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☐ PICK-UP

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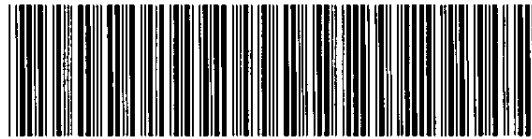
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04/25/17--01016--004 \*\*358.75

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2017 APR 25 PM 4:31

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

2017 APR 25 AM 11:33

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

C. GOLDEN

APR 27 2017

**SUNSHINE CORPORATE**  
**3458 Lakeshore Drive, Tallahassee, FL 32312**  
**850-656-4724**  
**850-508-1891 (cell)**

**FILED**

2017 APR 25 PM 4:31

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Date: 4-25-17

Name:	Tallahassee West Tennessee, DST
Document #:	
Order #:	Dee UCS

Certified Copy of Arts & Amend:				
Plain Copy:				
Certificate of Good Standing:				
Apostille/Notarial Certification:			Country of Destination:	
			Number of Certs:	

Filing:	<input checked="" type="checkbox"/> Certified:
	<input type="checkbox"/> Plain:
	<input type="checkbox"/> COGS:

Availability	_____
Document	_____
Examiner	_____
Updater	_____
Verifier	_____
W.P. Verifier	_____
Ref#	_____

Amount: \$ 358.75

Thank you!

2017 APR 25 AM 11:03  
TALLAHASSEE, FLORIDA

## TRANSMITTAL LETTER

Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**SUBJECT:** Tallahassee West Tennessee, DST

Enclosed is an original and one (1) copy of the Declaration of Trust and a check for:

**FEES:**

Declaration of Trust \$350.00

**OPTIONAL:**

Certified Copy \$ 8.75

2017 APR 25 PM 4:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

**FROM:** Jocelyn C. Beckman

**Name (Printed or typed)**

1401 Broad Street

**Address**

Clifton, New Jersey 07013

**City, State & Zip**

973-249-8016

**Daytime Telephone number**



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

April 26, 2017

SUNSHINE CORPORATE

SUBJECT: TENNESSEE WEST TENNESSEE, DST  
Ref. Number: W17000036030

*Corrected -  
Please file on  
and allow for  
original file  
date.  
Thanks,  
Tina*

We have received your document for TENNESSEE WEST TENNESSEE, DST and your check(s) totaling \$358.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

The name of the entity must be identical throughout the document.

Please return the corrected original and one copy of your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6052.

Claretha Golden  
Regulatory Specialist II  
New Filing Section

Letter Number: 017A00008182

2017 APR 25 PM 4:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

2017 APR 27 PM 2:20  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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

**FILED**

2017 APR 25 PM 4:31

Tallahassee West Tennessee, DST

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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 TALLAHASSEE WEST TENNESSEE, DST, a

(Name of Trust)

Delaware Statutory Trust hereby affirms in order to file or qualify

(State)

TALLAHASSEE WEST TENNESSEE, 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, NJ 07013

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

9200 South Dadeland Blvd, Suite 508, Miami, FL 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.

[Signature]  
(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.

Tallahassee West Tennessee, DST

Sworn to before me this 20th  
day of April, 2017, NOTARY

By:

Name: Robert J. Ambrose as Manager of Tallahassee West Tennessee ST, LLC,  
Chairman of the Board of Trustees the Signatory Trustee

Filing Fee: \$350.00

Certified Copy: \$ 8.75 (optional)

CR2E063(3/00)

**JOCELYN C. BECKMAN**

NOTARY PUBLIC  
STATE OF NEW JERSEY

ID # 2399360

MY COMMISSION EXPIRES AUG. 12, 2020

# Delaware

The First State

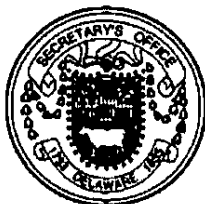
Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "TALLAHASSEE WEST TENNESSEE ST, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTH DAY OF APRIL, A.D. 2017.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "TALLAHASSEE WEST TENNESSEE ST, LLC" WAS FORMED ON THE FIFTH DAY OF APRIL, A.D. 2017.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.

FILED  
2017 APR 25 PM 4:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



6370341 8300

SR# 20172337003

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

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 202340345

Date: 04-07-17

**FILED**

2017 APR 25 PM 4:31

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**TRUST AGREEMENT**

**OF**

**TALLAHASSEE WEST TENNESSEE, DST**  
A Delaware Statutory Trust

By And Among

**ARCTRUST EQUITIES, LLC,**  
A New Jersey Limited Liability Company As  
As **DEPOSITOR,**

**TALLAHASSEE WEST TENNESSEE ST, LLC,**  
A Delaware Limited Liability Company As  
**SIGNATORY TRUSTEE**

And

**UNITED CORPORATE SERVICES, INC.**  
A Delaware corporation As  
**DELAWARE TRUSTEE**

Dated As Of

April \_\_, 2017

**TRUST AGREEMENT  
OF  
TALLAHASSEE WEST TENNESSEE, DST,  
A DELAWARE STATUTORY TRUST**

**FILED**

2017 APR 25 PM 4:31

**THIS TRUST AGREEMENT**, dated as of March 31, 2017 (as the same may be amended or supplemented from time to time, this "Trust Agreement"), is made by and among the **ARCTRUST STATE EQUITIES, LLC** (the "Depositor"), **TALLAHASSEE WEST TENNESSEE ST, LLC**, a Delaware limited liability company (in its individual capacity, "Signatory Trustee") as Signatory Trustee, and **United Corporate Services, Inc.**, a Delaware corporation (in its individual capacity, "United Corporate Services"), as Delaware Trustee.

