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(Requestor's Name)

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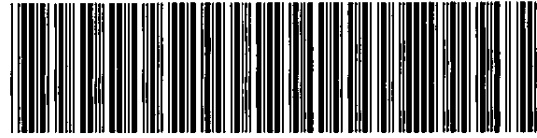
(Business Entity Name)

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# SUNSHINE CORPORATE & FILING SERVICES, INC.

3458 Lakeshore Drive  
Tallahassee, Florida 32312  
(850) 656-4724

COVER LETTER

DATE: 12-8-15

WALK IN

ENTITY

NAME: MELBOURNE WICKMAN, DST

(NAME AVAILABLE?  )

CORRECT FORM?  )

PLEASE FILE THE ATTACHED AND RETURN:

PLAIN COPY

CERTIFIED COPY

CERTIFICATE OF STATUS

CHECK # \_\_\_\_\_

AMOUNT: 358.75

PLEASE CONTACT TINA AT 850-508-1891 WITH ANY  
QUESTIONS OR CORRECTIONS!

THANK YOU!

TINA GOFF, PRESIDENT

SUNSHINE CORPORATE & FILING SERVICES, INC.



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

MELBOURNE WICKMAN, DST

A Delaware Statutory 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 Melbourne Wickman, DST, a

Delaware Statutory (Name of Trust)  
Trust hereby affirms in order to file or qualify  
(State)  
Melbourne Wickman, DST, in the State of Florida.  
(Name of Trust)

1. Two or more persons are named in the Trust.
2. The principal address is 1401 Broad Street, Clifton, New Jersey 07013

3. The registered agent and street address in the State of Florida is:  
United Corporate Services, Inc.

9200 South Dadeland Boulevard, Suite 508, Miami, Florida 33156

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.

Michael A Darr, President  
(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.

NOTARY

[Signature]  
Name:  
Chairman of the Board of Trustees

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

CR2E063(3/00)

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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**TRUST AGREEMENT  
OF  
MELBOURNE WICKMAN DST**

**DATED AS OF  
NOVEMBER 30, 2015**

**BY AND AMONG**

**LODI-ESSEX, LLC, a New Jersey limited liability company  
AS DEPOSITOR,**

**ARC DST TRUSTEE, LLC,  
a Delaware limited liability company,  
AS SIGNATORY TRUSTEE,**

**AND**

**UNITED CORPORATE SERVICES, AS DELAWARE TRUSTEE**

RECORDED AT THE OFFICE OF THE  
CLERK OF THE SUPERIOR COURT  
IN AND FOR THE COUNTY OF  
DUKE, NORTH CAROLINA  
NOV 30 2015 10 58 AM '15

**TRUST AGREEMENT  
OF  
MELBOURNE WICKMAN DST,  
A DELAWARE STATUTORY TRUST**

THIS TRUST AGREEMENT, dated as of November 30, 2015 (the "Effective Date") (as the same may be amended or supplemented from time to time, this "Trust Agreement"), is made by and among LODI-ESSEX, LLC, a New Jersey limited liability company (the "Individual Depositor" and the "Depositor"), ARC DST TRUSTEE, LLC, a Delaware limited liability company (in its individual capacity, "Signatory Trustee") as Signatory Trustee, and UNITED CORPORATE SERVICES, INC. (in its individual capacity, "Wagner"), as Delaware Trustee.

**RECITALS**

A. Depositor has acquired, will acquire or will contract to acquire the real estate located more particularly described on Exhibit A, together with all buildings, structures, fixtures and improvements located thereon (collectively, the "Real Estate").

B. The Real Estate is subject to (or will hereafter become subject to) certain Financing Documents (as hereinafter defined).

C. Depositor, Signatory Trustee and Delaware Trustee have formed a statutory trust in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §3801, *et seq.* (the "Statutory Trust Act").

D. Depositor will convey the Real Estate, or will cause the Real Estate to be conveyed, to the Trust (as hereinafter defined) in exchange for one hundred percent (100%) of the Beneficial Interests (as hereinafter defined) in the Trust issued to Depositor.

E. It is anticipated that thereafter, certain additional Investors (as hereinafter defined) will acquire the Beneficial Interests in the Trust in exchange for payment of money to the Trust, and shall become Beneficial Owners (as hereinafter defined) in accordance with the provisions of this Trust Agreement. In connection with the acquisition of the Beneficial Interests by the Investors, the Beneficial Interests held by Depositor will be redeemed by the Trust on a prorated basis.

F. The Trust will retain ARC DST Signatory Trustee, LLC as the Signatory Trustee of the Trust to undertake certain actions and perform certain duties that would otherwise be performed by the Trust.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

LODI-ESSEX, LLC  
UNITED CORPORATE SERVICES, INC.  
ARC DST TRUSTEE, LLC

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**Definitions.** Capitalized terms used in this Trust Agreement shall have the following meanings:

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

**"Beneficial Interest"** means a beneficial interest in the Trust, as such term is used in the Statutory Trust Act.

**"Beneficial Owner"** means each Person who, at the time of determination, holds a Beneficial Interest as reflected on the most recent Ownership Records.

**"Business Day"** is any day other than Saturday, Sunday or a legal holiday in the State of Delaware.

**"Certificate of Trust"** means the certificate of trust of the Trust in substantially the form of Exhibit B, as amended from time to time.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

**"Delaware Trustee"** means the Person serving, at the time of determination, as the Delaware Trustee under this Trust Agreement. As of the Effective Date, the Delaware Trustee is Jean Marie Wagner.

4.5. **"Delaware Trustee Covered Expenses"** has the meaning given to such term in Section

4.5: **"Delaware Trustee Indemnified Persons"** has the meaning given to such term in Section

**"Depositor"** has the meaning given to such term in the introductory paragraph hereof.

**"Effective Date"** means the date of this Trust Agreement as specified in the introductory paragraph hereof.

**"Exhibit"** means an exhibit attached to this Trust Agreement, unless otherwise specified.

**"Financing Documents"** means the Note and all instruments, agreements, and other documents creating, evidencing, or securing the Loan, including, without limitation, any deed of trust, security agreement and assignment of leases and rents, as heretofore or concurrently herewith amended. The Financing Documents provide that the Lender's recourse, and any other

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documents or agreements contemplated by any of the foregoing or otherwise required by Lender in connection with the Loan.

**"Investors"** means the purchasers of Beneficial Interests in the Trust, excluding the Depositor.

**"Lease"** means that lease agreement relating to the Real Estate together with all amendments, supplements and modifications thereto.

**"Lender"** means Wells Fargo Bank Northwest, National Association, as Trustee, and the successors and assigns of such lender.

**"Loan"** means that certain loan payable to Lender in the original principal amount of \$TBD as evidenced and secured by the Financing Documents.

**"Material Action"** means to consolidate or merge the Trust with or into any Person, or sell all or substantially all of the assets of the Trust, or to institute proceedings to have the Trust be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Trust or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors of the Trust, or admit in writing the Trust's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Trust.

**"Memorandum"** has the meaning given to such term in Section 3.3(a)(6).

**"Mortgage"** means, collectively, the mortgages or deeds of trust, as the case may be, encumbering the Real Estate as security for the Loan.

**"Note"** means the note evidencing the Loan.

**"Ownership Records"** means the records maintained by the Signatory Trustee, substantially in the form of Exhibit C, indicating from time to time the name, mailing address, and Percentage Share of each Beneficial Owner, which records shall initially indicate the Depositor as the sole Beneficial Owner and shall be revised by the Signatory Trustee contemporaneously to reflect the issuance of Beneficial Interests in accordance with this Trust Agreement, changes in mailing addresses, or other changes.

**"Percentage Interests"** has the meaning given to such term in Recital A hereof.

**"Percentage Share"** means, for each Beneficial Owner, the percentage of the aggregate Beneficial Interests in the Trust held by such Beneficial Owner as reflected on the most recent Ownership Records. For the avoidance of doubt, the sum of the Percentage Share of the Beneficial Interests at all times shall be one hundred percent (100%).

**"Permitted Investment"** has the meaning set forth in Section 7.2.

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"Person" means a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust, statutory trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

"Purchase Agreement" means the purchase agreement and escrow instructions to be entered into by the Signatory Trustee and each Investor with respect to the acquisition of Beneficial Interests by the Investors.

"Real Estate" has the meaning given to such term in Recital C hereof.

"Regulations" means U.S. Treasury Regulations promulgated under the Code.

"Reserves" has the meaning given to such term in Section 7.2.

"Secretary of State" has the meaning given to such term in Section 2.1(b).

"Section" means a section of this Trust Agreement, unless otherwise specified.

"Securities Act" means the Securities Act of 1933, as amended.

"Signatory Trustee" means the Person serving, at the time of determination, as the signatory trustee under this Trust Agreement. As of the Effective Date, the Signatory Trustee is ARC DST Trustee, LLC, a Delaware limited liability company.

"Signatory Trustee Covered Expenses" has the meaning given to such term in Section 5.4.

"Signatory Trustee Indemnified Persons" has the meaning given to such term in Section 5.4.

"Springing LLC" has the meaning given to such term in Section 9.2.

"Statutory Trust Act" has the meaning given to such term in Recital F hereof.

"Tenant" shall mean the person identified as the tenant in the Lease.

"Transaction Documents" means the Trust Agreement, each Purchase Agreement, the Lease and the Financing Documents, together with any other documents to be executed in furtherance of the investment activities of the Trust.

"Transfer Distribution" has the meaning given to such term in Section 9.2.

"Trust" means MELBOURNE WICKMAN DST, a Delaware statutory trust formed by and in accordance with, and governed by, this Trust Agreement.

"Trust Agreement" has the meaning given to such term in the introductory paragraph hereof.

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**"Trust Estate"** means all of the Trust's right, title, and interest in and to the Lease, the Real Estate, and any and all other property and assets (whether tangible or intangible) in which the Trust at any time has any right, title or interest.

**"Trust Year"** means (i) initially, the period of time commencing on the Effective Date and ending on the date that is 12 months later and (ii) subsequently, each successive 12-month period thereafter.

## ARTICLE 2 GENERAL MATTERS

### Section 2.1 Organizational Matters.

(a) United Corporate Services, Inc. is hereby appointed as the Delaware Trustee, and United Corporate Services, Inc. hereby accepts such appointment.

(b) The Depositor hereby authorizes and directs the Delaware Trustee and Signatory Trustee to execute the Certificate of Trust and deliver it for in the office of the Secretary of State of the State of Delaware (the "Secretary of State"), and authorizes the Delaware Trustee to execute and file in the office of the Secretary of State such certificates as may from time to time be required under the Statutory Trust Act or any other Delaware law.

(c) The name of the Trust is "Melbourne Wickman DST." The Signatory Trustee shall have full power and authority, and is hereby authorized, to conduct the activities of the Trust, execute and deliver all documents (including, without limitation, the Transaction Documents) for or on behalf of the Trust, and cause the Trust to sue or be sued under its name. Any reference to the Trust shall be a reference to the statutory trust formed pursuant to the Certificate of Trust and this Trust Agreement and not to the Delaware Trustee or the Signatory Trustee individually or to the officers, agents or employees of the Trust, the Delaware Trustee or the Signatory Trustee.

(d) The principal office of the Trust, and such additional offices as the Signatory Trustee may determine to establish, shall be located at such places inside or outside of the State of Delaware as the Signatory Trustee shall designate from time to time. As of the Effective Date, the principal office of the Trust is located c/o the Signatory Trustee at c/o ARC Properties, Inc., 1401 Broad Street, Clifton, New Jersey 07013.

(e) Legal title to the Trust Estate shall be vested in the Trust as a separate legal entity.

### Section 2.2 Declaration of Trust and Statement of Intent.

(a) The Delaware Trustee hereby declares that it shall hold the Trust Estate in trust for the benefit of the Beneficial Owners upon the terms set forth in this Trust Agreement.

(b) It is the intention of the parties that the Trust constitute a "statutory trust," the Delaware Trustee is a "trustee," the Signatory Trustee is an "agent" of the Trust, the

Beneficial Owners are "beneficial owners," and this Trust Agreement is the "governing instrument" of the Trust, each within the respective meaning provided in the Statutory Trust Act.

