trustee to the extent permitted by law may delegate to the Owner Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(v) The Owner Trustee at any time, by an instrument in writing, with the concurrence of the Owners, may accept the resignation of, or remove, any co-trustee or separate trustee appointed under this Section 13.02. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 13.02;

(vi) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder;

(vii) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Owners and delivered to the Owner Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(viii) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may

be permitted by law, be turned over to the Owner Trustee to be held pursuant to the terms hereof.

(c) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the estate, right, title and interest in the Trust Property, or portion thereof, and with such rights, powers, duties, trusts or obligations, jointly or separately with the Owner Trustee, all as shall be specified in the instrument of appointment, subject to all the terms hereof. Every such acceptance shall be filed with the Owner Trustee.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the estate, right, title and interest in the Trust Property and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Owner Trustee unless and until a successor co-trustee or separate trustee shall be appointed pursuant to this Section 13.02.

ARTICLE XIV MISCELLANEOUS

14.01. *Supplements and Amendments.* This Agreement may be amended, and compliance with any provisions of this Agreement may be waived, only by a written instrument signed by the Owner Trustee and the Majority Owners at the time of such amendment; *provided, however,* that if any such amendment or waiver would have a material adverse effect on any Owner, such amendment or waiver will require the consent of any Owner so affected. Furthermore, if in the reasonable opinion of the Owner Trustee any instrument required to be executed adversely affects any right, duty or liability of, or immunity or indemnity in favor of, the Owner Trustee under this Agreement or any of the documents contemplated hereby to which the Owner Trustee is a party, or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, the charter documents or by-laws of the Owner Trustee or any document contemplated hereby to which the Owner Trustee is a party, the Owner Trustee may in its sole discretion decline to execute such instrument.

14.02. *No Legal Title to Trust Property in Owners.* The Owners shall not have legal title to any part of the Trust Property and shall only be entitled to receive distributions with respect to their Ownership Interest therein pursuant to Sections 6.02 and 6.06 hereof. No transfer, by operation of law or otherwise (other than as set forth in Article XII hereof), of any right, title and interest of any Owner in and to its Ownership Interest in the Trust Property hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Property.

14.03. *Limitations on Rights of Others.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Bank, the Owner Trustee, the Depositor and the Owners any legal or equitable right, remedy or claim in the Trust Property or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

14.04. *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing and delivered by hand, mailed by certified mail, postage

prepaid, delivered by overnight courier, charges prepaid, or by facsimile transmission (to be followed in writing by one of the foregoing methods) addressed as follows, or to such other address as may be hereafter notified by the respective parties hereto in accordance with this Section:

If to the Owner Trustee:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-0001
Attention: Corporate Trust Administration
Facsimile: (302) 651-8882

If to an Owner, addressed to such Owner at the address set forth for such Owner in the register maintained by the Owner Trustee.

If to CDC:

CDC Mortgage Capital Inc.
9 West 57th Street, 36th Floor
New York, NY 10019
Attention: Gary DiGiuseppe
Facsimile: (212) 891-6263;
with a copy to:
Barry Funt
Facsimile: (212) 891-3411.

Whenever any notice in writing is required to be given hereunder, such notice shall be deemed given and such requirement satisfied when such notice is hand delivered, mailed by certified mail, postage prepaid, delivered to an overnight courier service, charges prepaid or sent by facsimile and electronically confirmed, in each case addressed as provided above.

14.05. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14.06. *Separate Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

14.07. *Successors and Assigns.* All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee, the Depositor and each Owner and their respective successors and permitted assigns, and no other person shall acquire or have any right under or by virtue of this Agreement, all as herein provided. Any request, notice,

direction, consent, waiver or other instrument or action by an Owner shall bind the successors and assigns of such Owner.

14.08. *Headings.* The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

14.09. *Governing Law.* This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Delaware (excluding conflict of law rules), including all matters of construction, validity and performance.

14.10. *Complete Agreement.* This Agreement constitutes the complete agreement between the parties with respect to the subject matter hereof and may not be modified except as provided herein.

14.11. *Third-Party Beneficiary.* The provisions of this Agreement are for the sole benefit of the parties hereto and shall not inure to the benefit of any other Person (other than permitted assigns of the parties) either as third party beneficiary or otherwise.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

WILMINGTON TRUST COMPANY

By: _____
Name:
Title:

CDC MORTGAGE CAPITAL INC.