**RECITALS**

A. Depositor has acquired, will acquire or will contract to acquire the real estate located at 1964 West Tennessee Street, Tallahassee, Florida 32304, and 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. On March 31, 2017, the Depositor, the Signatory Trustee and the Delaware Trustee, caused a Certificate of Trust (as hereinafter defined) of TALLAHASSEE WEST TENNESSEE, DST, to be filed with the Secretary of State (as hereinafter defined), to form the statutory trust in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. §3801, *et seq.* (the "Statutory Trust Act"). A Certificate of Formation forming the Signatory Trustee as TALLAHASSEE WEST TENNESSEE ST, LLC was filed on March 31, 2017 with the Delaware Secretary of State.

D. The 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 Tallahassee West Tennessee ST, 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:



**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 B1, 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 The United Corporate Services, Inc.

"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 4.5.

"Deposit Date" means the date in which the closing of title for the Real Estate is completed.

"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, the Mortgage, and any other 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 agreements relating to the Real Estate together with all amendments, supplements and modifications thereto.

“Lender” means Sabadell United Bank, N.A., a national banking association, and the successors and assigns of such lender.

“Loan” means that certain loan payable to Lender in the original principal amount of \$7,556,250.00 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.

“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 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.

“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, attached hereto as Exhibit D, 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 A 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 Tallahassee West Tennessee ST, 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 C 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 TALLAHASSEE WEST TENNESSEE, 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.

“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 Deposit 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 and file the Certificate of Trust and deliver it for filing with the Certificate of Conversion 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 "TALLAHASSEE WEST TENNESSEE, 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 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 General Interpretation.** 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 personal property 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: (i) 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; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; or (iii) 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;
- (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;
- (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; 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;
- (25) 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);
- (26) shall not become involved in the day-to-day management of any other person;
- (27) shall have at least one trustee (such trustee being herein referred to as the "SPE 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 SPE 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;
- (28) shall not cause or permit the board of directors or board of managers, as applicable, of it or the SPE 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 SPE Member, as applicable, unless at the time of such action there shall be at least one member who is an Independent Person;

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.

### **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; 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 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 Revenue Ruling 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 Revenue Ruling 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 Revenue Ruling 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.

**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, United Corporate Services, Inc., 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 United Corporate Services, Inc., in its individual capacity or in its

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 United Corporate Services, Inc. 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 United Corporate Services, Inc. and its own employees); provided, however, that this limitation shall not protect United Corporate Services, Inc. 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 its 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.

**Section 4.7 Fees and Expenses.** The United Corporate Services, Inc. shall receive as compensation for its 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.

**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 of the Signatory Trustee.**

(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 and 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;

- (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 being 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 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 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. The Trust shall reimburse the Signatory Trustee for any reasonable expenses incurred by the Signatory Trustee on behalf of the Trust.

**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 certificated 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. 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 Restrictions on Transfer.** Subject to compliance with applicable securities laws, the Financing Documents and this Section 6.3, Section 6.4 and Section 6.5 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 6.4 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 E.

**Section 6.5 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 twenty-five (25) 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 6.6 Representations and Acknowledgements of Beneficial Owners.**

(a) 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.

(b) Each Beneficial Owner hereby further acknowledges that (i) other than with respect to the initial issuance thereof by the Signatory Trustee to the Investors, no Beneficial Interest may be sold, transferred or otherwise disposed of unless expressly permitted hereunder and, where applicable, 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 (ii) 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 6.7 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 6.8 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 6.9 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 6.10 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 quarterly 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 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, PHYSICAL OR ENVIRONMENTAL 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 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 (i) a Transfer Distribution pursuant to Section 9.2 in which case the Loan shall be assumed by the Springing LLC; (ii) 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 paid in full or assumed in accordance with the terms of the Financing Documents. Notwithstanding anything in this Trust Agreement to the contrary the Trust shall be dissolved and wound up 21 years after the death of the last living descendant of the forty-fourth President of the United State, Barack H. Obama. Further, 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 paid in full or assumed in accordance with the Financing Documents.

**Section 9.2 Termination to Preserve and Protect the Trust Estate; Springing LLC.** 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 F (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 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 Depositors:

ARCTRUST Equities, LLC  
1401 Broad Street  
Clifton, New Jersey 07013  
Attn: Gary Baumann, Esq.

If to the Signatory Trustee, to:

Tallahassee West Tennessee ST, LLC  
1401 Broad Street  
Clifton, New Jersey 07013  
Attn: Robert J. Ambrosi, Manager

If to the Delaware Trustee:

United Corporate Services, Inc.  
874 Walker Road, Suite C  
Dover, Delaware 19904  
Attn: Michael Barr

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.

**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.

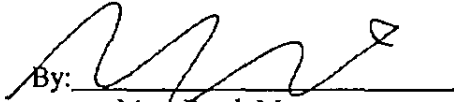
**Section 10.10 Signature of Beneficial Owners.** Each Investor will execute the signature page for Agreement of Assignee or Transferee Beneficial Owners of TALLAHASSEE WEST TENNESSEE, DST in substantially the form set forth in Exhibit E hereto (the "Signature Page") in connection with their acquisition 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 F 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.

