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(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

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PICK-UP

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MAIL

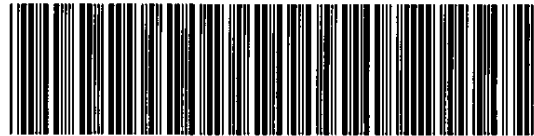
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



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RECEIVED  
07 JUN 25 PM 12:39  
DEPT. OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

6/24/07



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 961835 7342777

AUTHORIZATION :

COST LIMIT : \$350.00

ORDER DATE : June 21, 2007

ORDER TIME : 2:17 PM

ORDER NO. : 961835-005

CUSTOMER NO: 7342777

FOREIGN FILINGS

NAME: LASALLE INCOME & GROWTH FUND  
IV

XXXX AFFIDVIT TO FILE OR QUALIFY A TRUST

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

       CERTIFIED COPY  
XX        PLAIN STAMPED COPY  
       CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Troy Todd -- EXT# 2940

EXAMINER: \_\_\_\_\_

**AFFIDAVIT TO THE FLORIDA SECRETARY OF STATE  
TO FILE OR QUALIFY**

LoSalle Income & Growth Fund IV

A Maryland real estate investment **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 LoSalle Income & Growth Fund IV, a

Maryland real estate

(Name of Trust)

investment

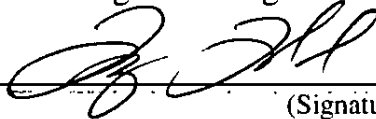
(State)

Trust hereby affirms in order to file or qualify

LoSalle Income & Growth Fund IV, in the State of Florida.

(Name of Trust)

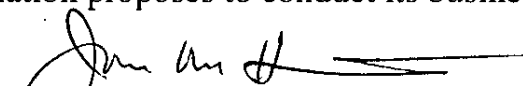
1. Two or more persons are named in the Trust.
2. The principal address is c/o LoSalle Investment Management, Inc.,  
200 E. Randolph Drive, Chicago, IL 60601
3. The registered agent and street address in the State of Florida are:  
Corporation Service Company  
1201 Days Street, Tallahassee, Florida 32301-2607
4. Acceptance by the registered agent: Having been named as registered  
agent to accept service of process for 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.



**Troy Todd  
as its agent**

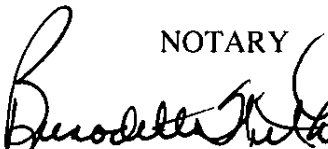
(Signature of Registered Agent)

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.

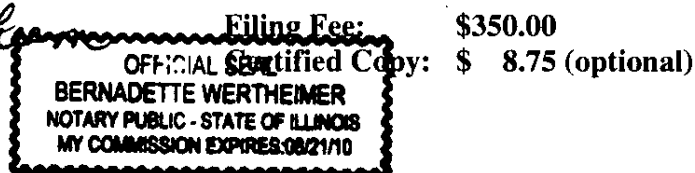


Name: James M. Hutchinson  
Chairman of the Board of Trustees

NOTARY



CR2E063(3/00)



MAR-25-2005 15:29 FROM:  
State of Maryland

**Department of  
Assessments and Taxation**

Charter Division



TD:312 782 8585

P.2/11  
ROBERT L. BARNES, Jr.  
Governor

C. John Sullivan, Jr.  
Director

Paul B. Anderson  
Administrator

VENABLE LLP  
AB COHEN  
1800 MERCANTILE BANK & TRUST BLDG  
2 HOPKINS PLZ  
BALTIMORE MD 21201-2930

Date: 03-25-2005

This letter is to confirm acceptance of the following filing:

ENTITY NAME : LASALLE INCOME & GROWTH FUND IV  
DEPARTMENT ID : D10539385  
TYPE OF REQUEST : DECLARATION OF TRUST  
DATE FILED : 03-25-2005  
TIME FILED : 01:22-PM  
RECORDING FEE : \$100.00  
ORG. & CAP FEE : \$20.00  
EXPEDITED FEE : \$70.00  
COPY FEE : \$28.00  
FILING NUMBER : 1000361991121860  
CUSTOMER ID : 0001588391  
WORK ORDER NUMBER : 0001031429

PLEASE VERIFY THE INFORMATION CONTAINED IN THIS LETTER. NOTIFY THIS DEPARTMENT IN WRITING IF ANY INFORMATION IS INCORRECT. INCLUDE THE CUSTOMER ID AND THE WORK ORDER NUMBER ON ANY INQUIRIES. EVERY YEAR THIS ENTITY MUST FILE A PERSONAL PROPERTY RETURN IN ORDER TO MAINTAIN ITS EXISTENCE EVEN IF IT DOES NOT OWN PERSONAL PROPERTY. A BLANK RETURN WILL BE MAILED BY FEBRUARY OF THE YEAR FOR WHICH THE RETURN IS DUE.

Charter Division  
Baltimore metro area (410)767-1350  
Outside metro area (888)246-5941

MAR-25-2005 15:29 FROM:

TO:312 782 8585

P.3/11

ENTITY TYPE: INVESTMENT TRUST  
STOCK: Y  
CLOSE: N  
EFFECTIVE DATE: 03-25-2005  
PRINCIPAL OFFICE: 100 EAST PRATT STREET  
BALTIMORE MD 21202  
RESIDENT AGENT: LASALLE INVESTMENT MANAGEMENT, INC.  
100 EAST PRATT STREET  
BALTIMORE MD 21202

## NOTICE Effective January 1, 2004

As a result of a change in State law, the annual report fee for most legal entities (including LLCs and LLPs) has increased to \$400. This fee is for the privilege of maintaining a legal entity's existence in Maryland, and is due and payable with the filing of the personal property return. The increase is effective for any return regardless of year filed after 12/31/2003.

There continues to be no annual report fee for non-stock corporations, churches, foreign interstate companies, sole proprietorships and general partnerships, but these entities must still file a personal property return annually.



ARTICLES OF AMENDMENT

OF

LASALLE INCOME & GROWTH FUND IV

April 22, 2005

WITNESSETH:

LaSalle Income & Growth Fund IV, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: The Declaration of Trust of the Trust is hereby amended by replacing the fourth sentence of Section 4.1(c) with the following:

"All Common Shares shall have equal non-cumulative voting rights at the rate of one vote per Common Share; provided, however, that Common Shares held by LaSalle or its Affiliates (other than I&G Opportunity Fund, LLC, a Delaware limited liability company) shall not be entitled to vote on matters involving (i) the removal or filling of a vacancy of any individual Trustee or the Board of Trustees as a whole, whether with or without Cause pursuant to Section 2.3 of this Declaration of Trust, (ii) changes to fees paid to, or services provided to the Trust by LaSalle or any Affiliate of LaSalle pursuant to Section 2.6(d) of the Declaration of Trust, (iii) the approval of any offering of any securities of the Trust pursuant to a registration statement filed with the Securities and Exchange Commission or the listing of any such securities on any securities exchanges, as contemplated by Section 3.2(d) of the Declaration of Trust, (iv) any amendment of a Management Agreement subject to Section 6.5 of the Declaration of Trust, (v) the approval or disapproval of any Affiliate Transaction pursuant to Section 5.8 of the Declaration of Trust, (vi) the extension of the duration of the Trust pursuant to Section 6.1 of the Declaration of Trust, (vii) any matter which LaSalle or its Affiliates are not otherwise entitled to vote upon pursuant to any agreement between LaSalle and the Shareholders of the Trust or (viii) any assignment (within the meaning of the Investment Advisers Act of 1940) of the Management Agreement subject to Section 6.5 of the Declaration of Trust, and the Common Shares held by LaSalle or any of its Affiliates (other than I&G Opportunity Fund, LLC, a Delaware limited liability company) shall not be taken into account in determining the relevant percentages required for approval of such matters."

CHI-1472281v2

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the page document on file in this office. DATED: 4/22/05  
BY: Spencer R. Purcell, Custodian  
This stamp replaces our previous certification system. Effective: 6/95

SECOND: The amendment to the Declaration of Trust of the Trust as set forth above has been duly advised by the Board of Trustees and approved by the shareholders of the Trust as required by law.

THIRD: The undersigned President acknowledges these Articles of Amendment to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.


(Signature Page Follows)



IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this ~~22~~<sup>24</sup> day of April, 2005.

ATTEST:

LASALLE INCOME & GROWTH FUND IV

By:   
Name: Kimball C. Woodrow  
Title: Secretary

By:   
Name: James M. Hutchinson  
Title: President

1. 1. 1.

1. 1. 1.

1. 1. 1.

ARTICLES OF AMENDMENT AND RESTATEMENT

OF

LASALLE INCOME & GROWTH FUND IV

April 1, 2005

WITNESSETH:

WHEREAS, the Trustees formed the Trust by duly filing the Declaration of Trust, dated as of March 25, 2005, with the MSDAT (the "Existing Declaration of Trust") for the principal purpose of investing in real property and interests therein; and

WHEREAS, the Trustees desire that the Trust qualify as a "real estate investment trust" under the Code, and as a "real estate investment trust" under the MREITL; and

WHEREAS, in furtherance of such purpose the Trustees intend to acquire and hold in the name of and on behalf of the Trust certain real property and interests therein and such other property as the Trust may acquire and to manage and dispose of all such property as Trustees in the manner hereinafter stated; and

WHEREAS, the beneficial interest in the Trust shall be divided into transferable shares of beneficial interest as hereinafter provided; and

WHEREAS, the Trustees desire to amend and restate the Existing Declaration of Trust; and

WHEREAS, the amendment to and restatement of the Declaration of Trust of the Trust as herein set forth has been duly advised by the Board of Trustees and approved by the Shareholders of the Trust as required by law; and

WHEREAS, the total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment and restatement was 100 Common Shares, \$.01 par value per share, and the aggregate par value of all shares of beneficial interest having par value was \$1.00; and

WHEREAS, the total number of shares of beneficial interest which the Trust has authority to issue pursuant to the foregoing amendment and restatement of the Declaration of Trust is 10,000,000 Common Shares, \$.01 par value per share, and the aggregate par value of all authorized shares of beneficial interest having par value is \$100,000; and

WHEREAS, capitalized terms used herein shall have the meanings assigned to them in Section 8.1 hereof; and

NOW, THEREFORE, it is hereby agreed and declared that the Trustees will hold, in the name of and on behalf of the Trust, any and all property of every type and description that they are acquiring or may hereafter acquire as Trustees, together with the proceeds thereof, in trust, to

CHL-1465769v3

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 41 page document on file in this office. DATED: April 1, 2005

BY: [Signature], Custodian

This stamp replaces our previous certification system. Effective: 6/95

manage and dispose of the same for the benefit of the holders from time to time of the shares of beneficial interest being issued and to be issued hereunder in the manner and subject to the stipulations contained herein.

## ARTICLE I

### THE TRUST

1.1 **Name.** The name of the Trust created by this Declaration of Trust shall be "LaSalle Income & Growth Fund IV" and so far as may be practicable the Trustees shall conduct the Trust's activities, execute all documents and sue or be sued under that name. If the Trustees determine that the use of such name is not practicable or if the Trustees are contractually bound to change that name, they may use another designation or they may adopt another name under which the Trust may hold property or conduct its activities.