Section 2.3 Purposes. Notwithstanding anything to the contrary in this Trust Agreement or in any other document governing the formation, management or operation of the Trust, for so long as any obligation under the Financing Documents is outstanding, the sole purpose of the Trust is to engage exclusively in the following activities: (i) to acquire, own, operate, lease, manage and, if and when appropriate, sell the Real Estate; (ii) to negotiate, enter into, execute, deliver and perform any and all obligations of landlord under, leases or other occupancy agreements with respect to the Real Estate; (iii) to negotiate, enter into, execute, deliver and perform any and all other agreements or obligations relating to the acquisition, ownership, operation, leasing, management or sale of the Real Estate; (iv) to incur indebtedness related to the Real Estate, whether as initial financing or refinancing, and to execute, deliver and perform under and pursuant to any and all loan documents relating thereto, including, without limitation, the Financing Documents; and (v) to engage in any lawful act or activity and to exercise any powers permitted to statutory trusts organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

### ARTICLE 3 PROVISIONS RELATING TO THE LOAN AND TAX TREATMENT

Section 3.1 Article 3 Supersedes All Other Provisions of this Trust Agreement. This Article 3 contains certain provisions required by the Lender in connection with the Loan or intended to achieve the desired treatment of the Trust and Beneficial Interests for United States federal income tax purposes. To the extent of any inconsistency between this Article 3 and any other provision of this Trust Agreement, this Article 3 shall supersede and be controlling; provided, for the avoidance of doubt, that nothing in this Article 3 shall limit or impair the Trust's power and authority to execute and deliver, and to perform its obligations under, the Transaction Documents, and further provided that the requirements of this Article 3 shall be enforceable to the maximum extent permissible under the Statutory Trust Act.

Section 3.2 Provisions Relating to Loan

(a) This Section 3.2 is intended to qualify the Trust as a "Single Purpose Entity" for purposes of the Loan. So long as any portion of the Loan is outstanding, the provisions of this Section 3.2 shall be in full force and effect; provided, however, that the provisions of this Section 3.2 shall be of no further force and effect at any time when no portion of the Loan is outstanding. The terms of this Trust Agreement are further limited by and subject to the provisions of the Financing Documents while the Loan is outstanding.

(b) With respect to the Trust, a "Single Purpose Entity" means a Delaware statutory trust that, at all times since its formation and thereafter:

- (1) shall not engage in any business or activity other than the ownership, operation and maintenance of the Real Estate and activities incidental thereto;

- (2) shall not acquire or own any assets other than fee interests in the Real Estate, such personalty as may be necessary and any cash collateral, if applicable, for the operation of the Real Estate, and shall conduct and operate its business as presently conducted and operated;
- (3) shall preserve its existence and remain in good standing under the laws of the jurisdiction in which it is organized;
- (4) shall not merge or consolidate with any other Person (except as a result of a Transfer Distribution), or liquidate and dissolve (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all, or substantially all, of the business or assets of, or any stock or other evidence of beneficial ownership of any other Person, except as a result of a Transfer Distribution;
- (5) except as a result of a Transfer Distribution, shall not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; or except for transfers permitted hereunder, transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable; or issue additional partnership, membership or other equity interests, as applicable; or seek to accomplish any of the foregoing;
- (6) shall not, without the unanimous written consent of all of the Trust's trustees, and such other entities as may be required under this Trust Agreement or other organizational documents or at law: (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (B) seek or consent to the appointment of a receiver, liquidator or any similar official; or (C) make an assignment for the benefit of creditors or take any action in furtherance of the foregoing;
- (7) shall not amend or restate its organizational documents if such change would modify the requirements set forth in this Section 3.2;
- (8) shall do all things necessary to observe organizational formalities and will not take any actions in violation of or inconsistent with the terms and provisions of the Trust Agreement or other applicable organizational documents;
- (9) shall not own any subsidiary or make any investment in, any other Person;

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- (10) shall not commingle its funds and assets with the funds and assets of any other Person and shall hold all of its assets in its own name and in such a manner that it will not be difficult to segregate, ascertain or identify its individual assets from those of another Person;
- (11) shall not incur any debt, secured or unsecured, direct, contingent or absolute (including, without limitation, guaranteeing any obligation), other than, the Loan, obligations to Tenant under the Lease or to other tenants or occupants of the Real Estate, and customary unsecured trade payables incurred in the ordinary course of owning and operating the Real Estate and payable within thirty (30) days;
- (12) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and shall not list its assets as assets on the financial statement of any other Person; provided, however, that the Trust's assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Trust from such Affiliate and to indicate that the Trust's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (B) such assets shall also be listed on the Trust's own separate balance sheet;
- (13) shall only enter into any contract or agreement with any Beneficial Owner or Affiliate of the Trust or any guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties;
- (14) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (15) shall not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;
- (16) shall not make any loans or advances to any other Person and shall not acquire obligations or securities of its Affiliates;

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- (17) shall file its own tax returns separate from those of any other Person, except to the extent that the Trust is treated as a "disregarded entity" or investment trust for tax purposes and is not required to file tax returns under applicable law, and pay any taxes required to be paid under applicable law;
- (18) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name and through its own authorized directors, officers, managers, employees and agents, shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself or any of its Affiliates as a division or part of the other;
- (19) shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and shall remain solvent and pay its debts and liabilities from its assets as the same shall become due;
- (20) shall allocate fairly and reasonably shared expenses (including, without limitation, shared office space) and use separate stationery, invoices and checks;
- (21) shall pay its own liabilities, obligations and indebtedness (including, without limitation, salaries of its own employees, administrative expenses and operating expenses) from its own funds;
- (22) shall not acquire obligations or securities of its Beneficial Owners;
- (23) shall not permit any Affiliate or constituent party independent access to its bank accounts;
- (24) shall maintain a sufficient number of employees (if any) in light of its contemplated business operations;
- (25) shall, to the extent its office, if any, is located in the offices of any of its affiliates, pay fair market rent for its office space located therein and its fair share of any overhead costs with respect thereto;
- (26) shall make investments directly or by brokers engaged and paid by the it or its agents (provided that if any such agent is an affiliate of the Trust it shall be compensated at a fair market rate for its services);

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- (27) shall not become involved in the day-to-day management of any other person;
- (28) shall have at least one trustee (such trustee being herein referred to as the "SPC Member") that is (a) a limited liability company or corporation which at all times has a manager, member or director who qualifies as an Independent Person, or (b) a natural person who qualifies as an Independent Person, and such SPC Member other than an Independent Person will at all times cause the Trust to comply with each of the representations, warranties, and covenants contained in this Agreement and in paragraph 20 of the Mortgage;
- (29) shall not cause or permit the board of directors or board of managers, as applicable, of it or the SPC Member, as applicable, to take any action which, under the terms of any certificate of incorporation, by-laws, voting trust agreement with respect to any common stock or other economic ownership interest, or limited liability company agreement requires the unanimous vote of the board of directors or board of managers, as applicable, of it or the SPC Member, as applicable, unless at the time of such action there shall be at least one member who is an Independent Person;
- (30) shall conduct its business so that the assumptions made with respect to it in the Non-Consolidation Opinion (as defined in the Mortgage) shall be true and correct in all respects; and
- (31) shall have a Delaware resident trustee with a net worth reasonably satisfactory to Lender; provided, that a net worth equal to at least Two Hundred Fifty Million and 00/100 Dollars (\$250,000,000.00) shall be deemed to be reasonably satisfactory to Lender.

Failure of the Signatory Trustee to comply with any of the foregoing covenants or any other covenants contained in this Trust Agreement shall not affect the status of the Trust as a separate legal entity or the limited liability of the Beneficial Owners.

(c) Notwithstanding any other provision of this Trust Agreement and any provision of law that otherwise so empowers the Trust, so long as any obligation evidenced or secured by any of the Financing Documents remains outstanding, the provisions of Sections 2.1, 2.3, 4.5, 6.1(d), 6.9, 6.10, Article 3, Article 5, Article 9, Section 10.1 and Article 1 (to the extent that terms defined in Article 1 are used in any of the foregoing provisions) may not be amended without the consent of the Lender.

(d) Notwithstanding any provisions of this Trust Agreement, so long as any obligation evidenced or secured by any of the Financing Documents remains outstanding and not discharged in full and the lien of the Mortgage has not been released, the Signatory Trustee or any replacement signatory trustee shall be an entity with an Independent Person (as such term is

defined in the Mortgage), and the consent of such Independent Person shall be required in order to file, or consent to the filing of, a bankruptcy or insolvency petition or otherwise, institute insolvency proceedings or take any other Material Action.

**Section 3.3 Provisions Relating to Tax Treatment.**

(a) It is the intention of the parties hereto that the Trust shall constitute an investment trust pursuant to Section 301.7701-4(c) of the Regulations and each Beneficial Owner shall be treated as a "grantor" within the meaning of Code Section 671. As such, the parties further intend that each Beneficial Owner shall be treated for federal income tax purposes as if it holds a direct ownership interest in the Real Estate. Each Beneficial Owner agrees to report its interest in the Trust in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing. None of the Delaware Trustee, the Signatory Trustee, the Beneficial Owners and/or the Trust shall have power and authority, or shall be authorized, and each of them is hereby expressly prohibited from taking, and none of them shall be allowed to take, any of the following actions:

(1) sell, transfer or exchange the Real Estate except in accordance with Article 9;

(2) reinvest any monies of the Trust, except to make modifications or repairs to the Real Estate permitted hereunder or in accordance with Section 5.2;

(3) renegotiate the terms of the Loan or enter into new financing;

(4) renegotiate the Lease or enter into new leases, except in the case of the Tenant's bankruptcy or insolvency;

(5) make modifications to the Real Estate (other than minor non-structural modifications) unless required by law;

(6) accept any capital from a Beneficial Owner (other than capital, including existing reserves, contributed by the Depositor in connection with the original contribution of the Trust Estate and capital from an Investor paid in accordance with the investment in the Beneficial Interests made pursuant to the private offering memorandum (if any) regarding the sale of the Beneficial Interests by the Trust (together with any addendums or supplements thereto, the "Memorandum") that will be distributed to the Depositor to redeem its Beneficial Interest or to fund reserves or pay fees and expenses related to the offering of the Beneficial Interests); or

(7) take any other action which would in the opinion of tax counsel to the Trust cause the Trust to be treated as a business entity for federal income tax purposes if the effect would be that

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such action or actions would constitute a power under the Trust Agreement to "vary the investment of the certificate holders" under Section 301.7701-4(c)(1) of the Regulations and Rev. Rul. 2004-86.

The Trust shall hold the Trust Estate for investment purposes and only lease the Real Estate to the Tenant. The activities of the Trust with respect to the Trust Estate shall be limited to the activities which are customary services in connection with the maintenance and repair of the Real Estate and none of the Delaware Trustee, the Beneficial Owners, the Signatory Trustee nor their agents shall provide non-customary services, as such term is defined in Code Sections 512 and 856 and Rev. Rul. 75-374, 1975-2 C.B. 261. The Trust shall conduct no business other than as specifically set forth in, or permitted by, this Section 3.3. Without limiting the generality of the foregoing, (i) none of the Delaware Trustee, the Signatory Trustee, the Beneficial Owners and the Trust shall have any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a "trust" within the meaning of Section 301.7701-4 of the Regulations and not treated as a "business entity" within the meaning of Section 301.7701-3 of the Regulations, and (ii) this Trust Agreement shall be interpreted and enforced so as to be in compliance with the requirements of Rev. Rul. 2004-86, 2004-2 C.B. 191.

For federal income tax purposes, the Trust is intended to be and shall constitute an investment trust pursuant to Section 301.7701-4(c) of the Regulations and a "grantor trust" under Subpart E of Part 1, Subchapter J of the Code (Code Sections 671 - 679) and shall not constitute a "business entity."

#### ARTICLE 4 CONCERNING THE DELAWARE TRUSTEE

Section 4.1 Power and Authority. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Trust in the State of Delaware; (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State, (iii) execute, solely in its capacity as trustee for and on behalf of the Trust, any document of title or other document relating to the Real Estate, as determined by the Signatory Trustee to be required or advisable under any applicable law of the jurisdiction where the Real Estate is located; and (iv) take such action or refrain from taking such action under this Trust Agreement as may be directed in a writing delivered to the Delaware Trustee by the Signatory Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee or is contrary to the terms of this Trust Agreement or of any document contemplated hereby to which the Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Signatory Trustee agrees not to instruct the Delaware Trustee to take any action, or to refrain from taking any action, that is contrary to the terms of this Trust Agreement or of any document contemplated hereby to which the Trust or the Delaware Trustee is or becomes a party, or that is otherwise contrary to law. Other than as expressly provided for in this Trust Agreement, the Delaware Trustee shall have no duty to take any action for or on behalf of the Trust.

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Section 4.2 Delaware Trustee May Request Direction. If at any time the Delaware Trustee determines that it requires or desires guidance regarding the application of any provision of this Trust Agreement or any other document, or regarding action that must or may be taken in connection herewith or therewith, or regarding compliance with any direction it received hereunder, then the Delaware Trustee may deliver a notice to a court of competent jurisdiction requesting written instructions as to the desired course of action, and such instructions from the court shall constitute full and complete authorization and protection for actions taken and other performance by the Delaware Trustee in reliance thereon. Until the Delaware Trustee has received such instructions after delivering such notice, it shall be fully protected in refraining from taking any action with respect to the matters described in such notice.