*SIGNATURES FOLLOW*

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

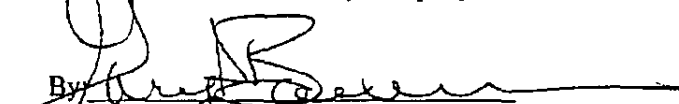
**THE DEPOSITOR:**

ARCTRUST EQUITIES, LLC  
a Delaware limited liability company

By:   
Marc Perel, Manager

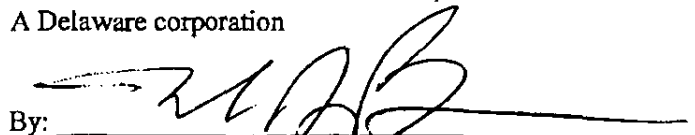
**THE SIGNATORY TRUSTEE:**

TALLAHASSEE WEST TENNESSEE ST, LLC  
a Delaware limited liability company

By:   
Gary S. Baumann, Manager

**THE DELAWARE TRUSTEE:**

UNITED CORPORATE SERVICES, INC.  
A Delaware corporation

By:   
Michael Barr, President

FILED  
2017 APR 25 PM 4:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA



**EXHIBIT A**  
**REAL ESTATE**

**EXHIBIT B**  
**CERTIFICATE OF TRUST**

**EXHIBIT C**  
**OWNERSHIP RECORDS OF**  
**TALLAHASSEE WEST TENNESSEE, DST**

LAST REVISED April \_\_\_\_, 2017

**FILED**

2017 APR 25 PM 4:32

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Name	Mailing Address	Percentage of Beneficial Interest
ARCTRUST Investments, L.P.	1401 Broad Street Clifton, NJ 07013	____.00%
ADP International, Inc.	Seven Penn Plaza, Suite 830 New York, NY 10001	____.00%
Garfield Midland, LLC	1041 Broad Street Clifton, NJ 07013	11.62%
Syracuse Teal, LLC	1401 Broad Street Clifton, NJ 07013	____.00%

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

**TALLAHASSEE WEST TENNESSEE  
ST, LLC**

a Delaware limited liability company  
not in its individual capacity, but solely  
as Signatory Trustee

\_\_\_\_\_  
By: Gary S. Baumann, Manager

**EXHIBIT D**  
**PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS**

**THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS** ("Agreement") is made and effective as of the date Seller executes this Agreement ("Effective Date"), by and between ARCTRUST Equities, LLC, a Delaware limited liability company, as owner of the beneficial interests of Tallahassee West Tennessee, DST, a Delaware statutory trust ("Seller"), and

("Buyer"), with reference to the facts set forth below. All terms with initial capital letters not otherwise defined herein shall have the meanings set forth in the Defined Terms attached hereto as Exhibit B and incorporated herein.

**RECITALS**

- A. ARCTRUST Equities, LLC, a New Jersey limited liability company ("Depositor"), Tallahassee West Tennessee ST, LLC ("Signatory Trustee"), and United Corporate Services, Inc. ("Delaware Trustee") have entered into the Trust Agreement of Tallahassee West Tennessee, DST (the "Trust Agreement").
- B. Depositor has, pursuant to a separate Assignment of Purchase and Sale Agreement, assigned its right to acquire the Property to Syracuse Grocery, DST (the "DST"). Seller desires to sell 100% of the beneficial interests (the "Interests") in the DST to purchasers who will become beneficial owners in the DST.
- C. The proceeds from the sale will be used, in part, to redeem any beneficial interests in the DST held by Depositor.
- D. The Property will be subject to the Loan Documents and the Lease.

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

**1. Agreement of Purchase and Sale.**

1.1 Purchase, Sale and Purchase Price. In consideration of the covenants herein contained, Seller hereby agrees to issue and sell, and Buyer hereby agrees to purchase and subscribe for, a \_\_\_\_\_% Interest evidenced by a Certificate of Beneficial Interest at a purchase price ("Purchase Price") equal to \$ \_\_\_\_\_, payable in Cash. Purchaser will be deemed for federal income tax purposes, including for purposes of Section 1031 of the Internal Revenue Code ("Section 1031"), to be allocated its \_\_\_\_\_% pro rata portion of the Loan (\$ \_\_\_\_\_ based on \$ \_\_\_\_\_ for each 1% Interest).

**1.2 Payment.** Buyer shall pay the Purchase Price as follows:

1.2.1 Buyer's Deposit. Buyer may be required, within five (5) days of executing and returning the Purchase Agreement and Escrow Instructions, to submit Buyer's Deposit, which shall be in the amount of \$5,000 by wire pursuant to the wiring instructions contained in Exhibit C hereto. Upon Close of Escrow, Buyer's Deposit will be credited against the Purchase Price or refunded to Buyer, at Buyer's election. Upon receipt, Buyer's Deposit shall be placed in a non-interest bearing account and shall be credited against the Purchase Price for the Interests or returned to Buyer, at Buyer's election, at the Close of Escrow. However, Buyer's

Deposit may be retained by the Seller as liquidated damages in accordance with Section 6.1. Buyer shall not receive any interest on Buyer's Deposit. Notwithstanding the foregoing, Seller reserves the right, in its sole discretion, to waive the Buyer's obligations set forth in this Section 1.2.1.

1.2.2 Payment of the Purchase Price. Buyer shall pay the Purchase Price plus the amount, if any, required of Buyer under Section 4 or any other provision of this Agreement, in current United States funds, at or before the Close of Escrow.

1.3 Buyer's Deliveries. Concurrently with delivery of Buyer's Deposit or as soon thereafter as requested by Seller, Buyer shall execute, acknowledge (where appropriate) and deposit into Escrow: (i) an executed counterpart signature page for the Trust Agreement and (iii) such other documents as may reasonably be requested by Seller or Lender. Within five (5) days after Seller's request, Buyer shall, if required by Lender, submit applications, financial information and other items required by the Lender in connection with the Loan Documents.