1.2 **Resident Agent.** The name and address of the resident agent of the Trust shall be LaSalle Investment Management, Inc., 100 East Pratt Street, Baltimore, Maryland 21202. The resident agent is a Maryland corporation. The Trust may change such Resident Agent from time to time as the Trustees shall determine. The Trust may have such offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

1.3 **Nature of Trust.** The Trust shall be a "real estate investment trust" within the meaning of the MREITL. It is also intended that the Trust shall qualify and carry on business as a "real estate investment trust" as described in the Code. The Trust is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, joint venture, corporation or joint stock company (but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Code); nor shall the Trustees or the Shareholders or any of them for any purpose be, nor be deemed to be, nor be treated in any way whatsoever as, liable or responsible hereunder as partners or joint venturers. The relationship of the Shareholders to the Trustees shall be solely that of beneficiaries of the Trust in accordance with the rights conferred upon them by this Declaration of Trust.

1.4 **Purpose of Trust.** The purpose of the Trust shall be to: (i) identify potential investments, directly or indirectly, in Real Property, (ii) acquire, hold, improve, develop, construct, maintain, operate, lease, manage, mortgage, encumber, sell, exchange, dispose or otherwise deal in or exercise control over Real Property relating to or underlying investments and (iii) engage in any other lawful act or activity incidental or related thereto for which real estate investment trusts may be organized under the MREITL.

## ARTICLE II

### TRUSTEES

#### 2.1 **Number, Term of Office and Qualifications of Trustees.**

(a) The number of Trustees initially shall be three, which number may be increased or decreased by an affirmative vote of the holders of Shares having Majority

**Voting Power.** Any vacancies in the Board of Trustees created thereby shall be filled pursuant to Section 2.4 hereof.

(b) The names of the initial Trustees who shall serve until their successors are duly elected and qualified are James M. Hutchinson, Lynn C. Thurber and Peter H. Schaff. Subject to the provisions of Section 2.3 hereof, each Trustee shall hold office until the election and qualification of his successor. There shall be no cumulative voting in the election of Trustees. A Trustee shall be an individual at least 21 years of age who is not under legal disability. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to be Shareholders or to devote their entire time to the business and affairs of the Trust.

**2.2 Compensation and Other Remuneration.** The Trustees shall not be entitled to receive compensation for their services as Trustees. The Trustees and officers of the Trust shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Subject to Sections 5.7 and 5.8 hereof, such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee.

**2.3 Resignation, Removal and Death of Trustees.** A Trustee may resign at any time by giving written notice to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date specified in such notice, without need for prior accounting. Any individual Trustee, or the standing Board of Trustees as a whole, may be removed (a) at any time for Cause by the affirmative vote of the holders of Shares having Majority Voting Power and (b) at any time without Cause by the affirmative vote of the holders of Shares entitled to cast not less than two-thirds of all votes entitled to be cast, and, in each case, any vacancies created thereby may be filled pursuant to Section 2.4 hereof. A Trustee judged incompetent or for whom a guardian or conservator has been appointed shall be deemed to have resigned as of the date of such adjudication or appointment.

**2.4 Vacancies.**

(a) If any or all the Trustees cease to be Trustees hereunder, whether by reason of resignation, removal, incapacity, death or otherwise, such event shall not terminate the Trust or affect its continuity. Until vacancies are filled, the remaining Trustee or Trustees may exercise the powers of the Trustees hereunder.

(b) Vacancies (including vacancies created by increases in the number of Trustees) may be filled by the remaining Trustees. If at any time there shall be no Trustees in office, successor Trustees shall be elected by the Shareholders as provided by Section 4.7 hereof and in the Bylaws. Any Trustee elected to fill a vacancy created by the resignation, removal or death of a former Trustee shall hold office for the unexpired term of such former Trustee.

**2.5 Successor and Additional Trustees.** Appropriate written evidence of the election and qualification of successor and additional Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable, and they shall thereupon have all the rights and obligations of Trustees hereunder.

**2.6 Actions by Trustees.** Notwithstanding anything contained herein or in the Bylaws to the contrary, neither the Trustees nor any of the officers shall take any of the following actions, or cause the Trust to take any of the following actions, without the approval of the holders of Shares having Majority Voting Power:

(a) subject to Section 3.4(a), the purchase or other acquisition of any Real Property or other investment, or the ownership of any equity interests in any Person, that deviates from the Investment Guidelines;

(b) subject to Section 3.4(a), the financing or refinancing of Trust assets that deviates from the Investment Guidelines;

(c) the acceptance of subscriptions for Shares at any time more than 12 months after the date on which the Trust first accepts a subscription or subscriptions for Shares (the "*First Closing*"); or

(d) any (i) changes to any fees, including changes in the circumstances under which such fees become payable or the manner in which they are to be paid, charged to the Trust for services provided by the Adviser or (ii) any other fees or compensation charged to the Trust for services provided by any Affiliate of the Adviser to the extent such fees are greater than the fees or compensation available in the relevant market in an arm's length transaction with independent third parties with comparable skills and qualifications.

### ARTICLE III

#### TRUSTEES' POWERS

**3.1 Power and Authority of Trustees.** The Trustees, subject only to the specific limitations contained in this Declaration of Trust or the Bylaws, shall have, without further or other authorization, and free from any power or control on the part of the Shareholders, full, absolute and exclusive power, control and authority over the Trust Estate and over the business and affairs of the Trust and may do all such acts and things as in their reasonable business judgment and discretion are necessary for or incidental to or desirable for carrying out or conducting the business of the Trust. Any construction of this Declaration of Trust or any determination made in good faith by the Trustees as to the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive. In construing the provisions of this Declaration of Trust, the presumption shall be in favor of the grant of powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid powers or the general powers or authority or any other specified power or authority conferred herein upon the Trustees.

**3.2 Specific Powers and Authority.** Subject only to the express limitations contained in this Declaration of Trust (including, but not limited to, the provisions of Sections 2.6 and 3.4(a) hereof), the Bylaws and the Investment Guidelines, and in addition to any power and authority conferred by this Declaration of Trust or that the Trustees may have by virtue of any present or future statute or rule of law, the Trustees, without any action or consent by the Shareholders, shall have and may exercise on behalf of the Trust, at any time and from time to time, the following powers and authorities, which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

(a) to retain, invest and reinvest the capital or other funds of the Trust in, and to acquire, purchase, take, receive, own, hold, use, employ, improve or encumber, or otherwise deal with, real or personal property of any kind, whether tangible or intangible, located in the United States, its territories and possessions, the District of Columbia and Puerto Rico, and make commitments for such investments, all without regard to whether any such property is authorized by law for the investment of trust funds or produces or may produce income; to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Estate; and subject to Sections 2.6 and 4.11(a) hereof, to increase the capital of the Trust at any time by the issuance of any additional authorized Shares or other Securities of the Trust for such consideration as they deem advisable;

(b) without limitation of the powers set forth in Section 3.2(a) hereof, to invest in, purchase or otherwise acquire for such consideration as they deem proper, in cash or other property or through the issuance of shares or through the issuance of notes, debentures, bonds or other obligations of the Trust, and to hold for investment, subject to the limitation set forth in Section 3.2(h) hereof, the entire or any participating interests in any Mortgage Loans or interests in Real Property, including ownership of, or participation in the ownership of, rights to acquire equity interests in Real Property or in Persons owning, developing, redeveloping, constructing, reconstructing, renovating, rehabilitating, repositioning, improving, maintaining, operating or managing Real Property, which interests may be acquired independently of or in connection with other investment activities of the Trust and, in the latter case, may include rights to receive additional payments based on gross income or rental or other income from the Real Property or improvements thereon; and subject to the limitation set forth in Section 3.2(h) hereof, to invest in loans secured by the pledge or transfer of Mortgage Loans;

(c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any and all the Trust Estate by deeds (including deeds in lieu of foreclosure), trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or nominee of the Trust;

(d) subject to the provisions of Sections 2.6 and 4.11 hereof, to issue Shares, bonds, debentures, notes or other evidences of indebtedness, which may be secured or

unsecured and may be subordinated to any indebtedness of the Trust, to such Persons for such cash, property or other consideration (including Securities issued or created by, or interests in, any Person) at such time or times and on such terms as the Trustees may deem advisable (provided, that in no event shall the Trust offer any of the foregoing securities pursuant to a registration statement filed with the Securities and Exchange Commission or list any of the foregoing securities issued by the Trust on any securities exchange without the affirmative vote of the holders of Shares, or such holders' designated proxyholder, carrying votes that exceed two-thirds of the votes carried by all Shares) and to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any of such Securities, and to cause the instruments evidencing such Securities to bear an actual or facsimile imprint of the seal of the Trust (if the Trustees shall have adopted such a seal) and to be signed by manual or facsimile signature or signatures (and to issue such Securities, whether or not any Person whose manual or facsimile signature shall be imprinted thereon shall have ceased to occupy the office with respect to which such signature was authorized), provided that, where only facsimile signatures for the Trust are used, the instrument shall be countersigned manually by a transfer agent, registrar or other authentication agent; and to issue any of such Securities of different types in combinations or units with such restrictions on the separate transferability thereof as the Trustees shall determine;

(e) to enter into leases of real and personal property as lessor or lessee and to enter into contracts, obligations and other agreements for a term, and to invest in obligations having a term, extending beyond the term of office of the Trustees and beyond the possible termination of the Trust, or having a lesser term;

(f) to delegate powers to the Adviser pursuant to a Management Agreement (it being understood that the Trust will not terminate a Management Agreement except in accordance with the provisions thereof); provided, however, that in the event that any such Management Agreement is terminated, the Trustees shall have the power to employ or contract with any Person to act as a replacement Adviser;

(g) to borrow money and give negotiable or nonnegotiable instruments therefor; or guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interest in, encumber or hypothecate the Trust Estate to secure any indebtedness of the Trust or any other of the foregoing obligations of the Trust;

(h) to lend money secured by Real Property or otherwise acquire debt interests in Real Property, if in the opinion of the Adviser, it is reasonably anticipated that the Trust will obtain fee simple title to such Real Property within six months through the exercise of remedies under mortgages, security instruments or the like obtained originally in connection with such debt investment;

(i) to create reasonable reserve funds for any purpose;



(j) to incur and pay out of the Trust Estate any charges or expenses, and to disburse any funds of the Trust, which charges, expenses or disbursements are, in the determination of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including, without limitation, taxes and other governmental levies, charges and assessments, of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the Trust Estate or upon or against the Trust Estate or any part thereof, and for any of the purposes herein;

(k) to deposit funds of the Trust in banks, trust companies, savings and loan associations and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including any one or more Trustees or officers, employees or agents of the Trust) as the Trustees may determine;

(l) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any Mortgages or Securities issued or created by, or interests in, any Person, forming part of the Trust Estate, to the same extent that an individual might do so, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action, and may include the exercise of discretionary powers;

(m) to cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire the Trust Estate or any part or parts thereof or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer the Trust Estate or any part or parts thereof to or with any such Person or any existing Person in exchange for the Securities thereof or otherwise, and to lend money to, subscribe for the Securities of and enter into any contracts with, any Person in which the Trust holds or is about to acquire Securities or any other interest;