Section 4.3 Delaware Trustee's Capacity. In accepting the trust hereby created, Jean Marie Wagner acts solely as Delaware Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents, or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement or any other document to the contrary, under no circumstances shall Jean Marie Wagner, in her individual capacity or in her capacity as Delaware Trustee, (i) have any duty to choose or supervise, nor shall it have any liability for the actions or inactions of, the Signatory Trustee or any officer, manager, employee, or other Person (other than The Jean Marie Wagner and its own employees), or (ii) be liable or responsible for, or obligated to perform, any contract, representation, warranty, obligation or liability of the Trust, the Signatory Trustee, or any officer, manager, employee, or other Person (other than Jean Marie Wagner and its own employees); provided, however, that this limitation shall not protect Jean Marie Wagner against any liability to the Beneficial Owners to which it would otherwise be subject by reason of its willful misconduct, bad faith, fraud or gross negligence in the performance of its duties under this Trust Agreement.

Section 4.4 Duties. None of the Delaware Trustee or any successor Delaware Trustee shall have any duty or obligation under or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby, except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Delaware Trustee or any successor Delaware Trustee. The right of the Delaware Trustee or any successor Delaware Trustee to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Delaware Trustee's or any successor Delaware Trustee's duties (including fiduciary duties) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties) expressly set forth in this Trust Agreement and liabilities relating thereto.

Section 4.5 Indemnification. The Beneficial Owners, jointly and severally, hereby agree to: (i) reimburse the Delaware Trustee or any successor Delaware Trustee for all reasonable expenses (including reasonable fees and expenses of counsel and other professionals), incurred in connection with the negotiation, execution, delivery, or performance of, or exercise of rights or powers under, this Trust Agreement; (ii) the fullest extent permitted by law, indemnify, defend and hold harmless the Delaware Trustee and/or any successor Delaware Trustee, and the officers, directors, employees and agents of the Delaware Trustee and/or any

successor Delaware Trustee (collectively, including the Delaware Trustee and/or any successor Delaware Trustee in its individual capacity, the "Delaware Trustee Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever (collectively, "Delaware Trustee Covered Expenses"), to the extent that such Delaware Trustee Covered Expenses arise out of or are imposed upon or asserted at any time against any such Delaware Trustee Indemnified Persons, including without limitation on the basis of ordinary negligence on the part of any such Delaware Trustee Indemnified Persons, with respect to or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby; provided, however, that the Beneficial Owners shall not be required to indemnify a Delaware Trustee Indemnified Person for Delaware Trustee Covered Expenses to the extent such Delaware Trustee Covered Expenses result from the willful misconduct, bad faith, fraud or gross negligence of such Delaware Trustee Indemnified Person; and (iii) the fullest extent permitted by law, advance to each such Delaware Trustee Indemnified Person any Delaware Trustee Covered Expenses incurred by such Delaware Trustee Indemnified Person in defending any claim, demand, action, suit or proceeding, in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby, prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by any Beneficial Owner of an undertaking, by or on behalf of such Delaware Trustee Indemnified Person, to repay such amount if a court of competent jurisdiction renders a final, non-appealable judgment that includes a specific finding of fact that such Delaware Trustee Indemnified Person is not entitled to be indemnified therefor under this Section 4.5. The obligations of the Beneficial Owners under this Section 4.5 shall survive the resignation or removal of the Delaware Trustee, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement. The obligations of the Beneficial Owners under this Section 4.5 shall be personal obligations irrespective of the sufficiency or insufficiency of the Trust Estate to satisfy any such obligations. So long as any obligation evidenced or secured by the Financing Documents is outstanding, no indemnity payment from funds of the Trust (as distinct from funds from other sources, such as insurance) of any indemnity pursuant to this Section 4.5 shall be payable from amounts allocable to the Lender pursuant to the Financing Documents. Any indemnification set forth in this Trust Agreement shall be fully subordinate to the Loan and shall not constitute a claim against the Trust in the event its cash flow is insufficient to pay its obligations, nor shall it constitute a claim against any beneficial owner of an interest in the Trust.

**Section 4.6 Removal; Resignation; Succession.** The Delaware Trustee may resign at any time by providing written notice to the Signatory Trustee, such resignation to be effective upon the acceptance of appointment by a successor Delaware Trustee as hereinafter provided. The Signatory Trustee may at any time remove the Delaware Trustee for cause by providing written notice to the Delaware Trustee, such removal to be effective upon the acceptance of appointment by a successor Delaware Trustee as hereinafter provided. Cause shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Delaware Trustee. In case of the removal or resignation of a Delaware Trustee, and with the prior written consent of Lender while the Loan is outstanding, the Signatory Trustee may appoint a successor by written instrument. If a successor Delaware Trustee shall not have been appointed within fifteen (15) days after the giving of such notice, the Delaware Trustee or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint a successor Delaware

Trustee to act until such time, if any, as a successor shall have been appointed as provided above; provided the Lender approves such appointment during any period in which the Loan remains outstanding. Any successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as provided above within one (1) year from the date of the appointment by such court. Any successor, however appointed, shall execute and deliver to its predecessor Delaware Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Delaware Trustee in the trusts hereunder with like effect as if originally named the Delaware Trustee herein; but upon the written request of such successor, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor, and such predecessor shall duly assign, transfer, deliver and pay over to such successor all monies or other property then held by such predecessor upon the trusts herein expressed. Any right of the Beneficial Owners against a predecessor Delaware Trustee in her individual capacity shall survive the resignation or removal of such predecessor, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement.

Any successor Delaware Trustee, however appointed, shall be a bank or trust company satisfying the requirements of Section 3807(a) of the Statutory Trust Act. Any corporation into which the Delaware Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Delaware Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Delaware Trustee may be transferred, shall, subject to the preceding sentence and any necessary filings pursuant to the Statutory Trust Act, be the Delaware Trustee under this Trust Agreement without further act.

Section 4.7 Fees and Expenses. United Corporate Services, Inc. shall receive as compensation for her services hereunder such fees as have been separately agreed upon between Depositor and United Corporate Services, Inc.. The Delaware Trustee shall not have any obligation by virtue of this Trust Agreement to spend any of its own funds, or to take any action that could result in its incurring any cost or expense.

#### ARTICLE 5 CONCERNING THE SIGNATORY TRUSTEE

Section 5.1 Power and Authority. The investment activities and affairs of the Trust shall be managed exclusively by or under the direction of the Signatory Trustee. The Signatory Trustee shall have the power and authority, and is hereby authorized and empowered, to manage the Trust Estate and the investment activities and affairs of the Trust, subject to and in accordance with the terms and provisions of this Trust Agreement; provided, that the Signatory Trustee shall have no power to engage on behalf of the Trust in any activities that the Trust could not engage in directly; and further provided, that the Signatory Trustee shall at all times be subject to the control and authority of the Trust. The Signatory Trustee shall have the power and authority, and is hereby authorized, empowered, and directed by the Trust, to enter into, execute and deliver, and to cause the Trust to perform its obligations under, each of the Transaction Documents to which the Trust is or becomes a party or signatory.

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Section 5.2 Signatory Trustee's Capacity. The Signatory Trustee acts solely as an agent of the Trust and not in its individual capacity, and all Persons having any claim against the Signatory Trustee by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents, or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement to the contrary, the Signatory Trustee shall not have any liability to any Person except for its own willful misconduct, bad faith, fraud or gross negligence.

Section 5.3 Duties.

(a) The Signatory Trustee has primary responsibility for performing the administrative actions set forth in this Section 5.3. In addition, the Signatory Trustee shall have the obligations with respect to a potential sale of the Trust Estate set forth in Article 9. The Signatory Trustee shall not have any duty or obligation under or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby, except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Signatory Trustee. The right of the Signatory Trustee to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Signatory Trustee's duties (including fiduciary duties) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties) expressly set forth in this Trust Agreement and liabilities relating thereto.

(b) The Signatory Trustee shall, on behalf of the Trust, enter into the Purchase Agreements with the Investors for purposes of selling and issuing the Beneficial Interests to the Investors, perform in accordance with the Purchase Agreements, and disburse the proceeds of the sale of the Beneficial Interests to redeem the Beneficial Interests held by the Depositor, to pay other offering expenses and fees in accordance with the terms of the Memorandum and to fund applicable reserves.

(c) Without limiting the generality of Section (a) above, the Signatory Trustee, for and on behalf of the Trust, is hereby authorized and directed to take each of the following actions necessary to conserve and protect the Trust Estate:

(1) receiving the contribution of the Real Estate subject to, and assuming, the Lease and the Loan or, in the event that the Depositor contributes the right to acquire the Real Estate (versus the Real Estate itself), receive the contribution of such right to acquire the Real Estate, acquire such Real Estate pursuant to such right and to enter into the Lease and the Loan on the terms negotiated and agreed to by the Depositor;

(2) entering into and complying with the terms of the Financing Documents;

(3) collecting rents and making distributions in accordance with Article 6;

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(4) entering into any agreement for purposes of completing tax-free exchanges of real property with a Qualified Intermediary as defined in Section 1.1031(k) - 1(g)(4) of the Regulations;

(5) notifying the relevant parties of any default by them under the Transaction Documents;

(6) entering into and complying with the terms of the Lease, including making any repairs or maintenance with respect to the Real Estate required to be undertaken by the landlord in accordance with the terms of the Lease; and

(7) solely to the extent necessitated by the bankruptcy or insolvency of the Tenant or any other tenant of the Real Estate, if the Trust has not terminated under Section 9.2, entering into a new lease with respect to the Real Estate.

The foregoing notwithstanding, under no circumstances shall the power or authority of the Signatory Trustee include the ability to take any actions which would cause the Trust to cease to constitute an "investment trust" within the meaning of Section 301.7701-4(c) of the Regulations. The power and authority of the Signatory Trustee shall be strictly and narrowly construed so as to preserve and protect the status of the Trust as an "investment trust" for federal income tax purposes.

(d) The Signatory Trustee shall keep customary and appropriate books and records relating to the Trust and the Trust Estate and shall certify reports regarding same to the Lender, if required by the Financing Documents. The Signatory Trustee shall maintain appropriate books and records in order to provide reports of income and expenses to each Beneficial Owner as necessary for such Beneficial Owner to prepare his/her income tax returns regarding the Trust Estate. The Signatory Trustee may, subject to Section 3.2 of this Trust Agreement, at its election, enter into one or more service agreements with third parties, or an affiliate of the Signatory Trustee, to provide reporting and asset management services to the Signatory Trustee to assist the Signatory Trustee in providing such services.

(e) The Signatory Trustee shall promptly furnish, or require its third party servicing contractors to furnish to the Beneficial Owners copies of all reports, notices, requests, demands, certificates, financial statements and any other writings required to be distributed to them pursuant to the Transaction Documents, unless the Signatory Trustee reasonably believes the same to have been sent directly to the Beneficial Owners, and promptly shall furnish, or require its third party servicing contractors to furnish, to the Lender those documents as required by the Financing Documents.

(f) The Signatory Trustee shall not be required to act or refrain from acting under this Trust Agreement, the Lease or the Financing Documents if the Signatory Trustee reasonably determines, or has been advised by counsel, that such action or inaction may result in personal liability, unless the Signatory Trustee is indemnified by the Trust and the Beneficial

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Owners against any liability and costs (including reasonable legal fees and expenses) which may result in a manner and form reasonably satisfactory to the Signatory Trustee.

(g) The Signatory Trustee shall not, on its own behalf (in contrast to actions that the Signatory Trustee is required to perform on behalf of the Trust), have any duty to (i) file, record or deposit any document or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document, (ii) obtain or maintain any insurance on the Real Estate, (iii) maintain the Real Estate, (iv) pay or discharge any tax levied against any part of the Trust Estate, (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the Financing Documents to provide such, or (vi) inspect the Real Estate at any time or to ascertain or inquire as to the performance or observance of any of the covenants of any Person under the Financing Documents.

(h) The Signatory Trustee shall manage, control, dispose of or otherwise deal with the Trust Estate consistent with its duties to conserve and protect the Trust Estate, subject to any restrictions required by the Financing Documents or the Lease, or otherwise provided in this Trust Agreement.

(i) The Signatory Trustee shall provide to each Person who becomes a Beneficial Owner a copy of this Trust Agreement at or before the time such Person becomes a Beneficial Owner.

(j) The Signatory Trustee shall provide to the Delaware Trustee a copy of the Ownership Records contemporaneously with each revision thereto.