1.4 Buyer's Intent to Exchange. If Buyer's acquisition of the Interests is part of a tax-deferred exchange pursuant to Section 1031, it is a condition precedent to the closing of this Escrow that Buyer is able to complete an exchange for all or a portion of its relinquished property pursuant to an Exchange Agreement between Buyer and \_\_\_\_\_ ("Accommodator"), to whom this Agreement may be assigned pursuant to Section 8.4. Seller agrees to execute such documents or instruments as may be necessary or appropriate to evidence such exchange, provided that Seller's cooperation in such regard shall be at no additional cost, expense, or liability whatsoever to Seller, and that no additional delays in the scheduled closing date of this Escrow are incurred unless mutually agreed upon by all parties to this Agreement.

## **2. Opening and Close of Escrow.**

2.1 Opening of Escrow. Upon execution of this Agreement by Seller, Buyer and Seller shall open Escrow by depositing with Seller a fully executed original of this Agreement for use as escrow instructions. If there is any inconsistency between the provisions of any General Conditions and this Agreement, the provisions of this Agreement shall control.

2.2 Seller's Deliveries. Prior to the Close of Escrow, Seller shall execute, acknowledge (where appropriate) and deposit into Escrow applicable certificates regarding federal and state withholding taxes and execute other customary documents, including the Certificate evidencing the Interests, in the appropriate form conveying the Interest to Buyer as of the Close of Escrow.

2.3 Close of Escrow. Escrow shall close on or about \_\_\_\_\_, 2017 (the "Closing Date") by Buyer and Seller delivering funds and other documents as set forth in Section 5 IF AND ONLY IF (a) all funds and instruments required pursuant to Sections 1 and 2 have been delivered to Seller and Buyer, as applicable, and (b) each of the conditions precedent set forth in Section 3 has been, or upon such closing shall be, satisfied or waived as provided in Section 3. Seller shall insert the Closing Date as the date of the Transaction Documents upon receipt of a fully executed Closing Statement signed by both Seller and Buyer.

2.4 Latest Closing. If Escrow has not closed by 5:00 p.m. on the Business Day after the Closing Date, for any reason other than the default of either Buyer or Seller under this Agreement, either party who is not then in default may terminate Escrow and this Agreement by written notice to the other party. If this Agreement is so terminated for any reason other than the default of Buyer or Seller hereunder, (i) Buyer and Seller shall promptly execute and deliver any

cancellation instructions to the other party; (ii) Seller shall return Buyer's Deposit to Buyer; and (iii) Buyer and Seller shall be released from their obligations under this Agreement, other than any obligations of Buyer that survive termination of this Agreement. If all conditions to the Close of Escrow have been satisfied or waived by the Closing Date and Buyer fails to close Escrow, Seller shall, in addition to any other rights or remedies which Seller may have, be entitled to retain Buyer's Deposit pursuant to Section 6 and terminate this Agreement and, upon such termination, Seller shall be released from all obligations under this Agreement.

### **3. Conditions to Closing.**

3.1 Closing Conditions. This Agreement and the obligations of the parties hereunder are subject to satisfaction or waiver (by the party in whose favor the condition precedent has been established) of all the conditions precedent set forth below.

3.1.1 Payment of Purchase Price. Buyer shall have deposited the full amount of the Purchase Price into the Escrow Account.

3.1.2 Issuance of Certificate. Seller shall have issued a Certificate representing the Buyer's Interest.

3.1.3 Section 1031 Compliance. If so elected by Buyer, Buyer shall be able to complete a Section 1031 exchange for all or part of his relinquished property with its Accommodator and Seller shall have executed any necessary documents to evidence such transaction.

3.1.4 Trust and Property-related Matters. Depositor has contributed its right to acquire the Property to the DST and the associated funds and the DST has acquired the Property and entered into the Loan Documents and the Lease. In connection with the contribution the Depositor's right to acquire the Property, the DST will have obtained title insurance with respect to the Property in the amount of the principal balance of the Loan and the cash equity being raised pursuant to the Memorandum. The Loan Documents and the Lease shall be in full force and effect with no existing defaults or matters existing that with the giving of notice or the passage of time would constitute defaults thereunder.

3.2 Failure of Conditions Precedent. If any of the foregoing conditions precedent are neither satisfied nor waived by the Closing Date, then either party, if not then in default hereunder, may terminate the Escrow and this Agreement in accordance with Section 2.4 and the Deposit shall be returned to Buyer.

3.3 Rescission Rights. Buyer may rescind his subscription if he receives, subsequent to the date he submits this Agreement, an environmental assessment, an engineering report, or Loan Documents for the financing of the Property from the Seller or modifications or amendments of any of the Transaction Documents that, in Buyer's sole discretion, contains information that shows that the purchase of an Interest is not appropriate for Buyer. Any such rescission notice shall be given to Seller in writing within three (3) days after receipt of the applicable document or be deemed waived. Upon receipt of such notice, the Deposit shall be returned to Buyer.

### **4. Fees and Costs.**

4.1 Fees and Costs Payable to Affiliates. Buyer acknowledges that affiliates of Seller and Depositor will be entitled to fees and compensation as set forth in the Memorandum.

**5. Distribution of Funds and Documents.**

5.1 Deposit of Funds. After the Opening of Escrow, all cash, if any, received hereunder by Seller, until the Close of Escrow, shall be kept on deposit in a non-interest bearing account with other escrow funds and held in trust at any state or national bank.