(n) to enter into joint ventures, general or limited partnerships, limited liability companies, participation or agency arrangements and any other lawful combinations or associations, and to act as a general or limited partner or a member thereof;

(o) subject to the provisions of Section 3.5 hereof, to elect, appoint, engage or employ such officers of the Trust as the Trustees may determine, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms, as may be prescribed by the Trustees, this Declaration of Trust or the Bylaws;

(p) to engage or employ any Persons (including, subject to the provisions of Sections 5.7 and 5.8 hereof, any Trustee or officer, agent or employee of the Trust and any Person in which any Trustee, officer or agent is directly or indirectly interested or with which he is directly or indirectly connected) as agents, representatives, employees,

or independent contractors (including, without limitation, real estate advisors, investment advisors, transfer agents, registrars, underwriters, accountants, attorneys at law, real estate agents, managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Person may be so engaged or employed; and to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons;

(q) to determine or cause to be determined from time to time the value of all or any part of the Trust Estate and of any services, Securities, property or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue or cause to be revalued all or any part of the Trust Estate in accordance with such appraisals or other information as are, in the Trustees' sole judgment, necessary or satisfactory;

(r) to collect, sue for and receive all sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Trust, the Trust Estate or the Trust's affairs, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted, and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof;

(s) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust or participate in any reorganization of obligors to the Trust;

(t) subject to the limitations set forth in Sections 5.1 and 5.6 hereof, to self-insure or to purchase and pay for out of the Trust Estate insurance contracts and policies, including contracts of indemnity, insuring the Trust Estate against any and all risks and insuring the Trust or all or any of the Trustees or the officers, employees or agents of the Trust or Persons who may directly or indirectly control the Trust against any and all claims and liabilities of every nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, the Shareholders, officers, employees, agents or controlling Persons, whether or not the Trust would have the power to indemnify such Person or Persons against any such claim or liability;

(u) to enter into a Management Agreement;

(v) to cause legal title to any of the Trust Estate to be held by or in the name of the Trust, or, except as prohibited by law, by or in the name of any other Person owned by the Trust, on such terms, in such manner and with such powers in such Person as the Trustees may determine;

(w) to adopt a fiscal year for the Trust, which shall be the calendar year;

(x) to adopt and use a seal (but the use of a seal shall not be required for the execution of instruments or obligations of the Trust);

(y) to the extent permitted by law, to indemnify or enter into agreements with respect to indemnification with any Person with which the Trust has dealings, including, without limitation, any broker/dealer, investment bank, investment advisor or independent contractor, to such extent as the Trustees shall determine;

(z) to confess judgment against the Trust;

(aa) to discontinue the operations of the Trust;

(bb) to repurchase or redeem Shares and other Securities issued by the Trust;

(cc) to authorize and cause the Trust to declare and pay dividends or distributions, consisting of cash, property or Securities, to the holders of Shares of the Trust out of any funds legally available therefor; and

(dd) to do all other such acts and things as are incident to the foregoing, and to exercise all powers that are necessary or useful to carry on the business of the Trust and to carry out the provisions of this Declaration of Trust.

**3.3 Standard of Care.** Each Trustee shall perform his or her duties with the same standard of care as that required of directors of a Maryland business corporation under Section 2-405.1 of the MGCL.

**3.4 Limitations on Investments; Reinvestment.**

(a) The Trust shall not purchase or otherwise acquire, or permit the Adviser to purchase or acquire, on behalf of the Trust, any investment that deviates from the Investment Guidelines, unless such investment shall have been declared advisable by the Board of Trustees and approved by the Shareholders in accordance with Section 2.6.

(b) During the Investment Period and subject to compliance with the minimum distribution requirements that the Fund must satisfy to qualify as a REIT for U.S. federal income tax purposes, the Trust may, in its discretion, reinvest proceeds from the financing of Trust assets, to the extent that such proceeds represent, or if not distributed would represent, a return of invested capital. Any such funds that qualify for reinvestment may, at the discretion of the Trust, be distributed to Shareholders as dividends, in which case such funds will be added to Shareholders' Unfunded Commitments.

**3.5 Officers.**

(a) Subject to the limitations contained in this Declaration of Trust (including, but not limited to, the provisions of Section 3.2 hereof and the Bylaws), the Trustees hereby delegate to the officers of the Trust the full power and authority to manage, control, administer and operate the real estate-related business and activities of the Trust

and to take all actions (including, but not limited to, the execution of and entry into contracts or other agreements) with respect to the real estate-related business and activities that are consistent with the Investment Guidelines and that are taken upon the advice or recommendation of the Adviser. For the avoidance of doubt, "real estate-related business and activities" means the acquisition, holding, management, financing, refinancing or operation of Real Property, Mortgage Loans or interests in Real Property or Mortgage Loans, but shall specifically not include the sale or other disposition of Real Property or interests in Real Property. Any action taken by an officer of the Trust in accordance with the authority granted by this Section 3.5(a) shall constitute the act of and serve to bind the Trust.

(b) Any number of offices may be held by the same person; provided that no single person shall hold the offices of President and Vice President at the same time. None of the officers of the Trust need be Trustees. Each officer shall hold office until the President shall appoint his or her successor or until his or her earlier death, resignation or removal.

#### ARTICLE IV

##### THE SHARES AND THE SHAREHOLDERS

###### 4.1 Description of Shares.

(a) The Trust has the authority to issue 10,000,000 shares of beneficial interest, \$0.01 par value per Share, which shall be known collectively as "Shares," all of which shall be validly issued, fully paid and non-assessable by the Trust upon receipt of full consideration for which they have been issued or without additional consideration if issued by way of share dividend or share split. All of the Shares shall be classified initially as "Common Shares." Each holder of Shares shall be deemed to have agreed to and be bound by the terms of this Declaration of Trust. The Shares may be issued for such consideration as the Trustees shall deem advisable. The Trustees are hereby expressly authorized at any time, and from time to time, to provide for issuance of Shares upon such terms and conditions and pursuant to such arrangements as the Trustees may determine, subject to Sections 2.6 and 4.11.

(b) The Trustees are hereby expressly authorized at any time, and from time to time, without Shareholder approval, to amend this Declaration of Trust to increase or decrease the aggregate number of Shares or the number of Shares of any class that the Trust has authority to issue.

(c) Except as otherwise determined by the Trustees with respect to any class or series of Shares, the holders of Shares shall be entitled to the rights and powers hereinafter set forth in this Section 4.1. The holders of Shares shall be entitled to receive, when and as authorized from time to time by the Trustees and declared by the Trust out of any funds legally available for the purpose, such dividends or distributions as may be authorized from time to time by the Trustees and declared by the Trust. In the event of the termination of the Trust pursuant to Section 6.1 hereof or otherwise, or upon the

distribution of its assets, the assets of the Trust available for payment and distribution to the Shareholders shall be distributed ratably among the holders of Shares at the time outstanding in accordance with Section 6.2 hereof. All Common Shares shall have equal non-cumulative voting rights at the rate of one vote per Common Share; provided, however, that Common Shares held by LaSalle or its Affiliates shall not be entitled to vote on matters involving (i) the removal or filling of a vacancy of any individual Trustee or the Board of Trustees as a whole, whether with or without Cause pursuant to Section 2.3 of this Declaration of Trust, (ii) changes to fees paid to, or services provided to the Trust by LaSalle or any Affiliate of LaSalle pursuant to Section 2.6(d) of the Declaration of Trust, (iii) the approval of any offering of any securities of the Trust pursuant to a registration statement filed with the Securities and Exchange Commission or the listing of any such securities on any securities exchanges, as contemplated by Section 3.2(d) of the Declaration of Trust, (iv) any amendment of a Management Agreement subject to Section 6.5 of the Declaration of Trust, (v) the approval or termination of any Affiliate Transaction pursuant to Section 5.8 of the Declaration of Trust, (vi) the extension of the duration of the Trust pursuant to Section 6.1 of the Declaration of Trust, (vii) any matter which LaSalle or its Affiliates are not otherwise entitled to vote upon pursuant to any agreement between LaSalle and the Shareholders of the Trust or (viii) any assignment (within the meaning of the Investment Advisers Act of 1940) of the Management Agreement subject to Section 6.5 of the Declaration of Trust, and the Common Shares held by LaSalle or any of its Affiliates shall not be taken into account in determining the relevant percentages required for approval of such matters. All Common Shares shall have equal dividend, distribution, liquidation and other rights, and (except as provided in Section 4.9 hereof) shall have no preference, conversion, exchange, sinking fund or redemption rights or, except as provided in Section 4.13 hereof, any appraisal or other rights of an objecting Shareholder under MREITL or MGCL. Absent a contrary written agreement of the Trust authorized by the Trustees, and notwithstanding any other determination by the Trustees with respect to any class or series of Shares, no holder of Shares shall be entitled as a matter of right to subscribe for or purchase any part of any new or additional issue of Shares of any class whatsoever of the Trust, or of securities convertible into any Shares of any class whatsoever of the Trust, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

#### **4.2. Classified or Reclassified Shares.**

Subject to receipt of approval by the affirmative vote of holders of Shares carrying votes that exceed two-thirds of the votes carried by all Shares, the Board of Trustees may classify any unissued Shares and reclassify any previously classified but unissued Shares of any class or series from time to time, in one or more classes or series of Shares. Prior to issuance of classified or reclassified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set, subject to the provisions of Section 4.9 hereof and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Trust to file articles supplementary with the

MSDAT: Any of the terms of any class or series of Shares set pursuant to clause (c) of this Section 4.2 may be made dependent upon facts ascertainable outside the Declaration of Trust (including the occurrence of any event, including a determination or action by the Trust or any other person or body) and may vary among holders thereof, provided that the manner in which such facts or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the articles supplementary filed with the MSDAT.

**4.3 Fractional Shares.** In connection with any issuance of Shares, the Trustees may issue fractional Shares or may adopt provisions for the issuance of scrip, including, without limitation, the time within which any such scrip must be surrendered for exchange into full Shares and the rights, if any, of holders of scrip upon the expiration of the time so fixed, the rights, if any, to receive proportional distributions, and the rights, if any, to redeem scrip for cash, or the Trustees may in their discretion, or if they see fit, at the option of each holder, provide in lieu of scrip for the adjustment of the fractions in cash. In addition, the Trust may, without the consent or approval of any shareholder, eliminate a fraction of a Share by rounding up or down to a full Share. The provisions of the Bylaws relative to certificates for Shares shall apply so far as applicable to such scrip, except that such scrip may in the discretion of the Trustees be signed by a transfer agent alone.

**4.4 Legal Ownership of Trust Estate.** The legal ownership of the Trust Estate is vested exclusively in the Trust (subject to Section 3.2(v) hereof), and the Shareholders shall have no interest therein (other than beneficial interest in the Trust conferred by their Shares issued hereunder) and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the Trust Estate.

**4.5 Shares Deemed Personal Property.** The Shares shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth or provided for in this Declaration of Trust. The death, insolvency or incapacity of a Shareholder shall not dissolve or terminate the Trust or affect its continuity or give his legal representative any rights whatsoever, whether against or in respect of the other Shareholders, the Trustees or the Trust Estate or otherwise, except the sole right to demand and, subject to the provisions of this Declaration of Trust, the Bylaws and any requirements of law, to receive a new certificate for Shares registered in the name of such legal representative, in exchange for the certificate held by such Shareholder.