Section 5.4 Indemnification. The Beneficial Owners, jointly and severally, hereby agree to (i) reimburse the Signatory Trustee for all reasonable expenses (including reasonable fees and expenses of counsel and other professionals), incurred in connection with the negotiation, execution, delivery, or performance of, or exercise of rights or powers under, this Trust Agreement, (ii) to the fullest extent permitted by law, indemnify, defend and hold harmless the Signatory Trustee, and the officers, directors, employees and agents of the Signatory Trustee (collectively, including the Signatory Trustee, the "Signatory Trustee Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever (collectively, "Signatory Trustee Covered Expenses"), to the extent that such Signatory Trustee Covered Expenses arise out of or are imposed upon or asserted at any time against any such Signatory Trustee Indemnified Persons, including without limitation on the basis of ordinary negligence on the part of any such Signatory Trustee Indemnified Persons, with respect to or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby; provided, however, that the Beneficial Owners shall not be required to indemnify a Signatory Trustee Indemnified Person for Signatory Trustee Covered Expenses to the extent such Signatory Trustee Covered Expenses result from the willful misconduct, bad faith, fraud or gross negligence of such Signatory Trustee Indemnified Person, and (iii) to the fullest extent permitted by law, advance to each such Signatory Trustee Indemnified Person any Signatory Trustee Covered Expenses incurred by such Signatory Trustee Indemnified Person in defending any claim, demand, action, suit or proceeding, in connection with this Trust Agreement, the Trust, or any transaction or

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document contemplated hereby, prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by any Beneficial Owner of an undertaking, by or on behalf of such Signatory Trustee Indemnified Person; to repay such amount if a court of competent jurisdiction renders a final, non-appealable judgment that includes a specific finding of fact that such Signatory Trustee Indemnified Person is not entitled to be indemnified therefor under this Section 5.4. The obligations of the Beneficial Owners under this Section 5.4 shall survive the resignation or removal of the Signatory Trustee, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement. The obligations of the Beneficial Owners under this Section 5.4 shall be personal obligations irrespective of the sufficiency or insufficiency of the Trust Estate to satisfy any such obligations. So long as any obligation evidenced or secured by the Financing Documents is outstanding, no indemnity payment from funds of the Trust (as distinct from funds from other sources, such as insurance, excluding insurance required under the Financing Documents) of any indemnity pursuant to this Section 5.4 shall be payable from amounts allocable to the Lender pursuant to the Financing Documents. Any indemnification set forth in this Trust Agreement shall be fully subordinate to the Loan and shall not constitute a claim against the Trust in the event its cash flow is insufficient to pay its obligations, nor shall it constitute a claim against any beneficial owner of an interest in the Trust.

Section 5.5 Fees and Expenses. The Signatory Trustee shall serve without compensation for services solely as the Signatory Trustee. The Signatory Trustee shall not have any obligation by virtue of this Trust Agreement to spend any of its own funds, or to take any action that could result in its incurring any cost or expense.

Section 5.6 Sale of Trust Estate by Signatory Trustee Is Binding. Any sale or other conveyance of the Trust Estate or any part thereof by the Signatory Trustee made for and on behalf of the Trust pursuant to the terms of this Trust Agreement shall bind the Trust and the Beneficial Owners and be effective to transfer or convey all rights, title and interest of the Trust and the Beneficial Owners in and to the Trust Estate.

Section 5.7 Removal/Resignation; Succession. The Signatory Trustee may resign at any time by providing prior written notice to the Delaware Trustee, such resignation to be effective upon the acceptance of appointment by a successor Signatory Trustee as hereinafter provided; provided, however, that at any time the Loan is outstanding, the Signatory Trustee may not resign, or otherwise transfer its powers as Signatory Trustee hereunder, in each case, without the prior consent of the Lender. For purposes of this Section 5.7, a transfer of the majority of the equity interests in the Signatory Trustee or the ability to control the management of the Signatory Trustee shall constitute a transfer of the powers of the Signatory Trustee hereunder. The Delaware Trustee may at any time remove the Signatory Trustee for cause by providing written notice to the Signatory Trustee, such removal to be effective upon the acceptance of appointment by a successor Signatory Trustee as hereinafter provided; provided, however, that at any time the Loan is outstanding, the Signatory Trustee may not be removed without the prior consent of the Lender. Cause shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Signatory Trustee. In case of the removal or resignation of the Signatory Trustee, the Delaware Trustee, with the prior written consent of the Lender while the Loan is outstanding, may appoint a successor by written instrument. If a successor Signatory Trustee shall not have been appointed within fifteen (15) days after the giving of such notice, the Signatory Trustee or



any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint a successor Signatory Trustee to act until such time, if any, as a successor shall have been appointed as provided above, provided that the Lender approves such appointment during any period in which the Loan is outstanding. Any successor so appointed by such court shall immediately and without further act be superseded by a successor appointed as provided above within one (1) year from the date of the appointment by such court. Any successor, however appointed, shall execute and deliver to its predecessor Signatory Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the rights, powers and duties of the predecessor Signatory Trustee in the trusts hereunder with like effect as if originally named the Signatory Trustee herein; but upon the written request of such successor, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trusts herein expressed, all the rights, powers and duties of such predecessor. Any right of the Beneficial Owners against a predecessor Signatory Trustee in its individual capacity shall survive the resignation or removal of such predecessor Signatory Trustee, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement.

## ARTICLE 6 BENEFICIAL INTERESTS

### Section 6.1 Issuance of Beneficial Ownership Interests.

(a) The Depositor shall convey the Real Estate, or shall cause the Real Estate to be conveyed, to the Trust, and the Trust shall convey to Depositor all the Beneficial Interests in the Trust. All Beneficial Interests shall be uncertificated interests and shall constitute a single class of interest in the Trust.

(b) The Signatory Trustee is hereby authorized to execute each Purchase Agreement for and on behalf of the Trust by the manual signature of any duly authorized officer of the Signatory Trustee, such execution to constitute the authentication thereof.

(c) Each Purchase Agreement bearing the manual signature of any individual who at the time such Purchase Agreement was executed was a duly authorized officer of the Signatory Trustee shall bind the Trust, notwithstanding that any such individual has ceased to hold such office or to be a duly authorized officer of the Signatory Trustee prior to the delivery of such Purchase Agreement or at any time thereafter. No Purchase Agreement shall be valid for any purpose unless it is executed on behalf of the Trust by the Signatory Trustee. The signature of a duly authorized officer of the Signatory Trustee on any Purchase Agreement shall be conclusive evidence that such Purchase Agreement has been duly executed under this Trust Agreement.

(d) Any Beneficial Owner shall be deemed, by virtue of the acceptance of its Purchase Agreement or beneficial interest referenced therein, to have agreed, accepted and become bound by, and subject to, the provisions of this Trust Agreement. Each Beneficial Owner hereby acknowledges and agrees that, in its capacity as a Beneficial Owner, it has no ability either to (i) petition for a partition of the assets of the Trust, (ii) file a petition in bankruptcy on behalf of the Trust, or (iii) take any action that consents to, aids, supports, solicits

or otherwise cooperates in the filing of an involuntary bankruptcy proceeding involving the Trust.

Section 6.2 Ownership Records. The Signatory Trustee shall at all times be the Person at whose office a Purchase Agreement may be presented or surrendered for registration of transfer or for exchange and where notices and demands to or upon the Trust in respect of a Purchase Agreement may be served. The Signatory Trustee shall keep Ownership Records, which shall include records of the transfer and exchange of Beneficial Interests. Notwithstanding any provision of this Trust Agreement to the contrary, transfer of a Beneficial Interest in the Trust, or of any right, title or interest therein, shall occur only upon and by virtue of the entry of such transfer in the Ownership Records. In the event of any transfer permitted under the terms of this Trust Agreement, the Signatory Trustee shall issue a new Purchase Agreement setting forth the current Percentage Share in the Trust held by such new Beneficial Owner, and if applicable the Signatory Trustee shall issue a new Purchase Agreement setting forth the Beneficial Interest retained by any transferring Beneficial Owner. Except as specifically permitted by Sections 6.4, 6.5 and 6.6, the Beneficial Interests shall be non-transferable and may not be negotiated, endorsed or otherwise transferred to a holder.

Section 6.3 [INTENTIONALLY DELETED]

Section 6.4 Restrictions on Transfer. Subject to compliance with applicable securities laws, the Financing Documents and this Section 6.4, Section 6.5 and Section 6.6 of this Trust Agreement, all or any portion of the Beneficial Interest of any Beneficial Owner may be assigned, or transferred without the prior consent of any of the Trust, the Delaware Trustee, the Signatory Trustee, or the other Beneficial Owners. All expenses of any such transfer shall be paid by the assigning or transferring Beneficial Owner.

Section 6.5 Conditions to Admission of New Beneficial Owners. Subject to the terms and provisions of the Financing Documents, any assignee or transferee of a Beneficial Owner shall only become a Beneficial Owner upon such assignee's or transferee's written acceptance and adoption of this Trust Agreement, as manifested by its execution and delivery to the Signatory Trustee of an executed agreement substantially in the form of Exhibit D.

Section 6.6 Limit on Number of Beneficial Owners. Notwithstanding anything to the contrary in this Trust Agreement, at no time shall the number of Beneficial Owners exceed one thousand nine hundred fifty (1,950) Persons. Any transfer that results in a violation of the preceding sentence shall, to the fullest extent permitted by law, be null, void and of no effect whatsoever.

Section 6.7 Representations and Acknowledgements of Beneficial Owners. Each Beneficial Owner hereby represents and warrants that it (i) is not acquiring its Beneficial Interest with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States; and (ii) is aware of the restrictions on transfer that are applicable to the Beneficial Interests and will not offer, sell, pledge or otherwise transfer its Beneficial Interest except in compliance with all applicable securities laws and regulations and this Trust Agreement. Each Beneficial Owner hereby acknowledges that (y) other than with respect to the initial issuance thereof by the Signatory Trustee to the Investors

pursuant to the terms of the Memorandum and applicable securities laws, no Beneficial Interest may be sold, transferred or otherwise disposed of unless expressly permitted hereunder and it is registered or qualified under the Securities Act and all other applicable laws of any applicable jurisdiction or an exemption therefrom is available in accordance with all other laws of any applicable jurisdiction; and (z) no Beneficial Interest has been or is expected to be registered under the Securities Act, and accordingly, all Beneficial Interests are subject to restrictions on transfer.

Section 6.8 Status of Relationship. This Trust Agreement shall not be interpreted to impose a partnership or joint venture relationship on the Beneficial Owners either at law or in equity. Accordingly, no Beneficial Owner shall have any liability for the debts or obligations incurred by any other Beneficial Owner, with respect to the Trust Estate, or otherwise, and no Beneficial Owner shall have any authority, other than as specifically provided herein, to act on behalf of any other Beneficial Owner or to impose any obligation on any other Beneficial Owner with respect to the Trust Estate. Neither the power to give direction to the Delaware Trustee, the Signatory Trustee, or any other Person nor the exercise thereof by any Beneficial Owner shall cause such Beneficial Owner to have duties (including fiduciary duties) or liabilities relating thereto to the Trust or to any Beneficial Owner.

Section 6.9 No Legal Title to Trust Estate. The Beneficial Owners shall not have legal title to the Trust Estate. The death, incapacity, dissolution, termination, or bankruptcy of any Beneficial Owner shall not result in the termination or dissolution of the Trust.

Section 6.10 In-Kind Distributions. Except as expressly provided herein, no Beneficial Owner (i) has an interest in specific Trust property or (ii) shall have any right to demand and receive from the Trust an in-kind distribution of the Trust Estate or any portion thereof. In addition, each Beneficial Owner expressly waives any right, if any, under the Statutory Trust Act to seek a judicial dissolution of the Trust, to terminate the Trust, or, to the fullest extent permitted by law, to partition the Trust Estate.

Section 6.11 Rights and Powers of Beneficial Owners. The Beneficial Owners shall only have the right to receive distributions from the Trust as a result of the operations or sale of the Real Estate. The Beneficial Owners shall not have the right or power to direct in any manner the Trust or the Signatory Trustee in connection with the operation of the Trust or the actions of the Delaware Trustee or the Signatory Trustee. In addition, the Beneficial Owners shall not have the right or power to:

- (a) Contribute additional assets to the Trust;
- (b) Be involved in any manner in the operation or management of the Trust or its assets;
- (c) Cause the Trust to negotiate or re-negotiate loans or leases; or
- (d) Cause the Trust to sell its assets and re-invest the proceeds of such sale.

Section 6.12 Contributions by the Beneficial Owners; Issuance of Beneficial Interests; Reduction in Beneficial Interest. The Trust shall issue Beneficial Ownership Interests to the

Investors upon the payment of cash to the Trust by the Investors in exchange for Beneficial Interests pursuant to their respective Purchase Agreements. The amount of cash paid by, and the Percentage Share of, each Investor shall be determined by the Signatory Trustee and shall be set forth in the Purchase Agreement for each Investor. All cash contributed by Investors in exchange for Beneficial Interests shall be used by the Trust to redeem a corresponding portion of the Beneficial Interest then held by the Depositor. With respect to each contribution by a Beneficial Owner and related redemption of a portion of the Beneficial Interest then held by the Depositor, the reduction of the Percentage Share of the Depositor shall be equal to the Percentage Share granted by the Trust to the new Beneficial Owner. All funds received by the Trust from the Investors shall be used to redeem a corresponding portion of the Beneficial Interest then held by the Depositor, to pay any applicable fees or expenses related to the sale of the Beneficial Interests pursuant to the Memorandum and to fund any applicable reserves, so that in no event may such repurchase result in a net increase or decrease in the corpus of the Trust.