5.2 Disbursements and Deliveries. Seller at the Close of Escrow will hold for personal pickup, or if requested, wire transfer to an account designated by the party receiving such funds, the following: (i) to Seller, or order, the Purchase Price, (ii) to Buyer, the Certificate, and (iii) to Buyer, or order, Buyer's Deposit (unless credited against the Purchase Price at closing) and any excess funds previously delivered to Seller by Buyer. All other disbursements by Seller shall be made by checks of Seller.

**6. Default.**

6.1 LIQUIDATED DAMAGES. IF ESCROW FAILS TO CLOSE DUE TO BUYER'S DEFAULT, IT IS AGREED THAT THE AMOUNT OF BUYER'S DEPOSIT, IF ANY, SHALL BE RETAINED AND ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND SELLER SHALL BE RELEASED FROM ITS OBLIGATION OF SELLING THE INTEREST TO BUYER. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO NEW JERSEY LAW. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES IS FAIR AND REASONABLE CONSIDERING ALL OF THE FACTS AND CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF HARM TO SELLER THAT COULD BE ANTICIPATED, AND THE ANTICIPATION THAT PROOF OF CAUSATION, FORESEEABILITY AND ACTUAL DAMAGES WOULD BE COSTLY AND/OR IMPRACTICAL. BUYER AND SELLER AGREE THAT IT IS IMPOSSIBLE OR IMPRACTICAL TO PRESENTLY PREDICT WHAT MONETARY DAMAGES WOULD BE SUFFERED IN SUCH EVENT. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH BUYER MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO COLLECT DAMAGES AND THEREFORE AGREE THAT SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THEIR SOLE AND EXCLUSIVE REMEDY IF ESCROW FAILS TO CLOSE DUE TO BUYER'S DEFAULT. BY INITIALING THIS PROVISION BELOW, THE PARTIES SPECIFICALLY CONFIRM THE ACCURACY OF SUCH FACTS, THE FACT THAT THEY POSSESS APPROXIMATELY EQUAL BARGAINING STRENGTH AND SOPHISTICATION AND THE FACT THAT EACH OF THEM WAS REPRESENTED BY COUNSEL WHEN ENTERING INTO THIS AGREEMENT, WHICH COUNSEL EXPLAINED THE CONSEQUENCES OF THIS SECTION TO THEM AT THE TIME THIS AGREEMENT WAS MADE. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT ANY OBLIGATIONS OF BUYER OTHER THAN A DEFAULT CAUSING ESCROW TO FAIL TO CLOSE THAT SURVIVE THE CLOSE OF ESCROW OR EARLY TERMINATION OF THIS AGREEMENT AND SELLER SHALL HAVE THE RIGHT TO PURSUE ANY CAUSE OF ACTION IT MAY HAVE AGAINST BUYER FOR BUYER'S FAILURE TO PERFORM ANY OTHER COVENANT UNDER THE TRANSACTION DOCUMENTS OR UNDER THIS AGREEMENT AFTER THE CLOSE OF ESCROW OR EARLIER TERMINATION OF THIS AGREEMENT. BY THE ACT OF AN AUTHORIZED REPRESENTATIVE OF EACH PARTY AFFIXING HIS OR HER INITIALS HEREIN, EACH PARTY

SPECIFICALLY CONFIRMS THE ACCURACY OF THE ABOVE STATEMENTS AND ITS AGREEMENT WITH THEM.

7. Buyer Representations and Warranties.

7.1 PURCHASE AS-IS. BUYER REPRESENTS AND WARRANTS THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTIONS, INVESTIGATIONS AND ANALYSES OF THE PROPERTY, THE DST AND THE LOAN IN ENTERING INTO THIS AGREEMENT AND BUYER IS NOT RELYING IN ANY WAY UPON ANY REPRESENTATIONS, STATEMENTS, AGREEMENTS, WARRANTIES, STUDIES, REPORTS, DESCRIPTIONS, GUIDELINES OR OTHER INFORMATION OR MATERIAL FURNISHED BY SELLER, SIGNATORY TRUSTEE, DEPOSITOR OR THEIR REPRESENTATIVES OR AFFILIATES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER REGARDING ANY SUCH MATTERS AND IS PURCHASING THE INTEREST (AND IS TAKING THE INTEREST IN THE DST IN THE PROPERTY) IN AN "AS-IS" CONDITION. BUYER IS A SOPHISTICATED AND EXPERIENCED REAL ESTATE INVESTOR AND WILL RELY ENTIRELY UPON ITS OWN INDEPENDENT INVESTIGATION AND REVIEW OF THE PROPERTY, THE DST AND THE LOAN. BUYER ACKNOWLEDGES THAT, PRIOR TO THE DATE OF THIS AGREEMENT, BUYER HAS HAD THE OPPORTUNITY TO CONDUCT ANY AND ALL PHYSICAL INSPECTIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY, TO REVIEW AND APPROVE EACH OF THE TRANSACTION DOCUMENTS, TO REVIEW AND APPROVE (I) THE OPERATING STATEMENTS FOR THE PROPERTY, (II) A CURRENT TENANT RENT ROLL, AND (III) THE MOST RECENT PROPERTY TAX BILLS, AND TO CONDUCT SUCH OTHER TESTS, INVESTIGATIONS AND REVIEW AS BUYER DEEMS NECESSARY. BUYER ACKNOWLEDGES THAT SELLER HAS NOT YET, OR ONLY RECENTLY, ACQUIRED THE PROPERTY AND HAS LIMITED KNOWLEDGE REGARDING THE CONDITION OF THE PROPERTY.