**4.6 Dividends or Distributions to the Shareholders.** Subject to maintaining the Trust's status as a "real estate investment trust" under the Code, the Trust may from time to time declare and pay to the Shareholders such dividends or distributions in cash, property or assets of the Trust or Securities issued by the Trust, out of current or accumulated income, capital, capital gains, principal, interest, surplus, proceeds from the increase or financing or refinancing of Trust obligations, or from the sale of portions of the Trust Estate or from any other source as the Trustees in their discretion shall determine; provided, however, that the Trust shall use reasonable efforts to make all dividends or other distributions in the form of cash; and provided, further, that no distribution of property or other assets may be made if such distribution would result in a non-exempt prohibited transaction under ERISA, Section 4975 of the Code or any similar law applicable to a Shareholder that is a "benefit plan investor" under the Plan Assets Regulations. The Shareholders shall have no right to any dividend or distribution unless and

until authorized by the Board of Trustees and declared by the Trust. Notwithstanding the foregoing, (i) net cash proceeds from the sale of the Trust's assets or any portion of any asset will be distributed as soon as practicable after receipt thereof, subject to reasonable reserves established by the Trustees, and (ii) the Trust shall be entitled to withhold from any distributions, in its sole discretion, appropriate reserves for expenses and liabilities of the Trust and any required tax withholdings. Subject to the provisions of any class or series of Shares at the time outstanding, all distributions will be made to the Shareholders in proportion to their respective ownership of Shares.

#### **4.7 Meeting of the Shareholders.**

(a) Within 90 days after the delivery of the Annual Report, there shall be an annual meeting of the Shareholders, at such time and place as shall be determined by or in the manner prescribed in the Bylaws, at which the Trustees shall be elected and any other proper business may be conducted. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders entitled to vote for the election of successor Trustees.

(b) Except as otherwise set forth in this Declaration of Trust or the Bylaws, whenever any action is to be taken by the Shareholders, it shall be authorized by the affirmative vote of the holders of Shares having Majority Voting Power. At all elections of Trustees, voting by the Shareholders shall be conducted under the non-cumulative method and the election of Trustees shall be by the affirmative vote of the holders of Shares having Majority Voting Power.

(c) Except as set forth in Section 6.3, whenever the Shareholders are required or permitted to take any action by a vote at a meeting of the Shareholders, such action may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of Shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of the Shareholders. The Trust shall promptly notify all Shareholders of any action so taken without a meeting.

(d) Notwithstanding any provision of law requiring the authorization of any action by a greater proportion than a majority of the total number of Shares of all classes or of the total number of Shares of any class, such action shall be valid and effective if authorized by the affirmative vote of the holders of Shares having Majority Voting Power, except as otherwise provided in this Declaration of Trust or the Bylaws.

**4.8 Fixing Record Date.** The Bylaws may provide for fixing or, in the absence of such provision, the Trustees may fix, in advance, a date as the record date for determining the Shareholders entitled to notice of or to vote at any meeting of the Shareholders or to express consent to any proposal without a meeting or for the purpose of determining the Shareholders entitled to receive payment of any dividend or distribution (whether before or after termination of the Trust) or any Annual Report or other communication from the Trustees, or for any other purpose. The record date so fixed shall not be prior to the close of business on the day the

record date is fixed and shall be not more than 90 days before the date on which the meeting or particular action requiring such determination of shareholders of record is to be held or taken.

**4.9 The Shareholders' Disclosure; Restrictions on Share Transfer; Limitation on Holdings.**

(a) (i) During the period commencing on the Initial Investment Date and prior to the Restriction Termination Date:

(1) (A) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Aggregate Shares Ownership Limit, no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Common Shares in excess of the Common Shares Ownership Limit and no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Ownership Limit for such Excepted Holder.

(B) No Person shall Beneficially or Constructively Own Shares to the extent that such Beneficial or Constructive Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(C) Notwithstanding any other provisions contained herein, any Transfer of Shares, that, if effective, would result in the Shares being Beneficially Owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void *ab initio*.

(2) If any Transfer of Shares or change in capital structure or other event occurs that, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 4.9(a)(i)(1)(A) or 4.9(a)(i)(1)(B) hereof,

(A) then that number of the Shares the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 4.9(a)(i)(1)(A) or (B) hereof (rounded to the nearest whole shares) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 4.9(b) hereof, effective on the close of



business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares; or

(B) if the transfer to the Charitable Trust described in clause (A) of this sentence would not be effective for any reason to prevent the violation of Section 4.9(a)(i)(1)(A) or (B) hereof, then the Transfer of that number of Shares that otherwise would cause any Person to violate Section 4.9(a)(i)(1)(A) or (B) hereof shall be void *ab initio*, and the intended transferee shall acquire no rights in such Shares.

(ii) If the Board of Trustees of the Trust or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 4.9(a)(i)(1) hereof or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any Shares in violation of Section 4.9(a)(i)(1) hereof (whether or not such violation is intended), the Trustees or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem shares, refusing to give effect to such Transfer on the books of the Trust or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfers or attempted Transfers or other events in violation of Section 4.9(a)(i)(1) hereof shall automatically result in the transfer to the Charitable Trust described above, and, where applicable, such Transfer (or other event) shall be void *ab initio* as provided above irrespective of any action (or non-action) by the Board of Trustees or committee thereof.

(iii) Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 4.9(a)(i)(1) hereof, or any Person who would have owned Shares that resulted in a transfer to the Charitable Trust pursuant to the provisions of Section 4.9(a)(i)(2)(A) hereof shall immediately give written notice to the Trust of such event or, in the case of such proposed or attempted transaction, give at least 15 days' prior written notice, and shall provide to the Trust such other information as the Trust may request in order to determine the effect, if any, of such Transfer on the Trust's status as a REIT.

(iv) From the Initial Investment Date and prior to the Restriction Termination Date:

(1) every owner of more than 5% (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Shares, within 30 days after the end of each taxable year of the Trust, shall give written notice to the Trust stating the name and address of such owner, the number of Shares Beneficially Owned or Constructively Owned and a description of the manner in which such shares are held. Each such owner shall provide to the Trust such

additional information as the Trust may reasonably request in order to determine the effect, if any, of such Beneficial or Constructive Ownership on the Trust's status as a REIT and ensure compliance with the Aggregate Shares Ownership Limit.

(2) each Person who is a Beneficial or Constructive Owner of Shares and each Person (including the Shareholder of record) who is holding Shares for a Beneficial or Constructive Owner shall provide to the Trust a written statement or affidavit stating such information as the Trust may request, in good faith, in order to determine the Trust's status as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

(v) Nothing contained in this Section 4.9(a) shall limit the authority of the Trustees of the Trust to take such other action as it deems necessary or advisable to protect the Trust and the interests of its Shareholders in preserving the Trust's status as a REIT.

(vi) In the case of an ambiguity in the application of any of the provisions of this Section 4.9 or any definition contained in Section 8.1 hereof, the Trustees of the Trust shall have the power to determine the application of the provisions of this Section 4.9 with respect to any situation based on the facts known to it. In the event this Section 4.9 requires any action by the Trustees and this Declaration of Trust fails to provide specific guidance with respect to such action, the Trustees shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Section 4.9.

(vii) (1) Subject to Section 4.9(a)(i)(1)(B) hereof, the Board of Trustees of the Trust, in their sole discretion, may exempt a Person from the Aggregate Shares Ownership Limit and the Common Shares Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Ownership Limit for such Person, if:

(A) the Trustees obtain such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial or Constructive Ownership of such Shares will violate Section 4.9(a)(i)(1)(A), 4.9(a)(i)(1)(B) or 4.9(a)(i)(1)(C) hereof;

(B) such Person certifies, to the best of its knowledge, such information as may be required by the Trustees to determine such Person will not own, actually or Constructively, an interest in an existing or contemplated tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2) of the Code) in such tenant and the Trust obtains such representations and undertakings from such

Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant shall not be treated as a tenant of the Trust if the Trust (or an entity owned or controlled by the Trust) derives (and is expected to continue to derive) a sufficiently small amount of revenue from the tenant such that, in the determination of the Trustees of the Trust, the Trust's ability to qualify as a REIT is not impaired); and

(C) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action that is contrary to the restrictions contained in Sections 4.9(a)(i)(1)(A) through 4.9(a)(i)(1)(C) hereof) will result in such Shares being automatically transferred to a Charitable Trust in accordance with Section 4.9(a)(i)(2)(A) and Section 4.9(b) hereof or, failing that, in such transfer being void *ab initio* in accordance with Section 4.9(a)(i)(2)(B) hereof.

(2) Prior to granting any exception pursuant to Section 4.9(a)(vii)(A) hereof, the Trustees of the Trust may require a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Trustees may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(3) Subject to Section 4.9(a)(i)(1)(B) hereof, an underwriter that participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Aggregate Shares Ownership Limit, the Common Shares Ownership Limit or both such limits, but only to the extent necessary to facilitate such public offering or private placement (and, in any event, not more than 90 days following the purchase by the underwriter of such Shares (or such securities convertible into or exchangeable for Shares)).

(4) The Trustees may only reduce the Excepted Holder Ownership Limit for an Excepted Holder: (i) with the written consent of such Excepted Holder at any time or (ii) pursuant to the terms and conditions of the agreements and understandings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Ownership Limit for that Excepted Holder. No Excepted Holder Ownership Limit shall be reduced to a percentage that is less than the Common Shares Ownership Limit.

(5) If the Trust determines in good faith that restrictions contained herein and in the Bylaws apply to a Shareholder's purchase of Shares as a result of any right of first refusal agreed to among the Shareholders, then (i) if at the time of any offer pursuant to such right of first refusal the offeree Shareholder is an Excepted Holder (a "*Current Excepted Holder*"), the Trust shall enter into a new agreement with the Excepted Holder, in the same form as the existing agreement with the Excepted Holder between the parties, with respect to such Shares, provided that entering into such new agreement with the Excepted Holder would not result in the Trust (A) being "closely held" within the meaning of Section 856(h) of the Code or (B) otherwise failing to satisfy the requirements for entering into an agreement with the offeree Shareholder under this Section 4.9, (ii) if at the time such right of first refusal is exercised the offeree Shareholder is not an Excepted Holder, the Trust shall enter into an agreement with the offeree Shareholder with respect to such Shares, provided that the conditions for entering into an agreement with such offeree Shareholder under this Section 4.9 can be satisfied, (iii) if an agreement with the offeree Shareholder cannot be entered into under (i) or (ii) above, then the Shares offered to such Shareholder shall be reduced (A) if the Shareholder is a Current Excepted Holder, until the Shares offered to such Shareholder would not result in the Trust being "closely held" within the meaning of Section 856(h) of the Code or otherwise fail to satisfy the requirements of this Section 4.9 or (B) if the Shareholder is not a Current Excepted Holder, until the Shares offered to such Shareholder would not result in a violation of this Section 4.9 (and, if necessary, the agreements with Excepted Holders shall be entered into with respect to such reduced number of Shares to be purchased by such Shareholder) and (iv) if any Shares offered to such Shareholder are reduced under (iii) above, then the other offeree Shareholders shall have the right to purchase such Shares in accordance with any right of first refusal.