## ARTICLE 7 DISTRIBUTIONS AND REPORTS

Section 7.1 Payments From Trust Estate Only. All payments to be made by the Signatory Trustee under this Trust Agreement shall be from the Trust Estate.

Section 7.2 Distributions in General. The Signatory Trustee shall distribute (or cause its third party servicing contractors to distribute on the Signatory Trustee's behalf) all available cash to the Beneficial Owners in accordance with their Percentage Shares on a monthly basis, after paying all amounts due under the Financing Documents and all other expenses of the Trust then due, and after paying or reimbursing the Signatory Trustee for any fees or expenses paid by the Signatory Trustee on behalf of the Trust and retaining such additional amounts as the Signatory Trustee determines, or the Lender has determined under the Transaction Documents, are necessary to pay anticipated ordinary current and future Trust expenses ("Reserves"). Reserves and any other cash retained pursuant to this paragraph shall be invested by the Signatory Trustee only in short-term obligations of (or guaranteed by) the United States, or any agency or instrumentality thereof and in certificates of deposit or interest-bearing bank accounts of any bank or trust companies having a minimum stated capital and surplus of \$100,000,000 (a "Permitted Investment"). All such obligations must mature prior to the next distribution date, and be held to maturity. All amounts distributable to the Beneficial Owners pursuant to this Trust Agreement shall be paid by check or in immediately available funds by transfer to a banking institution with bank wire transfer facilities for the account of such Beneficial Owner, as instructed from time to time by such Beneficial Owner on the last Business Day of each calendar month.

Section 7.3 Distribution Upon Dissolution. In the event of the Trust's dissolution in accordance with Article 9 hereof, all of the Trust Estate as may then exist after the winding up of its affairs in accordance with the Statutory Trust Act (including without limitation subsections (d) and (e) of Section 3808 of the Statutory Trust Act and providing for all costs and expenses, including any income or transfer taxes which may be assessed against the Trust, whether or not by reason of the dissolution of the Trust), shall, subject to Section 9.2, be distributed to those Persons who are then Beneficial Owners in their respective Percentage Shares.

Section 7.4 Cash and other Accounts; Reports by the Signatory Trustee. The Signatory Trustee shall be responsible for receiving all cash from the Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust under Section 7.2. The Signatory Trustee shall furnish (or cause its third party servicing contractors to furnish) annual reports to each of the Beneficial Owners as to the amounts of rent received from the Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficial Owners.

## ARTICLE 8 RELIANCE; REPRESENTATIONS; COVENANTS

Section 8.1 Good Faith Reliance. Neither the Delaware Trustee nor the Signatory Trustee shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably and in good faith believed by such Person to be genuine and signed by the proper party or parties thereto. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Delaware Trustee and the Signatory Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the Person executing such certificate, as to such fact or matter, and such certificate shall constitute full protection of the Delaware Trustee and the Signatory Trustee for any action taken or omitted to be taken by them in good faith in reliance thereon, and the Delaware Trustee and the Signatory Trustee may conclusively rely upon any certificate furnished to such Person that on its face conforms to the requirements of this Trust Agreement. Each of the Delaware Trustee and the Signatory Trustee may (i) exercise its powers and perform its duties by or through such attorneys and agents as it shall appoint with due care, and it shall not be liable for the acts or omissions of such attorneys and agents; and (ii) consult with counsel, accountants and other experts, and shall be entitled to rely upon the advice of counsel, accountants and other experts selected by it in good faith and shall be protected by the advice of such counsel and other experts in anything done or omitted to be done by it in accordance with such advice. In particular, no provision of this Trust Agreement shall be deemed to impose any duty on the Delaware Trustee or the Signatory Trustee to take any action if such Person shall have been advised by counsel that such action may involve it in personal liability or is contrary to the terms hereof or to applicable law. For all purposes of this Trust Agreement, the Delaware Trustee shall be fully protected in relying upon the most recent Ownership Records delivered to it by the Signatory Trustee.

Section 8.2 No Representations or Warranties as to Certain Matters. NEITHER THE DELAWARE TRUSTEE NOR THE SIGNATORY TRUSTEE, EITHER WHEN ACTING HEREUNDER IN ITS CAPACITY AS DELAWARE TRUSTEE OR SIGNATORY TRUSTEE OR IN ITS INDIVIDUAL CAPACITY, MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, LOCATION, VALUE, CONDITION, WORKMANSHIP, DESIGN, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE TRUST ESTATE OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS

BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRUST ESTATE OR ANY PART THEREOF.

Neither the Delaware Trustee or the Signatory Trustee makes any representation or warranty as to (i) the title, value, condition or operation of the Real Estate, and (ii) the validity or enforceability of Transaction Documents or as to the correctness of any statement contained in any thereof, except as expressly made by the Delaware Trustee or the Signatory Trustee in its individual capacity. Each of the Delaware Trustee and the Signatory Trustee represents and warrants to the Beneficial Owners that it has authorized, executed and delivered the Trust Agreement.

## ARTICLE 9 TERMINATION

Section 9.1 Termination in General. The Trust shall not have perpetual existence and instead shall be dissolved and wound up in accordance with Section 3808 of the Statutory Trust Act upon the first to occur of a Transfer Distribution pursuant to Section 9.2 in which case the Loan shall be assumed by the Springing LLC or the sale of Trust Estate pursuant to Section 9.3, at which time each Beneficial Owner's Percentage Share of the Trust Estate shall be distributed to such Beneficial Owner in accordance with Section 7.3; provided, however, that in connection with a sale of the Trust Estate in accordance with Section 9.3 and distribution in accordance with Section 7.3, the Loan shall have been defeased, paid in full or assumed in accordance with the terms of the Financing Documents. Notwithstanding anything in this Section 9.1 or the balance of the Trust Agreement to the contrary, the Trust shall dissolve and wind up not later than twenty-one (21) years after the death of the last living descendant of Barack H. Obama, the 44th President of the United States, who was alive on the Effective Date; provided, that, in connection with any dissolution pursuant to this sentence, the Loan shall have been defeased, paid in full or assumed in accordance with the Financing Documents. Notwithstanding anything in this Trust Agreement to the contrary, in no event shall the Trust terminate, dissolve or wind up unless the Loan shall have been defeased, paid in full, or assumed in accordance with the Financing Documents.

Section 9.2 Termination to Preserve and Protect the Trust Estate. Subject to the terms and conditions of the Financing Documents, upon the first to occur of (i) a sale of the Trust Estate pursuant to Section 9.3 or (ii) if the Signatory Trustee determines that (a) the Tenant has failed to timely pay rent due under the Lease after the expiration of any applicable notice and cure provisions in the Lease, if any, (b) the Trust Estate is in jeopardy of being lost due to a default on the Loan, and the Signatory Trustee is prohibited from acting pursuant to Section 3.3 hereof, (c) the Tenant files for bankruptcy, seeks appointment of a receiver, makes an assignment for the benefit of its creditors or there occurs any similar event, (d) the Trust is otherwise in violation of Section 3.3, or (e) an Event of Default has occurred under the Financing Documents and Lender has required the "conversion" of the Trust to a limited liability company, and if the Signatory Trustee determines in writing that dissolution of the Trust is necessary and appropriate to preserve and protect the Trust Estate for the benefit of the Beneficial Owners, then, in either case, the Trust shall dissolve and wind up in accordance with Section 3808 of the Statutory Trust Act and each Beneficial Owner's Percentage Share of the Trust Estate shall be distributed to

such Beneficial Owner in accordance with this Section 9.2 in full and complete satisfaction and redemption of their Beneficial Ownership Interests. Subject to the requirements of Section 3808 of the Statutory Trust Act, immediately before any such liquidating distributions, and only in the event that a distribution is to be made to the Beneficial Owners under this Section 9.2, the Signatory Trustee shall transfer title to the assets comprising the Trust Estate to a newly formed Delaware limited liability company (the "Springing LLC") that has a limited liability company agreement substantially similar to that set forth in Exhibit E (the "Transfer Distribution"). As part of the Transfer Distribution, the Signatory Trustee shall cause the membership interests in the Springing LLC to be distributed to the Beneficial Owners in complete satisfaction of their Beneficial Interests in order to consummate the dissolution of the Trust with Lender's security interest or pledge on any of the Beneficial Interests automatically attaching to the replacement membership interests in the Springing LLC (and Signatory Trustee and such Investor agree to execute any documentation as shall be reasonably necessary to perfect Lender's security and pledge in such membership interests). It is the express intent of this Trust Agreement that no distribution be made under subsection (ii) of this Section 9.2 except in the rare and unexpected situations in which (w) such distribution is necessary to prevent the loss of the Trust Estate due to the imminent risk of a default on the Loan (or Lender's exercise of remedies in connection therewith), (x) the Loan must otherwise be refinanced in order to preserve or protect the Trust Estate, (y) the Lease is in imminent danger of being in material default or (z) the Signatory Trustee anticipates undertaking some other action in order to preserve the Trust Estate that would, in the Signatory Trustee's reasonable discretion, result in the Trust no longer being treated as an investment trust in accordance with Section 3.3 of this Agreement. To the fullest extent permitted by applicable law, the Signatory Trustee shall be fully protected in any determinations made under this Section 9.2 made in good faith, and shall have no liability to any Person, including without limitation the Beneficial Owners, with respect thereto. If a determination has been made to dissolve the Trust under this Section 9.2, the Signatory Trustee may, in its discretion and upon advice of counsel, utilize such other form of transaction (including, without limitation, a conversion of the Trust into a limited liability company if then permitted by applicable law) to accomplish the transaction contemplated by the Transfer Distribution, provided that such alternative form of transaction is entered into to preserve and protect the Trust Estate for the benefit of the Beneficial Owners and is in compliance with the Statutory Trust Act.

Section 9.3 Sale of the Trust Estate: Subject to the terms and provisions of the Financing Documents, the Trust shall sell the Trust Estate at any time after the Trust Estate has been held by the Trust for at least 2 years upon receipt of a notice from the Signatory Trustee that the Signatory Trustee has determined (in its sole discretion; however, the Signatory Trustee shall consult with the Beneficial Owners) that a sale of the Trust Estate is appropriate. Any such sale of the Trust Estate shall occur as soon as practicable after the Signatory Trustee has determined that the sale of the Trust Estate is appropriate. The Signatory Trustee shall be responsible for (i) determining the fair market value of the Trust Estate, (ii) providing notice to the Trust that the sale of the Trust Estate is appropriate, (iii) conducting the sale of the Trust Estate, and (iv) after paying all amounts due to the Delaware Trustee hereunder, and the Lender, if any, distributing the balance of the proceeds (net of any fee due to the Signatory Trustee) to the Beneficial Owners. No such sale shall occur unless the Loan is repaid in full at that time. The Signatory Trustee and the Delaware Trustee are expressly instructed to permit each Beneficial Owner to undertake its portion of the sale as a like-kind exchange within the meaning of Section 1031 of

the Code. Any sale of the Trust Estate shall be on an "as is, where is" basis and without any representations or warranties by the Delaware Trustee or the Signatory Trustee (other than as to ownership of the Trust Estate and authority to enter into the sale). Costs of sale shall be allocated between the Trust and the purchaser of the Trust Estate as may be determined by the Signatory Trustee in its sole discretion.

Section 9.4 Loan Paid in Full. If the Signatory Trustee determines that the Loan, including all interest, principal and penalties, if any, has been paid in full and the Trust Estate has not been sold pursuant to Section 9.3 within a reasonable period determined by the Signatory Trustee then the Signatory Trustee shall provide written notice to such effect to the Trust, and the Trust shall dissolve and wind up in accordance with the procedures set forth in Section 9.1.

Section 9.5 Certificate of Cancellation. Upon the completion of the dissolution and winding up of the Trust, the Certificate of Trust shall be cancelled by the Delaware Trustee who shall execute and cause a certificate of cancellation to be filed in the office of the Secretary of State.

## ARTICLE 10 MISCELLANEOUS

Section 10.1 Limitations on Rights of Others. Nothing in this Trust Agreement, whether express or implied, shall give to any Person other than the Depositor, the Delaware Trustee, the Signatory Trustee, the Beneficial Owners, and the Trust any legal or equitable right, remedy or claim hereunder; provided, however, that the Lender shall be an intended third-party beneficiary of Section 3.2 of this Trust Agreement.

Section 10.2 Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Depositor, the Delaware Trustee, the Signatory Trustee, the Beneficial Owners, the Trust, and their successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other writing or action by any such Person shall bind its successors and assigns.