7.2 NO TAX REPRESENTATIONS. BUYER REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON ANY ADVICE OR ANY INFORMATION OR MATERIAL FURNISHED BY SELLER OR ITS REPRESENTATIVES, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, OF ANY NATURE WHATSOEVER REGARDING ANY TAX MATTERS, INCLUDING WITHOUT LIMITATION, A DECISION BY BUYER TO EFFECT A TAX-DEFERRED EXCHANGE UNDER INTERNAL REVENUE CODE ("IRC") SECTION 1031, AS AMENDED. BUYER FURTHER REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY OBTAINED ADVICE FROM ITS OWN LEGAL COUNSEL AND/OR TAX ACCOUNTANT REGARDING ANY SUCH TAX-DEFERRED EXCHANGE, INCLUDING, WITHOUT LIMITATION, WHETHER THE ACQUISITION OF THE INTEREST PURSUANT TO THIS AGREEMENT MAY QUALIFY AS PART OF A TAX-DEFERRED EXCHANGE, AND BUYER IS RELYING SOLELY ON SUCH ADVICE.

7.3 Commissions. The parties mutually warrant and covenant that no brokerage commissions, finder's fees or similar commissions or fees shall be due or payable on account of this transaction. Each party shall indemnify, protect, defend (with legal counsel acceptable to the other), and hold the other harmless from the claims for such commission or finder's fees or similar commissions or fees arising out of the actions of the indemnifying party, including, without limitation, attorneys' fees and costs, incurred in connection therewith or to enforce this indemnity, which indemnities shall survive the Close of Escrow.



7.4 Additional Buyer Representations, Warranties, and Acknowledgements.

Buyer hereby represents and warrants to Seller that the following are true and correct on the date of this Agreement and shall be true and correct as of the Closing Date.

7.4.1 Buyer acknowledges that the sale of the Interest has not been accompanied by the publication of any advertisement or by any general solicitation.

7.4.2 Buyer has had the opportunity to ask questions of, and receive answers from, the Seller, the Depositor, and their members, managers, officers, employees and affiliates, concerning the Property and the terms and conditions of the DST and the Interest, and to obtain any additional information deemed necessary. Buyer has been provided with all materials and information requested by either Buyer or others representing Buyer, including any information requested to verify any information furnished Buyer.

7.4.3 Buyer is purchasing the Interest for Buyer's own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Interest. Buyer understands that, due to the restrictions referred to in Section 7.5.7 below, and the lack of any market existing or to exist for the Interest, Buyer's investment in the Interest will be highly illiquid and may have to be held indefinitely.

7.4.4 Buyer understands that legends will be placed on the Certificate with respect to restrictions on distribution, transfer, resale, assignment or subdivision of the Interest imposed by applicable federal and state securities laws. Buyer is fully aware that the Interest has not been registered with the Securities and Exchange Commission in reliance on the exemptions specified in Regulation D issued by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, which reliance is based in part upon Buyer's representations set forth herein. Buyer understands that the Interest has not been registered under applicable state securities laws and is being offered and sold pursuant to the exemptions specified in said laws, and unless it is registered, it may not be re-offered for sale or resold except in a transaction or as a security exempt under those laws. Buyer further understands that the specific approval of such resales by the state securities administrator may be required in some states and that any transfer of the Interest must be made in accordance with the Trust Agreement.

**7.4.5 BUYER UNDERSTANDS THAT SELLER HAS NOT OBTAINED A RULING FROM THE INTERNAL REVENUE SERVICE ("IRS") THAT THE INTEREST WILL BE TREATED AS AN UNDIVIDED INTEREST IN REAL PROPERTY AS OPPOSED TO A PARTNERSHIP INTEREST. BUYER UNDERSTANDS THAT THE TAX CONSEQUENCES OF AN INVESTMENT IN THE INTEREST, ESPECIALLY THE TREATMENT OF THE TRANSACTION UNDER IRC SECTION 1031 AND THE RELATED TREASURY REGULATIONS, ARE COMPLEX AND VARY WITH THE FACTS AND CIRCUMSTANCES OF EACH INDIVIDUAL PURCHASER. BUYER SPECIFICALLY REPRESENTS AND WARRANTS THAT: (I) HE HAS CONSULTED HIS OWN INDEPENDENT TAX ADVISOR REGARDING AN INVESTMENT IN THE INTERESTS AND THE QUALIFICATION OF THE TRANSACTION UNDER SECTION 1031 AND APPLICABLE STATE TAX LAWS, (II) HE IS NOT RELYING ON SELLER, THE DST, DEPOSITOR ANY OF THEIR AFFILIATES, OR THEIR AGENTS, INCLUDING THEIR COUNSEL AND ACCOUNTANTS, OR ANY MEMBER OF THE SELLING GROUP FOR TAX ADVICE REGARDING THE QUALIFICATION OF THE INTERESTS UNDER SECTION 1031 OR ANY OTHER MATTER, (III) HE IS AWARE THAT THE IRS HAS ISSUED REVENUE RULING 2004-86, 2004-2 C.B. 191 SPECIFICALLY ADDRESSING DELAWARE**

**STATUTORY TRUSTS, THE REVENUE RULING IS MERELY GUIDANCE AND IS NOT A "SAFE HARBOR" FOR TAXPAYERS AND, WITHOUT THE ISSUANCE OF A PRIVATE LETTER RULING, THERE IS NO ASSURANCE THAT THE INTERESTS WILL NOT BE DEEMED PARTNERSHIP INTERESTS FOR FEDERAL INCOME TAX PURPOSES, AND (IV) HE SHALL, FOR FEDERAL INCOME TAX PURPOSES, REPORT THE PURCHASE OF THE INTEREST PURSUANT TO THIS AGREEMENT AS A PURCHASE OF A DIRECT OWNERSHIP INTEREST IN THE PROPERTY.**

7.4.6 Buyer understands that none of the Seller, Depositor, DST or their members, managers, officers, employees or affiliates, in-house legal counsel, outside legal counsel, or advisors represent Buyer in any way in connection with the purchase of the Interest and the entering into any of the related agreements associated with the purchase, including, but not limited to the Trust Agreement. Buyer also understands that in-house legal counsel and outside legal counsel to the Seller, Depositor, DST and their affiliates do not represent, and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing, Buyer.