(viii) The Trustees may from time to time increase or decrease the Common Shares Ownership Limit and the Aggregate Shares Ownership Limit; provided, however, that:

(1) any decrease may be made only prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law, in which case such decrease shall be effective immediately);

(2) neither ownership limitation may be increased if, after giving effect to such increase, five "individuals" (as defined in the Code) Persons could Beneficially Own or Constructively Own, in the aggregate, more than 50.0% in value of the Shares then outstanding; and

(3) prior to the modification of either of the ownership limitations, the Board of Trustees of the Trust may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT.

(ix) In addition to any other legend as required by law, each certificate, if any, evidencing Shares shall contain a legend imprinted thereon (or each statement delivered to the Shareholders with respect to uncertificated Shares as required by law hereof shall contain a legend therein) to substantially the following effect or such other legend as the Trustees may from time to time adopt:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE TRUST'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST ("REIT") UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND FOR OTHER PURPOSES. SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE TRUST'S DECLARATION OF TRUST, (I) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN COMMON SHARES OF THE TRUST IN EXCESS OF 9.8% (IN VALUE OR NUMBER OF SHARES) OF THE OUTSTANDING COMMON SHARES OF THE TRUST UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER OWNERSHIP LIMIT SHALL BE APPLICABLE); (II) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE TRUST IN EXCESS OF 9.8% OF THE VALUE OF THE TOTAL OUTSTANDING SHARES OF THE TRUST, UNLESS SUCH PERSON IS AN EXCEPTED HOLDER (IN WHICH CASE THE EXCEPTED HOLDER OWNERSHIP LIMIT SHALL BE APPLICABLE); (III) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES THAT WOULD RESULT IN THE TRUST BEING "CLOSELY HELD" UNDER SECTION 856(H) OF THE CODE OR OTHERWISE CAUSE THE TRUST TO FAIL TO QUALIFY AS A REIT; AND (IV) NO PERSON MAY TRANSFER SHARES IF SUCH TRANSFER WOULD RESULT IN THE SHARES OF THE TRUST BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES THAT CAUSES OR WILL CAUSE A PERSON TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES IN EXCESS OR IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE TRUST. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE SHARES REPRESENTED HEREBY MAY BE AUTOMATICALLY TRANSFERRED TO A CHARITABLE TRUSTEE OF A CHARITABLE TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS

DESCRIBED ABOVE MAY BE VOID AB INITIO. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS LEGEND HAVE THE MEANINGS ASSIGNED TO THOSE TERMS IN THE DECLARATION OF TRUST, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF SHARES OF THE TRUST ON REQUEST AND WITHOUT CHARGE.

In lieu of the foregoing legend, the certificate may state that the Trust will furnish a full statement about certain restrictions on transferability to a Shareholder on request and without charge.

(b) (i) Upon any purported Transfer or other event described in Section 4.9(a)(i)(2) hereof that would result in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as Charitable Trustee of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Charitable Trust pursuant to Section 4.9(a)(i)(1)(B) hereof. The Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 4.9(b)(vi) hereof.

(ii) Shares held by the Charitable Trustee shall be issued and outstanding Shares of the Trust. The Prohibited Owner shall have no rights in the shares held by the Charitable Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Charitable Trustee, shall have no rights to dividends and shall not possess any rights to vote or other rights attributable to the shares held in the Charitable Trust.

(iii) The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Trust that the Shares have been transferred to the Charitable Trustee shall be paid with respect to such Shares to the Charitable Trustee upon demand and any dividend or other distribution authorized but unpaid shall be paid when due to the Charitable Trustee. Any dividends or distributions so paid over to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares held in the Charitable Trust and, subject to Maryland law, effective as of the date that the Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's sole discretion) to (A) rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Trust that the Shares have been transferred to the Charitable Trustee and (B) recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the

Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible Trust action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Section 4.9, until the Trust has received notification that Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its share transfer and other Shareholder records for purposes of preparing lists of the Shareholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of the Shareholders.

(iv) Within 20 days of receiving notice from the Trust that Shares have been transferred to the Charitable Trust, the Charitable Trustee of the Charitable Trust shall sell the shares held in the Charitable Trust to a Person, designated by the Charitable Trustee, whose ownership of the shares will not violate the ownership limitations set forth in Section 4.9(a)(i)(1)(A) hereof. Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate, and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 4.9(b)(iv). The Prohibited Owner shall receive the lesser of (A) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Charitable Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Charitable Trust and (B) the price per share received by the Charitable Trustee from the sale or other disposition of the shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. Each Prohibited Owner and Charitable Beneficiary waive any and all claims that they may have against the Charitable Trustee and the Charitable Trust arising out of the disposition of any Shares transferred to the Charitable Trust, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this Section 4.9(b)(iv) by, the Charitable Trustee or the Trust. If, prior to the discovery by the Trust that Shares have been transferred to the Charitable Trustee, such shares are sold by a Prohibited Owner, then (x) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (y) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 4.9(b)(iv), such excess shall be paid to the Charitable Trustee upon demand.

(v) Shares transferred to the Charitable Trustee shall be deemed to have been offered for sale to the Trust, or its designee, at a price per share equal to the lesser of (A) the price per share in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (B) the Market Price on the date the Trust, or its designee, accepts such offer. The Trust shall have the right to accept such offer until the Charitable Trustee has sold the shares held in the Charitable Trust pursuant to Section 4.9(b)(4) hereof. Upon such sale to the Trust, the interest of

the Charitable Beneficiary in the shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

(vi) By written notice to the Charitable Trustee, the Trust shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (A) the Shares held in the Charitable Trust would not violate the restrictions set forth in Section 4.9(a)(i)(1)(A) hereof in the hands of such Charitable Beneficiary and (B) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

(vii) No delay or failure on the part of the Trust or the Trustees in exercising any right under this Declaration of Trust shall operate as a waiver of any right of the Trust or the Trustees, as the case may be, except to the extent specifically waived in writing.

**4.10 Business Combination and Control Share Statutes.** The Trust elects not to be governed by the provisions of Subtitles 6 and 7 of Title 3 of the MGCL with respect to any transactions and exempts all transactions of the Trust therefrom.

**4.11 Additional Subscriptions for Shares.** The Trust may not accept any additional subscriptions for Shares subsequent to the expiration of the Commitment Period, without first obtaining the affirmative vote of holders of Shares carrying votes that exceed two-thirds of the votes carried by all Shares. If the Trust receives the required Shareholder approval and enters into any new subscription or subscriptions for the purchase of Shares from the Trust such that the total Capital Commitments of all Shareholders on such date exceed the total Capital Commitments of all Shareholders outstanding as of the expiration of the Commitment Period (a "*Post-Commitment Period Subscription*"), each Shareholder shall be permitted, as of the date of such Post-Commitment Period Subscription, to increase its Capital Commitment (an "*Increased Subscription*") to purchase Shares such that after giving effect to such Increased Subscription such Shareholder is eligible to maintain its percentage interest in the Trust up to the percentage equivalent to such Shareholder's total Capital Commitment as of the expiration of the Commitment Period over the total Capital Commitments of all Shareholders as of the expiration of the Commitment Period.

**4.12 ERISA Matters.**

(a) The Trust shall not accept the first payment for Shares from an ERISA Plan Shareholder until it has received an opinion of counsel, reasonably satisfactory in substance and form to such Shareholder, stating that, as of the date such opinion is given, the Trust should qualify as an "operating company" within the meaning of the Plan Assets Regulations, or that the assets of the Trust otherwise should not be treated as "plan assets" for purposes of the Plan Assets Regulations that are subject to ERISA, and at such time, the amount of Shares that each ERISA Plan Shareholder would otherwise have been required to purchase in order to fund expenses of the Trust or pay fees to the Adviser shall be purchased by such ERISA Plan Shareholder.



(b) The Trust shall use reasonable best efforts to qualify as an "operating company" as defined and described in the Plan Assets Regulations or otherwise operate or manage the Trust in a manner so that the assets of the Trust will not be treated as "plan assets" for purposes of the Plan Assets Regulations that are subject to ERISA.

(c) The Trustees may take such actions as they determine in good faith to be necessary or desirable to prevent the Trust's assets from being treated as "plan assets" for purposes of the Plan Assets Regulations, including, without limitation, (i) making structural, operational or other changes in the Trust, (ii) selling or otherwise disposing of any investment, (iii) reducing or canceling the remaining Subscription Amount of any ERISA Plan Shareholder or Other Plan Shareholder, (iv) subject to the procedures set forth in Section 4.13, requiring the redemption or sale in whole or in part of any Shares of an ERISA Plan Shareholder or Other Plan Shareholder or (v) adopting a resolution for the dissolution of the Trust. Any action taken by the Trustees pursuant to this Section 4.12(c) shall not require the approval of any Shareholder. Notwithstanding the foregoing, unless one or more ERISA Plan Shareholders or Other Plan Shareholders objects, the Trustees shall exercise the rights set forth in clause (iii) and (iv) above on a pro rata basis among all ERISA Plan Shareholders and Other Plan Shareholders.

#### **4.13 Repurchase of Shares.**

(a) If the Trustees determine that the assets of the Trust would be treated as "plan assets" for purposes of the Plan Assets Regulations and that such result is not otherwise reasonably susceptible to correction by the Trustees pursuant to Section 4.12(c), then, subject to the provisions of Section 2-311 of the MGCL and this Section 4.13(a), the Trust shall deliver written notice to any ERISA Plan Shareholder (and, in the discretion of the Trustees, to any Other Plan Shareholder) advising that the Trust intends to purchase all Shares held by such Shareholder for an amount equal to the product of (x) a fraction, the numerator of which is the number of Shares held by such Shareholder and the denominator of which is the total number of Shares outstanding times (y) the Fair Market Value of the assets of the Trust, net of all liabilities of the Trust as of the date of receipt of such notice; provided, however, that if within 30 days after delivery of such notice, such Shareholder objects in writing to the Fair Market Value of any asset that is not based on an independent appraisal, then the fair market value of such asset shall be determined by an independent appraiser selected by the Trustees and reasonably acceptable to such Shareholder. Such amount shall be paid without interest within 90 days of the Trust's delivery of the notice described herein; provided, however, it shall not be paid during a time that such payment would, in the reasonable discretion of the Trustees, cause hardship to the Trust. The Trustees shall have absolute discretion to make such payment in cash or in kind or combination thereof; provided, however, that if such Shareholder notifies the Trust in writing that the receipt by such Shareholder of a distribution of assets in kind would result in a nonexempt prohibited transaction under ERISA or Section 4975 of the Code by, or imposition of excise taxes on, such Shareholder, then the Trustees shall use reasonable efforts to sell such assets in due course and distribute the proceeds of such sale to such Shareholder; further provided, however, that the Trustees may withhold or delay from distribution (but in no event for longer than one year) any assets the distribution of which would, in the Trustees'

determination, cause hardship to the Trust or to the issuer of any securities to be distributed in kind. Any portion of distributions made to such Shareholder in kind pursuant to this Section 4.13 shall be made in proportion to such Shareholder's percentage interest in each asset then held by the Trust.