Section 10.3 Usage of Terms. With respect to all terms in this Trust Agreement, the singular includes the plural and the plural includes the singular; words importing any gender, include the other gender; references to "writing" include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Trust Agreement; references to Persons include their successors and permitted assigns; and the term "including" means including without limitation.

Section 10.4 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 10.5 Amendments. Subject to Section 3.2(c) of this Trust Agreement, to the fullest extent permitted by applicable law, this Trust Agreement may not be supplemented or amended, and no term or provision hereof may be waived, discharged, or terminated orally, but



only by a signed writing executed by each of the parties hereto; provided, however, that no amendment or supplement shall be made to the Trust Agreement if its effect would be that it would constitute a power under the Trust Agreement to "vary the investment" of the Beneficiary within the meaning of Treasury Regulation Section 301.7701-4(c)(1).

Section 10.6 Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof shall be in writing, and given by (i) overnight courier, or (ii) hand delivery, and shall be deemed to have been duly given when received. Notices shall be provided to the parties at the addresses specified below.

If to the Depositor:

Lodi-Essex, LLC  
1401 Broad Street  
Clifton, New Jersey 07013

If to the Delaware Trustee:

United Corporate Services, Inc.  
874 Walker Road, Suite C  
Dover, Delaware 19904  
Email: David.Bass@unitedcorporate.com  
Phone: (518) 449-7587 x213

If to the Signatory Trustee, to:

ARC DST Trustee, LLC  
1401 Broad Street  
Clifton, New Jersey 07013  
Attn: Robert J. Ambrosi, Manager

If to a Beneficial Owner, at such Person's address as specified in the most recent Ownership Records.

From time to time the Depositor, Delaware Trustee or Signatory Trustee may designate a new address for purposes of notice hereunder by notice to the others, and any Beneficial Owner may designate a new address for purposes of notice hereunder by notice to the Signatory Trustee.

Section 10.7 Governing Law. This Trust Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware (without regard to conflict of law principles). To the fullest extent permitted by applicable law, the laws of the State of Delaware pertaining to trusts (other than the Statutory Trust Act) shall not apply to this Trust Agreement.

Section 10.8 Counterparts. This Trust Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECRETARY OF STATE  
DEPARTMENT OF TREASURY

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Section 10.9 Severability. Any provision of this Trust Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, each of the parties hereby waives any provision of applicable law that renders any such provision prohibited or unenforceable in any respect.

Section 10.10 Signature of Beneficial Owners. Each Investor will execute the signature page for Agreement of Assignee or Transferee Beneficial Owners of Melbourne Wickman DST in substantially the form set forth in Exhibit D hereto (the "Signature Page") in connection with their acquisition of a Beneficial Interest. By executing the Signature Page, each Investor hereby acknowledges and agrees to be bound by the terms of the limited liability company agreement for the Springing LLC contemplated under Section 9.2 in the form substantially similar to that set forth in Exhibit E hereto (the "Springing LLC Agreement") when and if such Springing LLC is formed. In addition, in light of their agreement to this Section 10.10, each Investor hereby acknowledges and agrees that their signature to the Springing LLC Agreement will not be required.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**  
**[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, each of the parties has caused this Trust Agreement to be duly executed as of the day and year first above written.

**THE DEPOSITOR:**

LODI-ESSEX, LLC, a New Jersey limited liability company

By:   
Name: AVAY GOLDSTEIN  
Title: MANAGER

*[Signatures continued on next page]*

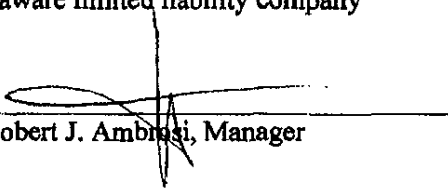
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*[Signatures continued from prior page]*


**THE SIGNATORY TRUSTEE:**

ARC DST TRUSTEE, LLC,  
a Delaware limited liability company

By:   
Robert J. Ambrosi, Manager

**THE DELAWARE TRUSTEE:**

UNITED CORPORATE SERVICES, INC.

By:   
Michael A. Barr, President

STATE OF FLORIDA  
NOTARY PUBLIC

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**SCHEDULE 1**

**DEPOSITOR**

| <b>Depositor</b>          | <b>Percentage Interest</b> |
|---------------------------|----------------------------|
| Lodi-Essex, LLC, a NJ LLC | 100%                       |

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**EXHIBIT A**

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**EXHIBIT "A"**

**PARCEL 1:**

A parcel of land lying in the Southwest 1/4 of Section 11, Township 26 South, Range 36 East, Brevard County, Florida, and being more fully described as follows:

Commence at the Southwest corner of said Southwest 1/4; thence North 00° 58' 45" West along the West line of said Southwest 1/4, a distance of 50.01 feet to a point on the North right of way line of Wickham Road, a 50.00 foot right of way in said Southwest 1/4 per Official Records Book 380, page 436 of the Brevard County Public Records; thence departing said West line, North 88°01'08" East along said North right of way line, a distance of 60.01 feet to a point 60.00 feet East, by right angle measure, of said West line; said point being the Point of Beginning of the lands herein described; thence departing said North right of way line, North 00°58'45" West, parallel with said West line, a distance of 300.05 feet to a point 350.00 feet North, by right angle measure, of the South line of said Southwest 1/4; thence North 88°01'08" East; parallel with said South line, a distance of 43.40 feet; thence North 01°58'52" West, a distance of 74.27 feet; thence North 88°01'08" East, parallel with said South line; a distance of 163.01 feet; thence South 01°58'52" East, a distance of 74.27 feet to a point 350.00 feet Northerly, by right angle measure, of said South line; thence North 88°01'08" East, parallel with said South line, a distance of 8.62 feet to a point 275.00 feet East, by right angle measure, of said West line; thence South 00°58'45" East, parallel with said West line, a distance of 300.05 feet to a point on said North right of way line; thence South 88°01'08" West along said North right of way line, a distance of 215.03 feet to the Point of Beginning.

**PARCEL 2:**

TOGETHER with easement rights as set out in Agreement Regarding Grant of Stormwater, Driveway, Parking and Landscape Easements and Termination of Support Easement and Temporary Construction Easement recorded July 27, 2004 in Official Records Book 5339, page 890, as modified by Modification recorded May 4, 2005 in Official Records Book 5461, page 7187, and further modified by Second Modification recorded June 23, 2006 in Official Records Book 5663, page 3299, in the public records of Brevard County, Florida.

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**EXHIBIT B**  
**CERTIFICATE OF TRUST**  
**OF**  
**MELBOURNE WICKMAN DST**

(copy attached)

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AND ADMINISTRATION RECORDS

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# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF STATUTORY TRUST REGISTRATION OF "MELBOURNE WICKMAN DST", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF NOVEMBER, A.D. 2015, AT 2:55 O'CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

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You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 10518652  
Date: 12-01-15

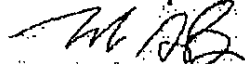
**CERTIFICATE OF TRUST  
OF  
MELBOURNE WICKMAN DST**

This Certificate of Trust of MELBOURNE WICKMAN DST (the "Trust") is being duly executed and files by the undersigned, to form a statutory trust under the Delaware Statutory Trust Act (12 Del.C. sec. 3801 et seq.)


1. The name of the statutory trust formed by this Certificate of Trust MELBOURNE WICKMAN DST.
2. The name and business address of the Delaware Trustee in the State of Delaware is United Corporate Services, Inc., 874 Walker Road, Suite C, Dover, Delaware 19904.
3. This Certificate of Trust shall be effective as of the date of filing the Delaware Secretary of State.

IN WITNESS WHEREOF, the undersigned, being the Trustees of the Trust, have executed this Certificate of Trust as of November 30, 2015.

UNITED CORPORATE SERVICES, INC.  
not in its individual capacity but solely as Delaware trustee

By:   
Name: Michael A. Barr  
Its: President

ARC DST TRUSTEE, LLC,  
a Delaware limited liability company, as Signatory Trustee

By:   
Name: Robert J. Ambrosi  
Its: Manager

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**EXHIBIT D**  
**OWNERSHIP RECORDS**  
**FOR**  
**MELBOURNE WICKMAN DST**

**LAST REVISED December \_\_, 2015**

| <u>Name</u> | <u>Mailing Address</u>                  | <u>Percentage (%)</u><br><u>Share of Beneficial</u><br><u>Interest</u> |
|-------------|---|--|
|             | 1401 Broad Street, Clifton, NJ<br>07013 | 100%   |

I hereby certify that the foregoing Ownership Records are complete and accurate as of the date set forth above.

ARC DST TRUSTEE, LLC, not in its individual capacity,  
but solely as Signatory Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT D**

**AGREEMENT OF ASSIGNEE OR TRANSFEREE BENEFICIAL OWNER OF  
MELBOURNE WICKMAN DST**

The undersigned has received and reviewed, with assistance from such legal, tax, investment, and other advisors and skilled persons as the undersigned has deemed appropriate, the Trust Agreement of Melbourne Wickman DST, dated as of December \_\_\_\_, 2015 (the "Trust Agreement"), by and among the Individual Depositor identified therein, collectively, as Depositor, ARC DST Trustee, LLC as Signatory Trustee, and United Corporate Services, Inc., as Delaware Trustee, and hereby covenants and agrees to be bound by the Trust Agreement as a Beneficial Owner. All capitalized terms used herein, and not defined herein shall have the meanings given to such terms in the Trust Agreement.

In connection with the purchase of the Beneficial Interest, the undersigned hereby:

1.1 Represents and warrants that the undersigned: (i) understands and is aware that there are substantial uncertainties regarding the treatment of the undersigned's Beneficial Interest as real estate for federal income tax purposes; (ii) fully understands that there is significant risk that the undersigned's Beneficial Interest will not be treated as real estate for federal income tax purposes; (iii) has independently obtained advice from its legal counsel and/or accountant regarding any tax-deferred exchange under Code Section 1031, including, without limitation, whether the acquisition of the undersigned's Beneficial Interest may qualify as part of a tax-deferred exchange, and the undersigned is relying on such advice and not on the opinion of counsel issued to the Trust or upon any statements in the Memorandum (as defined below) regarding the tax treatment of the Beneficial Interests; (iv) is aware that the Internal Revenue Service ("IRS") has issued Revenue Ruling 2004-86 (the "Revenue Ruling") specifically addressing Delaware statutory trusts, the Revenue Ruling is merely guidance and is not a "safe-harbor" for taxpayers or sponsors, and, without the issuance of a Private Letter Ruling on a specific offering, there is no assurance that the undersigned's Beneficial Interest will not be treated as a partnership interest for federal income tax purposes; (v) understands that the Trust has not obtained a ruling from the IRS that the undersigned's Beneficial Interest will be treated as an undivided interest in real estate as opposed to an interest in a partnership; (vi) understands that the tax consequences of an investment in the undersigned's Beneficial Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related "1031 Exchange" rules, are complex and vary with the facts and circumstances of each individual purchaser; (vii) understands that, notwithstanding that the opinion of counsel issued to the Trust states that a purchaser's Beneficial Interest "should" be considered a real property interest and not a partnership interest for federal income tax purposes, no assurance can be given that the IRS will agree with this opinion; and (viii) shall, for federal income tax purposes, report the purchase of the Beneficial Interest by the undersigned as a purchase by the undersigned of a direct ownership interest in the Real Estate.

1.2 Acknowledges that the undersigned (i) has received from the undersigned's transferor or assignor a courtesy copy of the private offering memorandum

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regarding the sale of the Beneficial Interests by the Trust (together with any addendums or supplements thereto, the "Memorandum") and the Trust Agreement and (ii) is familiar with and understands each of the foregoing including the "Risk Factors" set forth in the Memorandum.

1.3 Represents and warrants that the undersigned, in determining to acquire the Beneficial Interest, has relied solely upon the advice of the undersigned's legal counsel and accountants or other financial advisors with respect to the tax and other consequences involved in acquiring the Beneficial Interest and that none of the Trust, the Delaware Trustee, the Signatory Trustee or the Depositor has made any representation to the undersigned regarding the Beneficial Interest or the Real Estate, except, in the case of any purchaser of an Interest from the Signatory Trustee, any representations contained in the Purchase Agreement and Escrow Instructions pursuant to which the undersigned acquires the Interest.

1.4 Acknowledges that the Beneficial Interest being acquired will be governed by the terms and conditions of the Trust Agreement, and under certain circumstances by the limited liability company agreement contemplated under Section 9.2 of the Trust Agreement and attached as Exhibit E thereto, both of which the undersigned accepts and by which the undersigned agrees by execution hereof to be legally bound notwithstanding that his signature will not be required on either agreement.