**7.4.7 BUYER UNDERSTANDS THAT THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATES. THE INTEREST IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER APPLICABLE LAWS PURSUANT TO SECURITIES REGISTRATION OR EXEMPTION THEREFROM. THE INTEREST HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY.**

7.4.8 Buyer hereby agrees to indemnify, defend and hold harmless the Seller, DST, Depositor, and each of their members, managers, officers, affiliates and advisors (together, the "Indemnified Parties") 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 Buyer's failure to fulfill all of the terms and conditions of this Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained herein or in any other documents Buyer has furnished to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any 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 Buyer has furnished to any of the foregoing in connection with this transaction. In addition, if any person asserts a claim to a real estate brokerage commission or finder's fee pursuant to a relationship with the Buyer in connection with the Buyer's purchase of an Interest, Buyer shall indemnify and hold harmless the Indemnified Parties from and against any such claim.

7.4.9 Buyer acknowledges that the 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 by the Trust Agreement, both of which the Buyer accepts and by which Buyer agrees by execution of this Agreement to be legally bound notwithstanding that his signature may not be required on either agreement.

7.4.10 Buyer agrees not to sell or transfer the Interest to (i) an employee benefit plan within the meaning of Section 3(3) of ERISA that is subject to the fiduciary

responsibility provisions of Title I of ERISA or a plan within the meaning of IRC Section 4975(e)(1) that is subject to IRC Section 4975 (a "plan"), including a qualified plan (any pension, profit sharing, or stock bonus plan that is qualified under IRC Section 401(a)) or an individual retirement account; (ii) any person that is directly or indirectly acquiring the Interest on behalf of, as an investment manager of, as a fiduciary of, as trustee of, or with assets of a plan (including any insurance company using assets in its general or separate account that may constitute assets of a plan); (iii) a charitable remainder trust; (iv) any other tax-exempt entity; or (v) a foreign person.

7.4.11 Buyer agrees that the information Buyer has received including, but not limited, to Property and Loan related information, reports, summaries, and other agreements, documents, and other written or oral information with respect to the proposed purchase of the Interest is confidential ("Confidential Information"). Buyer acknowledges and agrees that such Confidential Information is intended for the Buyer's limited use and benefit in determining his desire to purchase the Interest and that Buyer will keep such information permanently confidential and not disclose or divulge any Confidential Information to, or reproduce any Confidential Information for the benefit of, any person other than those individuals who are actively and directly participating in the analysis of the proposed investment on behalf of the Buyer and who have been informed of the confidential nature of such information.

7.4.12 Buyer acknowledges and agrees that Seller has the unconditional right to accept or reject any offer to purchase the Interest.

7.4.13 Buyer represents and warrants that (i) if an individual, the Buyer is at least nineteen (19) years of age; (ii) if an individual, the Buyer is a United States citizen; (iii) the Buyer has adequate means of providing for his current financial needs; (iv) the Buyer has no need for liquidity in Buyer's investment in the Interest; (v) all of Buyer's investments in and commitments to illiquid investments are, and following the purchase of the Interest will be, reasonable in relation to the Buyer's net worth and financial needs; and (vi) all personal and financial information provided by Buyer to Seller, or subsequently provided, does or will accurately reflect the Buyer's financial condition.

7.4.14 Within three (3) days after receipt of a written request from Seller, Buyer agrees to provide such information and to execute and deliver such documents as may be reasonably necessary to comply with any and all laws and regulations to which Seller or Buyer is subject.

7.5 The representations and warranties of Buyer set forth herein above shall survive the Close of Escrow or termination of this Agreement.

7.6 Seller hereby represents and warrants to Buyer that the following are true and correct as of the date of this Agreement and shall be true and correct as of the Closing Date:

7.6.1 Except as otherwise disclosed to Buyer in writing, Seller has not received any written notice of any violation of any applicable governmental licenses, permits or other approvals with respect to the Property or any violation of building codes and/or zoning ordinances or any other applicable laws, statutes, ordinances or other governmental regulations, including without limitation, laws, statutes, ordinances and governmental regulations with respect to hazardous or toxic substances and the protection of the environment, with respect to the Property.

7.6.2 Except as otherwise disclosed to Buyer in writing, there are no pending or, to Seller's knowledge, threatened condemnation suits or actions with respect to the Property.

7.6.3 To the best of Seller's knowledge, no fact or condition exists that would or could result in the termination or impairment of the furnishing of service to the Property of water, sewer, gas, electric, telephone, drainage or other such utility services.

7.6.4 Seller has received no written notice from any insurance carrier alleging any defects or inadequacies in the Property that, if not corrected, would result in termination of insurance coverage or an increase in the normal and customary cost of any or all of its insurance policies.

7.6.5 Except as otherwise disclosed to Buyer in writing, Seller has not received any material written notice from any governmental agency of any violation of the Property with the requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. §12101, *et. seq.*), any state and local laws and ordinances related to access for disabled or handicapped person(s) (or any other similar laws or ordinances applicable to the Property) or any rules, regulations and orders issued pursuant to any of the foregoing, including, without limitation, the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities.