By: _____
Name:
Title:

EXHIBIT A

FORM OF TRUST CERTIFICATE

This Trust Certificate has not been registered under the Securities Act of 1933, as amended, and may not be sold, or offered for sale, unless registered pursuant to such Act or unless an exemption under such Act is available.

**CDC Pompano Property Trust
(the "TRUST")**

TRUST CERTIFICATE

For
Trust Agreement
dated as of October 18, 2001

Certificate No. 1A

Ownership Percentage: 100%

Wilmington Trust Company, a Delaware banking corporation, acting not in its individual capacity but solely as trustee under the trust agreement dated as of the date above written (the "Trust Agreement") with CDC Mortgage Capital Inc., as depositor, on behalf of the holders from time to time (each, an "Owner") of beneficial interests in the trust created thereby, hereby certifies that CDC Mortgage Capital Inc. is the owner of an undivided beneficial interest of the Ownership Percentage specified above in the Trust provided for and created by the Trust Agreement. This Trust Certificate is issued pursuant to and is entitled to the benefits of the Trust Agreement, and each Owner by acceptance hereof shall be bound by the terms of the Trust Agreement. Reference is hereby made to the Trust Agreement for a statement of the rights and obligations of the Owner hereof. The Owner Trustee may treat the person shown on the register maintained by the Owner Trustee pursuant to Section 4.02 of the Trust Agreement as the absolute Owner hereof for all purposes.

Capitalized terms used herein without definition have the meanings ascribed to them in or by reference to the Trust Agreement.

Transfer of this Trust Certificate is subject to certain restrictions and limitations set forth in the Trust Agreement. In the manner more fully set forth in, and as limited by, the Trust Agreement, this Trust Certificate may be transferred upon the books of the Owner Trustee by the registered Owner in person or by his attorney duly authorized in writing, upon surrender of this Trust Certificate to the Owner Trustee accompanied by a written instrument of transfer and with such signature, guarantees and evidence of authority of the persons signing the instrument of transfer as the Owner Trustee may reasonably require, whereupon the Owner Trustee shall issue in the name of the transferee or transferees a Trust Certificate or Trust Certificates evidencing the amount and extent of interest of the transferee or transferees.

The Owner hereof, by its acceptance of this Trust Certificate, warrants and represents to the Owner Trustee and to the Owners of the other Trust Certificates issued under the

Trust Agreement that (a) it is acquiring this Trust Certificate and the interest and participation in the Trust evidenced hereby for investment and not with a view to distribution or resale, but subject nevertheless to any requirement of law that disposition of its property shall at all times be within its control, (b) it has the full right, power and authority to perform its obligations as an Owner under the Trust Agreement, (c) the Trust Agreement does not, nor will the performance of the Owner's obligations thereunder, violate the provisions of (i) the articles of incorporation and by-laws of the Owner, or (ii) any indenture or other agreement to which it is a party or by which it may be bound, and (d) the Trust Agreement is the legal, valid and binding obligation of the Owner hereof, enforceable against the Owner hereof in accordance with its terms. The Owner hereof (i) shall be jointly and severally liable with the Owners of the other Trust Certificates issued under the Trust Agreement (with rights of contribution *inter se* in proportion to their Ownership Percentages) for all fees, expenses, taxes, indemnity payments and other charges of the Trust pursuant to the Trust Agreement and (ii) shall not transfer this Trust Certificate except in accordance with the Trust Agreement.

This Trust Certificate may be pledged if such pledge, in the opinion of counsel, does not constitute a sale or exchange for federal income tax purposes.

IN WITNESS WHEREOF, the Owner Trustee, pursuant to the Trust Agreement, has caused this Trust Certificate to be issued as of October 18, 2001. _____

WILMINGTON TRUST COMPANY,
not in its individual capacity but solely as Owner
Trustee

By: _____
Name:
Title:

EXHIBIT B

CERTIFICATE OF TRUST

EXHIBIT C

LIST OF DESIGNATED OFFICERS

Owner.....CDC Mortgage Capital Inc.

Designated OfficersRamine Rouhani
Brook Payner
Barry Funt
Scott Zucker
Gary DiGiuseppe
Jenna Gerstenlauer

FILED
2001 OCT 19 PM 4: 11
SECRETARY OF STATE
TALLAHASSEE FLORIDA