1.5 Represents and warrants that the undersigned either (i) is an Accredited Investor (as defined by Rule 501 of Regulation D promulgated under the Securities Act), or (ii) is acquiring the Beneficial Interest in a fiduciary capacity for a person meeting such condition.

1.6 Represents and warrants that the Beneficial Interest being acquired will be acquired for the undersigned's own account without a view to public distribution or resale and that the undersigned has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Beneficial Interest or any portion thereof to any other Person.

1.7 Represents and warrants that the undersigned (i) can bear the economic risk of the purchase of the Beneficial Interest including the total loss of the undersigned's investment, (ii) has such knowledge and experience in business and financial matters, including the analysis of or participation in offerings of privately issued securities, as to be capable of evaluating the merits and risks of purchasing Beneficial Interests, and (iii) if an individual, is at least 19 years of age.

1.8 Understands that the Beneficial Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state and are subject to substantial restrictions on transfer as described in the Memorandum under "Restrictions on Transferability" which restrictions are in addition to certain other restrictions set forth in the Trust Agreement.

1.9 Understands that a legend will be placed on the Beneficial Ownership Certificate with respect to restrictions on distribution, transfer, resale, assignment or subdivision of the Beneficial Interest imposed by applicable federal and state securities laws.

1.10 Agrees that the undersigned will not sell or otherwise transfer or dispose of any Beneficial Interest or any portion thereof unless (i) such Beneficial Interest is registered

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under the Securities Act and any applicable state securities laws or, if required by the Trust (through the Signatory Trustee), the undersigned obtains an opinion of counsel that is satisfactory to the Trust that such Beneficial Interest may be sold in reliance on an exemption from such registration requirements, provided that such opinion shall not be required for the assignment or transfer by the Depositor or the Lender (or any affiliate, assignee or successor of the Lender), and (ii) the transfer is otherwise made in accordance with the Trust Agreement.

1.11 Understands that (i) the Trust has no obligation or intention to register any Beneficial Interest for resale or transfer under the Securities Act or any state securities laws or to take any action (including the filing of reports or the publication of information as required by Rule 144 under the Securities Act) which would make available any exemption from the registration requirements of any such laws, and (ii) the undersigned therefore may be precluded from selling or otherwise transferring or disposing of any Beneficial Interest or any portion thereof for an indefinite period of time or at any particular time.

1.12 Understands that no federal or state agency including the Securities and Exchange Commission, or the securities commission or authorities of any other state has approved or disapproved the Beneficial Interests, passed upon or endorsed the merits of the Trust's offering of Beneficial Interests or the accuracy or adequacy of the Memorandum, or made any finding or determination as to the fairness of the Interest for public investment.

1.13 Represents, warrants and agrees that, if the undersigned is acquiring the Beneficial Interest in a fiduciary capacity, (i) the above representations, warranties, agreements, acknowledgments and understandings shall be deemed to have been made on behalf of the Person or Persons for whose benefit such Beneficial Interest is being acquired, (ii) the name of such Person or Persons is indicated below the undersigned's name, and (iii) such further information as the Signatory Trustee deems appropriate shall be furnished regarding such Person or Persons.

1.14 Acknowledges and agrees that counsel to the Trust, the Depositor, the Signatory Trustee, the Delaware Trustee and their Affiliates do not represent, and shall not be deemed under applicable codes of professional responsibility, to have represented or to be representing, any transferee or assignee, including the undersigned, in any way in connection with the transfer or assignment of a Beneficial Interest.

1.15 Agrees to indemnify, defend and hold harmless the Trust, Delaware Trustee, Depositor and Signatory Trustee, and each of their members, managers, shareholders, officers, directors, employees, consultants, affiliates and advisors (collectively, the "Indemnified Persons") of and from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of the untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained herein or in any other document transferee or assignee has furnished to any of the foregoing in connection with this transaction. In addition, if any person shall assert a claim to a finder's fee or real estate brokerage commission on account of alleged employment as a finder or real estate broker through or under the undersigned in connection with the undersigned's acquisition of the Beneficial Interest, the undersigned shall indemnify and hold the Indemnified Parties harmless from and against any such claim. This indemnification includes, but is not limited to, any

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damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Indemnified Parties defending against any alleged violation of federal or state securities laws, which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents the undersigned has furnished to any of the foregoing in connection with this transaction, and against any failure of the transaction to satisfy any Code Section 1031 requirements in connection with the undersigned's exchange under such provisions.

1.16 Represents and warrants that neither the undersigned nor any Affiliate of the undersigned (i) is a Sanctioned Person (defined below), (ii) has more than fifteen percent (15%) of its assets in Sanctioned Countries (defined below), or (iii) derives more than fifteen percent (15%) of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. For purposes of the foregoing, a "Sanctioned Person" shall mean (y) a Person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("OFAC") at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time, or (y) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "Sanctioned Country" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, or as otherwise published from time to time.

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**EXHIBIT E**

**FORM OF LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

\_\_\_\_\_, **LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of \_\_\_\_\_, LLC, a Delaware limited liability company (the "Company"), is made and entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and among \_\_\_\_\_, DST, a Delaware statutory trust (the "DST" or the "Trust"), ARC DST Trustee, LLC, a Delaware limited liability company (the "Signatory Trustee" or "Manager"), and the persons whose names are set forth on Exhibit A of this Agreement (collectively, the "Member").

**RECITALS:**

WHEREAS, pursuant to the trust agreement of DST (the "Trust Agreement"), Signatory Trustee is the signatory trustee of DST, and the Members collectively own all of the beneficial interests in DST (the Members in such capacity, the "Owners").

WHEREAS, DST owns that certain \_\_\_\_\_ (the "Real Property"), and certain incidental additional assets associated with the Real Property (the Real Property and all such additional assets collectively the "Trust Property"), which property is subject to the Loan Documents and the Lease.

WHEREAS, the Signatory Trustee has determined that, to conserve and protect the Trust Property, DST must be terminated as provided in Section 9.2 of the Trust Agreement.

WHEREAS, pursuant to Section 9.2 of the Trust Agreement, the Company shall become the owner of the Trust Property (such property in the hands of the Company the "Property") which shall remain subject to the Loan Documents and the Lease, Signatory Trustee shall become the manager of the Company (the "Manager"), the Owners shall become the Member of the Company, and the DST shall be terminated.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

Section 1. Name.

The name of the Company is \_\_\_\_\_, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at \_\_\_\_\_, or such other location as may hereafter be determined by the Member.

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Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is \_\_\_\_\_.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is \_\_\_\_\_.

Section 5. Member.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member hereby continues as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(e), the Member may act by written consent of the Member.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon the continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 20 and 22, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 21 and 22), each person acting as an Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Director pursuant to Section 10; provided, however, the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company; provided, however, such prohibition shall not limit the obligations of each Special Member, in its capacity as Independent Director, to vote on such matters required by this Agreement. In order to implement the admission to the Company of each Special Member, each person acting as an Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Director pursuant to Section 10 shall not be a member of the Company. By signing this Agreement, each person acting as an Independent

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Director pursuant to Section 10 agrees that, should it become admitted to the Company as a Special Member, it will be subject to and bound by the provisions of this Agreement applicable to a Special Member.

Section 6. Certificates.

An "authorized person" within the meaning of the Act on behalf of the Company has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, such execution (by the Company and such "authorized person" on its behalf) and filing being approved and ratified in all respects. Upon such filings, such person's powers as an "authorized person" ceased, and the Manager thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. Such person or other persons authorized on the Company's behalf have executed, delivered and filed other certificates (and amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State or Commonwealth where the Property is located.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purpose. (a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as any Obligation is outstanding, the sole purpose of the Company is to engage exclusively in the following activities:

- (i) To acquire, own, operate, lease, manage and, if and when appropriate, sell the Property;
- (ii) To negotiate, enter into, execute, deliver and perform any and all obligations of landlord under, leases or other occupancy agreements with respect to the Property;
- (iii) To negotiate, enter into, execute, deliver and perform any and all other agreements or obligations relating to the acquisition, ownership, operation, leasing, management or sale of the Property;
- (iv) To incur indebtedness related to the Property, whether as initial financing or refinancing, and to execute, deliver and perform under and pursuant to any and all loan documents relating thereto, including, without limitation, the Loan Documents; and
- (v) To engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member, the Manager or any Officer or any Authorized Signatory on behalf of the Company is hereby authorized to execute and deliver the Loan Documents and all documents, agreements, certificates, or financing statements related to the foregoing purposes, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Members or the Manager to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(e), the Company, the Manager on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Management of the Company by the Manager. Subject to Section 9(e), the business, property and affairs of the Company shall be managed by or under the direction of the Manager. The Manager shall be appointed by the Member, and shall hold office until a successor is selected and qualified or until such Manager's earlier death, resignation, expulsion or removal. The Manager shall execute and deliver a Management Agreement in the form attached hereto as Schedule C. The Manager need not be a Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Independent Directors. The initial number of Independent Directors shall be one. The initial Manager designated by the Members is the Signatory Trustee, and the initial Independent Direction designated by the Members is \_\_\_\_\_.

(b) Powers/Manager as Agent. Subject to Section 9(e), the Manager shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Manager has the authority to bind the Company. To the extent of its powers set forth in this Agreement and subject to Section 9(e), the Manager is an agent of the Company for the purpose of the Company's business, and the actions of the Manager taken in accordance with such powers set forth in this Agreement shall bind the Company.

(c) Compensation. The Members shall have the authority to fix the compensation of the Manager. The Manager may be paid his, her or its expenses, if any, and/or a stated salary as the Manager. No such payment shall preclude the Manager from serving the Company in any other capacity and receiving compensation therefor.

(d) Removal of Manager. Unless otherwise restricted by law, the Manager may be removed or expelled, with or without cause, at any time by the Members, and any vacancy caused by any such removal or expulsion may be filled by action of the Members.

(e) Limitations on the Company's Activities.

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- (i) This Section 9(e) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity pursuant to the Loan Documents (if the same shall be in effect), and so long as any Obligation is outstanding, notwithstanding anything herein to the contrary, this Section 9(e) shall control.
- (ii) The Members shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definitions of "Independent Director," "Independent Person" or "Material Action" herein, or Sections 1, 5(b), 5(c), 7, 8, 9, 10, 20, 22, 23 or 30 of this Agreement, without the written consent of the Lender. Subject to this Section 9(e), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 30. In the event of any conflict between any of the provisions of this Section 9(e) or Section 10 and any other provision of this or any other document governing the formation, management or operation of the Company, the provisions contained in Section 9(e) and Section 10 shall control.
- (iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Members, the Manager or any other Person, so long as any Obligation is outstanding, neither the Members nor the Manager nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not without the prior unanimous written consent of the Members and Independent Director, take any Material Action, provided, however, that, so long as any Obligation is outstanding, the Member may not authorize the taking of any Material Action unless there is at least one Independent Director then serving in such capacity.
- (iv) The Manager shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. So long as any Obligation is outstanding, the Manager also shall cause the Company to:
- (A) to the extent Company's office, if any, is located in the offices of any Affiliate, pay fair market rent for office space allocated to it located therein and its fair share of any overhead costs with respect thereto and in all other respects, maintain an arms-length relationship with its Affiliates;
- (B) maintain Company's books of account, financial statements, accounting records and other Company documents and records separate from those of any Affiliate or any other entity; provided, that Company shall not be required to file separate tax returns if it is a disregarded entity for tax purposes;

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- (C) not commingle Company's funds and other assets with those of any Affiliate or other entity;
- (D) maintain Company's books of account, bank accounts and payroll separate from those of any Affiliate;
- (E) act solely in its own name and through its own authorized officers and agents, and in all respects, hold itself out as an entity separate and distinct from any other entity, and not become involved in the day-to-day management of any other entity or person;
- (F) make investments directly or by brokers engaged and paid by Company or its agents (provided, that if any such agent is an Affiliate of Company it shall be compensated at a fair market rate for its services);
- (G) separately manage Company's liabilities from those of its managers, members and all other Affiliates and pay from its assets its own obligations, indebtedness and liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets to the extent sufficient funds are available, except that a member or other Affiliate may pay the organizational expenses of Company;
- (H) pay from Company's assets all obligations and indebtedness of any kind incurred by Company;
- (I) not acquire obligations or securities of Company's Members or Affiliates;
- (J) conduct all business correspondence using separate stationery, invoices and checks;
- (K) not pledge Company's assets for the benefit of any other entity, or make any loans or advances to any entity;
- (L) correct any known misunderstanding regarding Company's separate identity;
- (M) maintain adequate capital in light of its contemplated business operations;
- (N) not dissolve (to the fullest extent permitted by law) or terminate or materially amend this Agreement or other agreement pursuant to which Company is formed;

- (O) not assume or guarantee or become obligated for the debts of any other Person, and not hold out its credit or assets as being available to satisfy the obligations of any other Person; and
- (P) not enter into any transaction of merger or consolidation, or (to the fullest extent permitted by law) liquidate or dissolve (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity.