(b) For purposes of any purchase of Shares pursuant to Section 4.13(a) the determination of whether the assets of the Trust would be treated as "plan assets" for purposes of the Plan Assets Regulations shall be made by the Trustees based on an opinion of counsel, such counsel being acceptable to the holders of Shares having Majority Voting Power. A copy of such opinion shall be provided to ERISA Plan Shareholders and Other Plan Shareholders. The Trustees may, but shall not be required to, make their determination on the basis of an opinion of counsel brought to their attention by a Shareholder, such counsel being acceptable to the Trustees in their sole discretion.

(c) Without limiting the foregoing, if the Trustees have determined pursuant to Section 4.12(c) or Section 4.13 that the Subscription Amount of any Shareholder should be reduced or canceled so that the assets of the Trust are not treated as "plan assets" for purposes of the Plan Assets Regulations, (i) each such Shareholder shall have no obligation to pay the portion of its Subscription Amount that has been reduced or canceled and (ii) each such Shareholder shall not be deemed to be a defaulting Shareholder under its Subscription Agreement solely by reason of its failure to pay such portion with respect to such Subscription Amount.

## **ARTICLE V**

### **LIABILITY OF TRUSTEES, THE SHAREHOLDERS, OFFICERS, EMPLOYEES AND AGENTS AND OTHER MATTERS**

**5.1 Limitation of Liability of the Shareholders, Trustees, Officers, Employees and Agents for Obligations of the Trust.** The Trustees and the officers, employees and agents of the Trust, in incurring any debts, liabilities or obligations or in taking or omitting any other actions for or in connection with the Trust, are, and shall be deemed to be, acting as trustees, officers, employees or agents of the Trust and not in their own individual capacities. Except as otherwise provided in Section 5.3 hereof with respect to liability of Trustees or officers, agents or employees of the Trust to the Trust, or to the Shareholders, no Shareholder, Trustee or officer, employee or agent of the Trust shall be liable for any debt, claim, demand, judgment decree, liability or obligation of any kind (in tort, contract or otherwise) of, against or with respect to the Trust or arising out of any action taken or omitted for or on behalf of the Trust, and the Trust shall be solely liable therefor and resort shall be had solely to the Trust Estate (subject to the limitations on indemnification set forth in Section 5.6) for the payment or performance thereof, and no Shareholder, Trustee or officer, employee or agent of the Trust shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other Person or Persons in connection with the Trust Estate or the affairs of the Trust (or any actions taken or omitted for or on behalf of the Trust), and all such other Persons shall look solely to the Trust Estate (subject to the limitations on indemnification set forth in Section 5.6) for satisfaction of claims of any nature

arising in connection with the Trust Estate or the affairs of the Trust (or any action taken or omitted for or on behalf of the Trust).

**5.2 Express Exculpatory Clauses and Instruments.** Any written instrument creating an obligation of the Trust shall, to the extent practicable, include a reference to this Declaration of Trust and provide that neither the Shareholders nor the Trustees nor any officers, employees or agents of the Trust shall be liable thereunder and that all Persons shall look solely to the Trust Estate (subject to the limitations on indemnification set forth in Section 5.6) for the payment of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the Shareholders, any Trustee or any officer, employee or agent of the Trust liable, nor shall the Shareholders, any Trustee or any officer, employee or agent of the Trust be liable to any one for such omission.

**5.3 Limitation of Liability of Trustees, Officers, Employees and Agents to the Trust and to the Shareholders for Acts and Omissions.** To the fullest extent permitted by Maryland statutory and decisional law, as amended or interpreted, no Trustee, officer, employee or agent of the Trust (a) shall be personally liable to the Trust or its Shareholders for (i) any action taken or failure to act with respect to the Trust, unless a judgment or other final adjudication adverse to any such person is entered in a proceeding based on a finding in the proceeding that the action taken or failure to act by any such person was the result of such person's fraud, willful misfeasance or gross negligence, (ii) any action or inaction arising from reliance in good faith upon the opinion or advice as to legal matters of legal counsel or as to accounting matters of accountants selected by them with reasonable care or (iii) the action or inaction of any agent, contractor or consultant selected and monitored by any of them with reasonable care or (b) shall have any greater duties than those established by this Declaration of Trust or, in cases as to which such duties are not so established, than those to which the directors, officers, employees or agents of a Maryland business corporation are subject from time to time. No amendment of this Declaration of Trust or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to Trustees, officers, employees or agents of the Trust hereunder with respect to any act or omission occurring prior to such amendment or repeal.

**5.4 Indemnification and Reimbursement of Trustees, Officers, Employees, Agents and Certain Other Persons.**

(a) The Trust shall indemnify (i) its Trustees and officers, whether serving the Trust or at its request any other entity, to the full extent required or permitted by the General Laws of the State of Maryland now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law, and (ii) other employees and agents to such extent as shall be authorized by the Trustees of the Trust or the Bylaws and be permitted by law, unless a judgment or other final adjudication adverse to such person is entered in a proceeding based on a finding in the proceeding that the action taken or failure to act by any such person with respect to any indemnified matter was a result of such person's fraud, willful misfeasance or gross negligence. The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The Board of Trustees may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such Bylaws, resolutions or

contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of this Declaration of Trust or repeal of any of its provisions shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

(b) Notwithstanding anything herein to the contrary, and to the fullest extent permitted by Maryland law, as amended or interpreted, no Trustee or officer of the Trust shall be personally liable to the Trust or the Shareholders for money damages. No amendment of this Declaration of Trust or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to Trustees and officers hereunder with respect to any act or omission occurring prior to such amendment or repeal.

**5.5 Indemnification and Reimbursement of the Shareholders.** Any Shareholder, or designated proxyholder of one or more of the Shareholders, made a party to any action, suit or proceeding or against which or whom, as the case may be, a claim or liability is asserted by reason of the fact that the Shareholder, or the designated proxyholder, his testate or intestate estate, was acting in the capacity of a Shareholder or designated proxyholder of one or more Shareholders, as the case may be, shall be indemnified and held harmless by the Trust against judgments, fines, amounts paid on account thereof (whether in settlement or otherwise) and reasonable expenses, including attorneys' fees, actually and reasonably incurred by the Shareholder or designated proxyholder in connection with the defense of such action, suit, proceeding, claim or alleged liability or in connection with any appeal therein, whether or not the same proceeds to judgment or is settled or otherwise brought to a conclusion; provided, however, that such Shareholder or other person gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense or settlement thereof and cooperates therein. In the event that the assets of the Trust Estate are insufficient to satisfy the Trust's indemnity obligations hereunder, each such Shareholder or other person shall be entitled to such indemnification pro rata from the Trust Estate (subject to the limitations on indemnification set forth in Section 5.6).

**5.6 Limitations on Indemnification.** Prior to seeking indemnification from the Trust, any Person with a right to indemnification under this Article V shall use its reasonable best efforts to receive full satisfaction and reimbursement for any claims or losses with respect to which such Person may be insured under any applicable insurance policy. In discharging its obligations to indemnify under this Article V, the Trust first shall use its reasonable best efforts to recover all insurance proceeds available under any applicable insurance policies and shall use such amounts recovered to discharge to the fullest extent possible its indemnification obligations.

**5.7 Right of Trustees, Officers, Employees and Agents to own Shares or Other Property and to Engage in Other Business.** Any Trustee or officer, employee or agent of the Trust may acquire, own, hold and dispose of Shares in the Trust, for his or her individual account, and may exercise all rights of a Shareholder to the same extent and in the same manner as if he or she were not a Trustee or officer, employee or agent of the Trust. Subject to the terms and provisions of any Management Agreement, any Trustee or officer, employee or agent of the Trust may, in his or her personal capacity or in the capacity of trustee, officer, director, stockholder, partner, member, advisor or employee of any Person or otherwise, have business interests and engage in business activities similar to or in addition to those relating to the Trust,

which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for his or her own account, or for the account of such Person or others, of interests in Mortgages, interests in Real Property, or interests in Persons engaged in the real estate business. Subject to the terms and provisions of any Management Agreement, each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity that comes to him in any capacity other than solely as Trustee, officer, employee or agent of the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust. Subject to the provisions of Section 5.9 hereof, any Trustee or officer, employee or agent of the Trust may be interested as trustee, officer, director, stockholder, partner, member, advisor or employee of, or otherwise have a direct or indirect interest in, any Person who may be engaged to render advice or services to the Trust, and may receive compensation from such Person as well as compensation as Trustee, officer, employee or agent or otherwise hereunder. None of these activities shall be deemed to conflict with his duties and powers as Trustee or officer, employee or agent of the Trust.

**5.8 Transactions Between Trustees, Officers, Employees or Agents and the Trust.**

(a) Except as otherwise provided by this Declaration of Trust, and in the absence of fraud, a contract, act or other transaction between the Trust and any other Person in which the Trust is interested, shall be valid, and no Trustee or officer, employee or agent of the Trust shall have any liability as a result of entering into any such contract, act or transaction, even though (i) one or more of the Trustees or officers, employees or agents of the Trust are directly or indirectly interested in or connected with or are trustees, partners, directors, employees, officers or agents of such other Person or (ii) one or more of the Trustees or officers, employees or agents of the Trust, individually or jointly with others, is a party or are parties to, or are directly or indirectly interested in or connected with, such contract, act or transaction.

(b) Subject to Section 5.8(c) below, the Trust may engage in a transaction with (i) any Trustee, officer, employee or agent of the Trust (acting in his or her individual capacity), (ii) any director, trustee, partner, officer, employee or agent (acting in his or her individual capacity) of any investment advisor of the Trust, (iii) any investment advisor of the Trust or (iv) an Affiliate of any of the foregoing.

(c) The Trust may engage Affiliates of the Adviser to provide services to the Trust in connection with the business of the Trust, such as services of property managers, leasing agents, mortgage brokers, sales agents, construction managers, trustees, servicers and financing agents or other services for which fees are customarily charged in connection with the acquisition or management, construction, financing or disposition of commercial real properties ("*Affiliate Transaction*"). Notwithstanding the foregoing, the Adviser shall not advise the Trust to enter into an Affiliate Transaction unless (i) the fees or other compensation charged to the Trust for services provided by Affiliates of the Adviser are equal to or less than the fees or other compensation available in the relevant market in an arm's length transaction with independent third parties with comparable skills and qualifications, (ii) the contract setting forth the terms and conditions of such

Affiliate Transaction is terminable by the Trust upon 30 days' notice without penalty until declared advisable by the Board of Trustees of the Trust and approved by an affirmative vote of the holders of Shares, or such holders' designated proxyholder, carrying votes that exceed two-thirds of the votes carried by all the Shares; and (iii) the Affiliate providing such services has sufficient experience and qualifications to perform such services. If the Board of Trustees makes no such declaration with respect to an Affiliate Transaction or the Shareholders, or such Shareholders' designated proxyholder, disapproves a particular Affiliate Transaction, then the Trust shall cause the contract evidencing such Affiliate Transaction to be terminated on 30 days' notice promptly delivered. If the Board of Trustees declares a particular Affiliate Transaction advisable and the Shareholders, or such Shareholders' designated proxyholder, approve such Affiliate Transaction, then the contract setting forth such Affiliate Transaction shall thereafter include not less than reasonable and customary termination provisions with respect to the services provided.

**5.9 Persons Dealing with Trustees, Officers, Employees or Agents.** No Person dealing with the Trustees or any of them or with the officers, employees or agents of the Trust shall be bound to see to the application of any funds or property passing into their hands or control. The receipt of the Trustees or any of them, or of authorized officers, employees or agents of the Trust, for monies or other consideration, shall be binding upon the Trust.

#### **ARTICLE VI**

##### **DURATION, AMENDMENT AND TERMINATION OF TRUST**

**6.1 Duration of Trust.** The Trust shall terminate on the fifth anniversary of the end of the Investment Period, unless sooner terminated by operation of law. Notwithstanding the foregoing, the term of the Trust may be extended by the Adviser, for up to two (2) consecutive times, in each case for an additional one (1) year period, each of which must be declared advisable by the Board of Trustees of the Trust and approved by the an affirmative vote of the holders of Shares having Majority Voting Power.

##### **6.2 Termination of Trust.**

(a) Upon the termination of the Trust: (i) the Trust shall carry on no business except for the purpose of winding up its affairs; (ii) the Trustees shall proceed to wind up the affairs of the Trust and all the powers of the Trustees under this Declaration of Trust shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Estate to one or more Persons at public or private sale (for consideration that may consist in whole or in part of cash, Securities or other property of any kind), discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; and (iii) after paying or adequately providing for the payment of all liabilities and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Trustees may distribute the remaining Trust Estate (in cash or in kind or partly each) among the Shareholders according to their respective rights.

(b) After termination of the Trust and distribution of the Trust Estate to the Shareholders as herein provided, the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination and such distribution, a copy of which instrument shall be filed with the MSDAT, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder and the rights and interests of all the Shareholders shall thereupon cease.

### **6.3 Amendment Procedure.**

(a) Except as otherwise provided in this Declaration of Trust, any amendment to the Declaration of Trust shall be valid only if declared advisable by the Board of Trustees and approved by the affirmative vote of holders of Shares carrying votes that exceed two-thirds of the votes carried by all Shares.

(b) The Trustees shall amend this Declaration of Trust without the vote or consent of the Shareholders if, based on an opinion of counsel, they deem it necessary to conform this Declaration of Trust to the requirements of the Code relating to a REIT or of the MREITL (including any amendments made pursuant to Section 7.6(a) hereof). A majority of the Trustees may also amend this Declaration of Trust without a vote or consent of the Shareholders (i) in any respect that the charter of a corporation may be amended in accordance with Section 2-605 of the MGCL or (ii) as authorized by Section 4.1(b) hereof.

**6.4 Amendments Effective.** Any amendment pursuant to any Section of this Declaration of Trust shall not become effective until it is duly filed with the MSDAT.

**6.5 Amendment or Assignment of Management Agreement.** In the event the Board of Trustees shall declare any amendment or assignment of a Management Agreement advisable, the Shareholders, by obtaining the affirmative vote of the Shareholders, or such Shareholders' designated proxyholder, having Majority Voting Power, shall have the power to require the Board of Trustees to terminate such Management Agreement.

## **ARTICLE VII**

### **MISCELLANEOUS**

**7.1 Applicable Law.** This Declaration of Trust is executed and acknowledged by the Trustees with reference to the statutes and laws of the State of Maryland, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the statutes and laws of such State. To the extent not otherwise provided in this Declaration of Trust, the provisions of MGCL shall be deemed to apply to the Trust.

**7.2 Index and Headings for Reference Only.** The index and headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration of Trust.

**7.3 Successors in Interest.** This Declaration of Trust and the Bylaws shall be binding upon and inure to the benefit of the undersigned Trustees and their successors, assigns,

heirs, distributees and legal representatives, and every Shareholder and his successors, assigns, heirs, distributees and legal representatives.

**7.4 Inspection of Records.** Trust records shall be available for inspection by the Shareholders at the same time and in the same manner and to the extent that comparable records of a Maryland business corporation would be available for inspection by stockholders under the laws of the State of Maryland. Except as specifically provided for in this Declaration of Trust or in the MREITL, the Shareholders shall have no greater right than stockholders of a Maryland business corporation to require financial or other information from the Trust, the Trustees or officers of the Trust. Any Federal or state securities administrator or the MSDAT shall have the right, at reasonable times during business hours and for proper purposes, to inspect the books and records of the Trust.

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

**7.6 Provisions of the Trust in Conflict with Law or Regulations; Severability.**

(a) The provisions of this Declaration of Trust are severable, and if the Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "*Conflicting Provisions*") are in conflict with the provisions of the Code relating to a REIT or the provisions of the MREITL, the Conflicting Provisions shall be deemed never to have constituted a part of this Declaration of Trust; provided, however, that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Declaration of Trust or render invalid or improper any action taken or omitted (including but not limited to the election of Trustees) prior to such determination.

(b) If any provision of this Declaration of Trust shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this Declaration of Trust, and this Declaration of Trust shall be carried out as if any such invalid or unenforceable provision were not contained herein.

**7.7 Certifications.** The following certifications shall be final and conclusive as to any Persons dealing with the Trust:

(a) a certification of a vacancy among the Trustees by reason of resignation, removal, increase in the number of Trustees, incapacity, death or otherwise;

(b) a certification as to the individuals holding office as Trustees or officers at any particular time, when made in writing by the secretary of the Trust;

(c) a certification that a copy of this Declaration of Trust or of the Bylaws is a true and correct copy thereof as then in force, when made in writing by the secretary of the Trust; and



(d) a certification as to any actions by Trustees, other than the above when made in writing by the secretary of the Trust or by any Trustee.

**7.8 Bylaws.** The Trustees may make or adopt and from time to time amend or repeal Bylaws ("*Bylaws*") not inconsistent with law or with this Declaration of Trust, containing provisions relating to the business of the Trust and the conduct of its affairs and in such Bylaws may define the duties of the officers, employees and agents of the Trust.

## ARTICLE VIII

### DEFINITIONS

**8.1 Definitions.** The terms defined in this Article, wherever used in this Declaration of Trust, shall, unless the context otherwise requires, have the respective meanings hereinafter specified. Whenever the singular number is used in this Declaration of Trust and when permitted by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa. Where applicable, calculations to be made pursuant to any such definition shall be made in accordance with generally accepted accounting principles as in effect from time to time except as otherwise provided in such definition.

(a) **Adviser.** The term "Adviser" shall mean the Person(s) whom the Trustees employ or contract to act as advisor to the Trust as provided in Article IX of the Bylaws.

(b) **Affiliate.** The term "Affiliate" of a Person shall mean an affiliate of such Person within the meaning of Rule 405 under the Securities Act.

(c) **Affiliate Transaction.** The term "Affiliate Transaction" shall have the meaning provided for in Section 5.8 hereof.

(d) **Aggregate Shares Ownership Limit.** The term "Aggregate Shares Ownership Limit" shall mean not more than 9.8% in value of the aggregate of the outstanding Shares. The value of the outstanding Shares shall be determined by the Trustees of the Trust in good faith, which determination shall be conclusive for all purposes hereof.

(e) **Annual Report.** The term "Annual Report" shall mean the annual report of the Trust's operations described in the Bylaws and shall constitute the accounting of the Trustees for such fiscal year.

(f) **Beneficial Ownership.** The term "Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns," and "Beneficially Owned" shall have the correlative meanings.

(g) **Business Day.** The term "Business Day" shall mean any day that is not a Saturday, Sunday or a day on which banking institutions in the State of Illinois are authorized or obligated by law or executive order to close.

(h) **Bylaws.** The term "Bylaws" shall have the meaning provided for in Section 7.8 hereof.

(i) **"Called Capital"** for the purpose of this Declaration of Trust shall mean a Shareholder's Funded Commitment, without reductions for returns of capital in respect of certain capital events described in such Shareholder's Subscription Agreement; provided, however, that in the event that capital is returned in respect of such a capital event during the Commitment Period and recalled as provided in a Shareholder's Subscription Agreement, Called Capital shall only include the original payment of capital into the Trust and shall not include any subsequent recall of such capital.

(j) **Capital Commitments.** The term "Capital Commitments" means the aggregate amount that the Shareholders of the Trust have agreed in Subscription Agreements to contribute to the Trust.

(k) **Cause.** The term "Cause" shall mean, with respect to a Trustee or officer of the Trust, any of the following: (A) the admission or plea of no contest to, or conviction of, a felony or crime of moral turpitude by such Trustee or officer, acting in his capacity as a Trustee or officer; (B) the bankruptcy or insolvency of such Trustee or officer; (C) the fraud, willful misconduct or negligence by such Trustee or officer, acting in his capacity as a Trustee or officer, in the performance of his obligations hereunder, in each case, after written notice to the Trustee or officer specifying in reasonable detail the nature of such fraud, willful misconduct or negligence, provided that such fraud, willful misconduct or gross negligence is curable if the employment of such person or position on the Board of Trustees (if not an employee of the Trust) is terminated within 60 days following such notice; (D) a material violation of any federal or state securities laws by such Trustee or officer; (E) the breach of this Declaration of Trust by such Trustee or officer, acting in his capacity as a Trustee or officer, which breach results in a material adverse effect on the Trust and which breach is not cured within 60 days following written notice to the Trustee or officer specifying in reasonable detail the nature of such breach; (F) any action taken by an Adviser or any officer of the Trust, acting in his capacity as an officer, who is an employee of the Adviser, who is any employee of the Adviser or an Affiliate, that would constitute "Cause" for purposes of clauses (A) through (F); and (G) any event that would constitute an event of default under a Management Agreement and that remains uncured after the expiration of any applicable notice or cure period.

(l) **Charitable Beneficiary.** The term "Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 4.9(b)(6) hereof, provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each Sections 170(b)(1)(A), 2055 and 2522 of the Code.

(m) **Charitable Trust.** The term "Charitable Trust" shall mean any trust provided for in Section 4.9(b)(i) hereof.

(n) **Charitable Trustee.** The term "Charitable Trustee" shall mean the Person unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust to serve as trustee of the Charitable Trust.

(o) **Code.** The term "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(p) **Commitment Period.** The term "Commitment Period" means the period commencing on the First Closing and ending on the date that is 12 months after the First Closing.

(q) **Common Shares.** The term "Common Shares" shall mean the shares of beneficial interest of the Trust as described in Section 4.1 hereof as Common Shares.

(r) **Common Shares Ownership Limit.** The term "Common Shares Ownership Limit" shall mean not more than 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding Common Shares of the Trust. The number and value of outstanding Common Shares of the Trust shall be determined by the Board of Trustees of the Trust in good faith, which determination shall be conclusive for all purposes hereof.

(s) **Conflicting Provision.** The term "Conflicting Provision" shall have the meaning provided for in Section 7.6(a) hereof.

(t) **Constructive Ownership.** The term "Constructive Ownership" shall mean ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

(u) **Current Excepted Holder.** The term "Current Excepted Holder" shall have the meaning provided in Section 4.9(a)(vii)(5).