Failure of the Company, or the Manager on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Manager.

- (v) So long as any Obligation is outstanding, the Manager shall not cause or permit the Company to:
  - (A) except as contemplated by the Loan Documents, guarantee any obligation of any Person, including any Affiliate;
  - (B) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 7, the Loan Documents or this Section 9(e);
  - (C) incur, create or assume any indebtedness other than as expressly permitted under the Loan Documents;
  - (D) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of the Loan Documents and permit the same to remain outstanding in accordance with such provisions; or
  - (E) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of ownership interests other than such activities as are expressly permitted pursuant to any provision of the Loan Documents and subject to obtaining any approvals required under this Agreement.

**Section 10. Independent Director.**

As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least one (1) Independent Director (provided by a nationally-recognized company that provides professional independent managers or directors) who will be appointed by the Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act,

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and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 9(c)(iii). Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Director shall not have any fiduciary duties to the Members, any Officer or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to the Company, the Members or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until (i) the Company has complied with the conditions set forth in the definition of "Independent Person" on Schedule A to this Agreement, (ii) such successor shall have accepted his or her appointment as an Independent Director by a written instrument, and (iii) such successor shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Director, the Members shall, as soon as practicable, appoint a successor Independent Director, subject to the conditions set forth in the definition of "Independent Person" on Schedule A to this Agreement. An Independent Director is a "manager" of the Company within the meaning of the Act. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement, and the Independent Director shall otherwise have no authority to bind the Company. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. An Independent Director shall at all times satisfy the definition of "Independent Person" contained herein.

Section 11. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Members, the Manager, Special Member, Independent Director nor any Officer shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Manager, Special Member, Independent Director or Officer of the Company.

Section 12. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto. In accordance with Section 5(c), the Special Member shall not be required to make any capital contributions to the Company.



Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and the Special Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member and the Special Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Manager. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

Section 16. Books and Records.

The Manager shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. Each Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Manager. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Manager.

Section 17. Officers.

(a) Officers. From time to time, the Manager may designate Officers of the Company. If Officers of the Company are chosen by the Manager, they shall consist of at least a President, a Secretary and a Treasurer. The Manager may also choose one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. The Manager may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Manager. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Manager. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Manager.

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Any vacancy occurring in any office of the Company may be filled by the Manager. The Officers of the Company on the date hereof are as follows:

|                     |   |       |
|---------------------|---|-------|
| President           | - | _____ |
| Secretary           | - | _____ |
| Treasurer           | - | _____ |
| Vice President      | - | _____ |
| Vice President      | - | _____ |
| Assistant Secretary | - | _____ |

(b) President. The President shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Members and the Manager are carried into effect. The President or any other Officer authorized by the President or the Manager shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed, including Section 7(b); (ii) where signing and execution thereof shall be expressly delegated by the Member to some other Officer or agent of the Company, and (iii) as otherwise permitted in Section 17(c).

(c) Vice President. In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Manager, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

(d) Secretary and Assistant Secretary. The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall maintain a corporate book. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Manager (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

(e) Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Manager. The Treasurer shall disburse the funds of the Company as may be ordered by the Manager, taking proper vouchers for such disbursements, and shall render to the President and to the Manager, when the Manager so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there

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shall be more than one, the Assistant Treasurers in the order determined by the Manager (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Manager may from time to time prescribe.

(f) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Members not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and, subject to Section 9(e), the actions of the Officers taken in accordance with such powers shall bind the Company. Subject to Section 9(e), with respect to all of its obligations, powers and responsibilities under this Agreement, the Officers of the Company, and each of them, is authorized to execute and deliver, for and on behalf of the Company, such contracts, agreements, assignments, documents, leases, certificates, registrations, applications, notices and other documents, instruments and agreements in the ordinary course of the day-to-day operations of the business of the Company (collectively, the "Ordinary Course Agreements") on such terms and conditions as the Manager or Officers deem proper, the execution of such Ordinary Course Agreements by such persons to be conclusive evidence of such authorization and approval and ratification thereof by the Manager and the Company, all without further act, vote or approval of any Person; provided, however, that no matters outside of the day-to-day operations of the business of the Company will be undertaken without the approval of the Members.

(g) Duties of Officers. Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

#### Section 18. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Members, the Manager, the Special Member and any Independent Director, and any Affiliate of the Member, the Manager, the Special Member and any Independent Director may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

#### Section 19. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, none of the Members, nor the Manager, nor the Special Members nor Independent Directors, nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 19 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Manager and the Special Member shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 19 shall be payable from amounts owed to any other Person pursuant to the Loan Documents.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 19.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 19 shall survive any termination of this Agreement.

Section 20. Assignments.

Subject to any transfer restrictions contained in the Loan Documents, the Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 22, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 20, such admission shall be deemed effective immediately prior to the transfer and,

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immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 21. Resignation.

A Member may resign at any time; provided, however, that so long as Obligations are outstanding, a Member's right to resign hereunder shall be subject to the terms of the Loan Documents. Upon any resignation of the Member, an additional member of the Company shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 22. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, that so long as Obligations are outstanding with respect to any Loan, the admission of the additional Members shall be subject to the terms of the Loan Documents.

Section 23. Dissolution.

(a) Subject to Section 9(e), the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the last remaining member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 20 and 22, or (ii) the resignation of the last remaining member and the admission of an additional member of the Company pursuant to Sections 21 and 22,) to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause the Member or a Special Member, respectively, to

cease to be a Member or a Special Member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution. Notwithstanding any other provision of this Agreement, each of the Member and Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or the Special Member, or the occurrence of an event that causes the Member or the Special Member to cease to be a member of the Company.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; provided, however, that any assets to be distributed pursuant to the Act to the Members of the Company shall be distributed in accordance with Section 15 of this Agreement (after deducting from the distributive share of a Member any sum such Member owes the Company).

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

**Section 24. Waiver of Partition; Nature of Interest.**

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member, the Independent Director and any Special Member hereby irrevocably waives any right or power that such Person might have to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 15 hereof. The interest of the Member in the Company is personal property.

**Section 25. Benefits of Agreement; Third-Party Rights.**

Subject to the last sentence of this Section, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or the Special Member. Subject to the last sentence of this Section, nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons). Notwithstanding anything herein to the contrary, Lender shall be a third-party beneficiary of the provisions of Sections 9 and 10 of this Agreement.

**Section 26. Severability of Provisions.**

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

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Section 27. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 28. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member, and is enforceable in accordance with its terms.

Section 29. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 30. Amendments.

Subject to Section 9(e), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member. Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless prior consent of the Lender has been obtained, except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the Loan Documents.

Section 31. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 32. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 33. Tax Status.

It is intended that the Company shall be a disregarded entity for federal, state, and local income tax purposes.

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Section 34. Effectiveness.

This Agreement shall be effective as of the date hereof.

*[Balance of page left blank/Signature page follows]*

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TALLAHASSEE, FLORIDA



IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the date first set forth above.

**MEMBERS:**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

*[Signatures continued on following page]*

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**INDEPENDENT DIRECTOR/SPECIAL  
MEMBER:**

\_\_\_\_\_  
Printed Name:

*[Limited Liability Company Agreement]*

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" has, with respect to any Person, the same meaning as defined in §101 of the Bankruptcy Code and shall include all "insiders", as such term is defined in §101 of the Bankruptcy Code, with respect to the Company, except that the percentage of direct or indirect legal or beneficial interest required to be held by the relevant entity shall be ten percent (10%), not twenty percent (20%).

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Bankruptcy Code" means 11 U.S.C. §101 et seq., as the same may be amended from time to time.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on \_\_\_\_\_, as amended or amended and restated from time to time.

"Company" means \_\_\_\_\_, LLC, a Delaware limited liability company.

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"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or partnership or limited liability company interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

"Covered Persons" has the meaning set forth in Section 19(a).

"Independent Director" means a manager appointed by the Member pursuant to Section 10 which qualifies as an Independent Person.

"Independent Person" means an individual who is not, and during the preceding five (5) years has never been, and is not while serving as the Independent Person (and is not, and during the preceding five (5) years has never been, an Affiliate of): (i) a direct or indirect legal or beneficial owner of any limited liability company membership interest, stock, partnership, membership or other equity interest in any of Company, an Owner (as defined in the Mortgage) or any of their respective Affiliates; (ii) a substantial creditor, customer or supplier of any of the Company, an Owner or any of their respective Affiliates (notwithstanding the foregoing a person who derives and reasonably expects to derive in the future no more than 5% of his or her annual adjusted gross income from services rendered as an Independent Person for the Company and Affiliates of the Company shall not be disqualified as an Independent Person); (iii) an employee, officer, director (other than during his tenure as an Independent Person of the Company or for one or more Affiliates), member, manager (other than as an Independent Person of the Company or for one or more Affiliates), trustee (other than as Independent Person of the Company or for one or more Affiliates), beneficiary or contractor (other than contracting to provide services as an Independent Person or in any similar capacity) of the Company, an Owner or any of their respective Affiliates; (iv) a person who controls (whether directly, indirectly or otherwise), the Company, an Owner or any of their respective Affiliates (other than acting as an Independent Person or in any similar capacity) or any substantial supplier, customer or creditor, or an officer, director (other than as an Independent Person of the Company or for one or more Affiliates), beneficiary, trustee (other than as an Independent Person of Company or for one or more Affiliates), manager (other than as an Independent Person of the Company or for one or more Affiliates), member or contractor of the Company, Owner or any of their respective Affiliates (other than acting as an Independent Person or in any similar capacity); (v) a lawyer representing or employed by a law firm representing the Company, an Owner or any of their respective affiliates (other than as Independent Person of the Company or for one or more Affiliates); (vi) an accountant employed or otherwise engaged by the Company, an Owner or any of their respective affiliates (other than as Independent Person of the Company or for one or more Affiliates); (vii) a spouse, parent, sibling or child of any Person described in clauses (i) through (iv) above; and (viii) an employee of any Person described in clauses (v) and (vi) above. In addition to the foregoing, any person appointed to act as the Independent Person of the Company must either (1) be an employee, agent, representative or designee of a nationally recognized corporate services firm, or (2) have experience (A) in the ownership, sale, leasing or management of commercial real estate properties, (B) in financing of commercial real estate properties, or the securitization of such financing, (C) as an independent director, manager or trustee (or any similar position) for a special purposes entity, or (D) as a director, manager or

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similar position of a publicly traded company or any other company involved in any business described in subpart (A) or (B) above.

"Lender" means any lender that makes a Loan to the Company, and such lender's successors and assigns.

"Loan" means a mortgage (or deed of trust or deed to secure debt, as applicable) loan secured by the Company's interest in and to the Property.

"Loan Documents" means all agreements of indebtedness, now or hereafter evidencing, securing or delivered to Lender in connection with a Loan, as each of same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Material Action" means to consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company.

"Member" means, collectively, \_\_\_\_\_, a \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_, as the initial member(s) of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Member.

"Mortgage" means that certain mortgage, deed of trust, deed to secure debt or similar security instrument securing the Loan and encumbering the Property.

"Officer" means an Officer of the Company described in Section 18.

"Obligation" means the indebtedness, liabilities and obligations of the Company under or in connection with the Loan Documents in effect as of any date of determination.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Property" has the meaning set forth in the Recitals.

"Real Property" has the meaning set forth in the Recitals.

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"Special Member" means, upon such person's admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Director, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

"Trust Property" has the meaning set forth in the Recitals.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

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SCHEDULE B

Members

| <u>Name</u> | <u>Mailing Address</u> | <u>Agreed Value of<br/>Capital Contribution</u> | <u>Limited Liability<br/>Company Interest</u> |
|-------------|------------------------|---|---|
| _____       | _____                  | \$ _____  | _____ %                                       |
| _____       | _____                  | \$ _____  | _____ %                                       |
| _____       | _____                  | \$ _____  | _____ %                                       |

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SCHEDULE C

Management Agreement

\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Management Agreement -- \_\_\_\_\_ LLC

Ladies and Gentlemen:

For good and valuable consideration, the undersigned who has been designated as the Manager of \_\_\_\_\_ LLC, a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of \_\_\_\_\_, 20\_\_\_\_, as it may be amended or restated from time to time (the "LLC Agreement"), hereby agrees as follows:

The undersigned accepts such Person's rights and authority as the Manager under the LLC Agreement and agrees to perform and discharge such Person's duties and obligations as a Manager under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such Person's successor as Manager is designated or until such Person's resignation or removal as the Manager in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

Initially capitalized terms used and not otherwise defined herein have the meanings set forth in the LLC Agreement.

[SIGNATURE PAGE FOLLOWS]

SECRETARY OF STATE  
DELAWARE

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IN WITNESS WHEREOF, the undersigned has executed this Management Agreement as of the day and year first above written.

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Name:

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MONTGOMERY, ALABAMA