(v) **Declaration of Trust.** The term "Declaration of Trust" or "this Declaration of Trust" shall mean this Declaration of Trust, including exhibits, as amended, restated, supplemented or modified from time to time. The use in this Declaration of Trust of "herein" and "hereunder" shall be deemed to refer to this Declaration of Trust and shall not be limited to the particular text, article or section in which such words appear.

(w) **ERISA.** The term "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

(x) **ERISA Plan Shareholder.** The term "ERISA Plan Shareholder" means a Shareholder who is (i) an employee benefit plan subject to Title I of ERISA; or (ii) an entity whose underlying assets include the assets of any such employee benefit plan by reason of a plan's investment in the entity, as determined in accordance with the Plan Assets Regulations.

(y) **Excepted Holder.** The term "Excepted Holder" shall mean a Shareholder of the Trust for whom an Excepted Holder Ownership Limit is created by this Declaration of Trust or by the Trustees pursuant to Section 4.9(a)(vii) hereof.

(z) **Excepted Holder Ownership Limit.** The term "Excepted Holder Ownership Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Trustees pursuant to Section 4.9(a)(vii) hereof, and subject to adjustment pursuant to Section 4.9(a)(viii) hereof, the percentage limit established by the Trustees pursuant to Section 4.9(a)(vii) hereof.

(aa) **Existing Declaration of Trust.** The term "Existing Declaration of Trust" shall have the meaning set forth in the recitals.

(bb) **Fair Market Value.** The term "Fair Market Value" shall mean, with respect to any asset of the Trust, as of any date, the fair market value of such asset as determined by the Trustees in their reasonable discretion, or if such asset has been held less than 12 months, the historical cost of such asset.

(cc) **First Closing.** The term "First Closing" shall have the meaning provided for in Section 2.6(c) hereof.

(dd) **Funded Commitment.** The term "Funded Commitment" shall mean, with respect to a Shareholder, as of any given time, the aggregate amount that has been paid by such Shareholder to the Trust, or has been deemed to have been paid by such Shareholder to the Trust, at or prior to such time, in payment for Shares pursuant to such Shareholders' Subscription Agreement. Notwithstanding the above, a Shareholder's Funded Commitment shall be reduced, from time to time, by returns of capital made by the Trust as a result of certain capital events described in such Shareholder's Subscription Agreement. Distributions and dividends in respect of certain capital events described in the Subscription Agreements shall be considered a return of capital for purposes of this definition to the extent of the Called Capital that were applied to the acquisition of applicable investments described in such Shareholder's Subscription Agreement. For avoidance of doubt, any capital charge amounts described in the Subscription Agreements shall not be included in any Shareholder's Funded Commitment.

(ee) **Increased Subscription.** The term "Increased Subscription" shall have the meaning provided in Section 4.11.

(ff) **Initial Investment Date.** The term "Initial Investment Date" shall mean the date upon which capital is first paid into the Trust in response to a notice to Shareholders under Subscription Agreements. Payments made in any subsequent closing

that are deemed to be payments to the Trust shall be deemed to have been made on the Initial Investment Date.

(gg) **Investment Guidelines.** The term "Investment Guidelines" shall have the meaning set forth on Exhibit A hereto.

(hh) **Investment Period.** The term "Investment Period" shall mean the period commencing at the expiration of the Investment Period and ending on the earlier of (i) 30 months after the First Closing and (ii) such time as the Capital Commitments are fully funded.

(ii) **LaSalle.** The term "LaSalle" shall mean LaSalle Investment Management, Inc., a Maryland corporation.

(jj) **Majority Voting Power.** The term "Majority Voting Power" shall mean the holders of Shares carrying votes that exceed 50% of the votes entitled to be cast on a matter by all Shares.

(kk) **Management Agreement.** The term "Management Agreement" shall mean any Management Agreement by and among the Trust and an Adviser.

(ll) **Market Price.** The term "Market Price" on any date shall mean, with respect to any class or series of outstanding Shares, the fair market value of each Share based upon the fair market value of all of the assets of the Trust as reasonably determined by the Trustees acting in good faith. In determining the fair market value of each Share, no discounts for minority interest, lack of liquidity or otherwise shall be applied. The determination of Market Price hereunder shall be final and binding.

(mm) **Mortgage Loans.** The term "Mortgage Loans" shall mean notes, debentures, bonds or other evidences of indebtedness or obligations, whether negotiable or non-negotiable, which are secured or collateralized by Mortgages.

(nn) **Mortgages.** The term "Mortgages" shall mean mortgages, deeds of trust or other security interests in Real Property.

(oo) **MGCL.** The term "MGCL" shall mean the Maryland General Corporation Law at Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland.

(pp) **MREITL.** The term "MREITL" shall mean the Maryland REIT Law at Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland.

(qq) **MSDAT.** The term "MSDAT" shall mean the Maryland State Department of Assessments and Taxation.

(rr) **Other Plan Shareholder.** The term "Other Plan Shareholder" means a Shareholder who is (i) a governmental plan as defined in Section 3(32) of ERISA or a church plan as defined in Section 3(33) of ERISA with respect to which no election has

been made under Code Section 410(d); (ii) any other employee benefit plan that is not subject to Title I of ERISA; or (iii) an entity whose underlying assets include the assets of any such governmental plan, church plan or other employee benefit plan as determined in accordance with the Plan Assets Regulations.

(ss) **Person.** The term "Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity.

(tt) **Plan Assets Regulations.** The term "Plan Assets Regulations" shall mean the regulations of the United States Department of Labor found at Title 29, Section 2510.3-101 of the United States Code issued pursuant to ERISA.

(uu) **Post-Commitment Period Subscription.** The term "Post-Commitment Period Subscription" shall have the meaning provided in Section 4.11.

(vv) **Prohibited Owner.** The term "Prohibited Owner" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Section 4.9(a)(1) hereof, would Beneficially Own or Constructively Own Shares, and if appropriate in the context, shall also mean any Person who would have been the record owner of the shares that the Prohibited Owner would have so owned.

(ww) **Real Property.** The term "Real Property" shall mean and include land, leasehold interests (including but not limited to interests of a lessor or lessee therein), rights and interests in land, and in any buildings, structures, improvements, furnishings and fixtures located on or used in connection with land or interests therein, but does not include investments in Mortgages, Mortgage Loans or interests therein.

(xx) **REIT.** The term "REIT" shall mean a real estate investment trust within the meaning of Section 856 of the Code.

(yy) **Restriction Termination Date.** The term "Restriction Termination Date" shall mean the first day after the Initial Investment Date on which the Board of Trustees of the Trust determines that it is no longer in the best interests of the Trust to attempt to, or continue to, qualify as a REIT or that compliance with the restriction and limitations with respect to Beneficial Ownership, Constructive Ownership and Transfers of Shares set forth herein is no longer required in order for the corporation to qualify as a REIT.

(zz) **Securities.** The term "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness or in general any instruments commonly known as "securities" or any certificates of interest, shares or participation in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire any of the foregoing.

(aaa) *Shareholders*. The term "Shareholders" shall mean as of any particular time all holders of record of outstanding Shares at such time.

(bbb) *Shares*. The term "Shares" or, as the context may require, "shares" shall mean the shares of beneficial interest of the Trust as described in Section 4.1 hereof or in any articles supplementary hereto, and shall include Common Shares.

(ccc) *Subscription Agreement*. The term "Subscription Agreement" shall mean each Subscription Agreement executed by a Shareholder pursuant to which such Shareholder agrees to purchase Shares from the Trust.

(ddd) *Subscription Amount*. The term "Subscription Amount" shall mean the number of Shares which a Shareholder has agreed to purchase pursuant to a Subscription Agreement.

(eee) *Transfer*. The term "Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event, that causes any Person to acquire Beneficial Ownership or Constructive Ownership, or any agreement to take any such actions or cause any such events, of Shares or the right to vote or receive dividends on Shares, including (i) the granting or exercise of any option or warrant (or any disposition of any option or warrant), (ii) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right and (iii) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

(fff) *Trust*. The term "Trust" shall mean the Trust created by this Declaration of Trust.

(ggg) *Trustees*. The term "Trustees" shall mean, as of any particular time, the original signatories hereto as long as they hold office hereunder and additional and successor Trustees, and shall not include the officers, employees or agents of the Trust or the Shareholders. Nothing herein shall be deemed to preclude the Trustees from also serving as officers, employees or agents of the Trust or owning shares.

(hhh) *Trust Estate*. The term "Trust Estate" shall mean as of any particular time any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to or purchased by the Trust or Trustees and all rents, income, profits and gains therefrom and which at such time is owned or held by or for the Trust or the Trustees.

(iii) *Unfunded Commitment*. The term "Unfunded Commitment" shall mean, for any Shareholder as of any given time, the difference between (i) such Shareholder's Subscription Amount and (ii) the aggregate amount paid by the Shareholder to the Trust at or prior to such time pursuant to the provisions such Shareholder's Subscription Agreement; provided, however, that (A) any amounts received by the Shareholder from

other Shareholders pursuant to any subsequent closings (exclusive of any capital charge amounts described in such Shareholder's Subscription Agreement) and (B) any amounts representing a return of capital as described in such Subscription Agreement (such amounts may be called again by the Trust according the provisions of such Subscription Agreement as if such amounts had not been previously called and funded), shall be deducted from the aggregate amount referred to in clause (ii) above and shall thereby be added to the Shareholder's Unfunded Commitment.

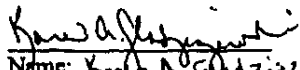


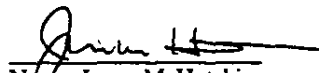
The undersigned President acknowledges these Articles of Amendment and Restatement to be the trust act of the Trust and as to all matters or facts required to be verified under oath, the undersigned President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its President and attested to by its ~~SECRETARY~~ Secretary on this 1st day of April, 2005.

ATTEST:

LASALLE INCOME & GROWTH FUND IV

  
Name: Karol A. Gudziszewski  
Title: ~~Vice President~~  
Assistant Secretary

  
Name: James M. Hutchinson  
Title: President

## EXHIBIT A

### Investment Guidelines

The Trust's strategy is to seek to acquire a broadly diversified, exclusively United States portfolio of multiple property types (as outlined below) that provide attractive current income and the potential for value creation through focused asset management.

The following constraints shall apply to the Trust's investments:

Property Type Diversification	No single property type will represent more than 50% of the total portfolio cost of the Trust's properties at full investment. The Trust will invest in office, retail, multi-family and industrial properties, as well as other property types that will not represent more than 15% of the Trust's assets (including borrowed amounts) at full investment.
Property Size Diversification	No single property will represent more than 20% of the Trust's assets (including borrowed amounts) at full investment.
Geographic Diversification	The Trust shall not invest in properties located outside the United States. For this purpose, United States includes the territories and possessions of the United States, the District of Columbia, and Puerto Rico.
Leverage	The Trust may borrow funds to make investments or otherwise in connection with the Trust's business. The Trust will not maintain indebtedness that would cause (i) outstanding indebtedness to exceed 75% of the cost of a single property plus expected future capital requirements or (ii) overall portfolio indebtedness of the Trust to exceed 65% of total portfolio cost at full investment. These calculations will not include indebtedness that the Trust reasonably anticipates will be repaid within 180 days or short-term indebtedness under the Subscription Credit Facility contemplated by a Subscription Agreement.