## **8. General Provisions.**

8.1 Interpretation. The use herein of (i) one gender includes the masculine and the feminine, (ii) the singular number includes the plural, whenever the context so requires and (iii) the words I and me include we and us if Buyer is more than one person. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof. All exhibits referred to herein and attached hereto are incorporated by reference. This Agreement together with the other Transaction Documents contain the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

8.2 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement thereof is or may be sought.

8.3 Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein to complete the acquisition of the Interest as provided herein. Buyer and Seller agree to cooperate with each other in good faith by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the parties' intent evidenced in this Agreement.

8.4 Assignment. Buyer shall not assign its rights under this Agreement to any person except for Accommodator without first obtaining Seller's written consent, which consent may be withheld in Seller's sole and absolute discretion. No such assignment shall operate to release the assignor from the obligation to perform all obligations of Buyer hereunder. Seller shall have the absolute right to assign its rights and obligations under this Agreement.

8.5 Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be addressed as follows:

If to Seller, to:

Tallahassee West Tennessee, DST  
1401 Broad Street  
Clifton, New Jersey 07013  
Attn: Gary S. Baumann, President

If to Buyer:

to Buyer's Address set forth above.

Either party may change such address by written notice to the other party. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding Business Day after deposit with FedEx or other similar overnight delivery system.

8.6 Eminent Domain. If, prior to the Close of Escrow, the Property is taken or appropriated by any public or quasi-public authority under the power of eminent domain or Seller receives actual notice of any pending or threatened condemnation proceedings affecting the Property, then Buyer may terminate this Agreement without further liability hereunder and the parties shall proceed in accordance with Section 2.4. In the event of a partial taking of the Property or the threatened partial taking of the Property with respect to which Seller has received actual notice that materially and adversely affects the ability to operate the Property for the purposes it is currently operated, then Buyer can elect to either (a) terminate this Agreement in accordance with Section 2.4, or (b) with Seller's approval, purchase the Interest with a reduction in the Purchase Price in an amount equal to any condemnation award received from the condemning authority based on the percentage interest in the DST represented by the Interest (in which event Seller or Depositor, as applicable, shall retain the right to receive such proceeds). In the event of a threatened taking or a lack of finality of any proceedings to determine the award in an actual taking, Escrow shall close and Seller shall assign to Buyer its interest in any condemnation award, based on the percentage interest in the DST represented by the Interest, made by the governmental entity.

8.7 Loss or Damage. Buyer shall have no right to terminate this Agreement in the event of any loss or damage to the Property, provided that Buyer shall have the right to receive an assignment of any insurance proceeds received by Seller, based on the percentage interest in the DST represented by the Interest, with respect to such loss upon the Close of Escrow. The parties acknowledge and agree in no event shall the Close of Escrow be extended due to any such loss or damage. Notwithstanding the foregoing, the assignment of any insurance proceeds as provided herein shall not include any proceeds received for items not related to the physical condition of the Property, such as proceeds from Seller's business interruption insurance, if any.

8.8 Periods of Time. All time periods referred to in this Agreement include all Saturdays, Sundays, and state or federal holidays, unless Business Days are specified, provided that if the date or last date to perform any act or give any notice with respect to this Agreement falls on a Saturday, Sunday, or state or federal holiday, such act or notice may be timely performed or given on the next succeeding Business Day.

8.9 Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall be deemed fully executed originals.

8.10 Attorneys' Fees. If either party commences litigation for the judicial interpretation, enforcement, termination, cancellation or rescission hereof, or for damages (including liquidated damages) for the breach hereof against the other party, then, in addition to any or all other relief awarded in such litigation, the substantially prevailing party therein shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred.

8.11 Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to its conflict of laws principles.

8.12 Time. Time is of the essence with respect to all dates set forth in this Agreement.

8.13 Third-Party Beneficiaries. Buyer and Seller do not intend to benefit any party (including any other purchaser of an Interest) that is not a party to this Agreement and no such party shall be deemed to be a third-party beneficiary of this Agreement or any provision hereof.

8.14 Severability. If any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, such fact shall in no way affect the validity or enforceability of the other portions of this Agreement.

8.15 Election to Effect an Internal Revenue Code Section 1031 Exchange. In the event Buyer so elects, Seller agrees to accommodate Buyer in effecting a tax-deferred exchange under IRC Section 1031, as amended. Buyer shall have the right to elect a tax-deferred exchange at any time prior to the Closing Date. If Buyer elects to effect a tax-deferred exchange, Seller agrees to execute revised or additional escrow instructions, documents, agreements, or instruments to effect the exchange, provided that Seller shall incur no additional costs, expenses, fees or liabilities, nor shall the closing be delayed, as a result of the exchange. Buyer may assign this Agreement to an Accommodator in order to effect such exchange and, thereafter, such assignee will perform Buyer's obligations under this Agreement.

8.16 Binding Agreement. Subject to any limitation on assignment set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

**8.17 ARBITRATION OF DISPUTES.**

**8.17.1 ALL CLAIMS SUBJECT TO ARBITRATION. ANY DISPUTE, CONTROVERSY OR OTHER CLAIM ARISING UNDER, OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, OR ANY AMENDMENT THEREOF, OR THE BREACH OR INTERPRETATION HEREOF OR THEREOF, SHALL BE DETERMINED AND SETTLED BY BINDING ARBITRATION IN THE COUNTY OF PASSAIC, STATE OF NEW JERSEY, BEFORE A SOLE ARBITRATOR, ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS ARBITRATION RULES FOR THE REAL ESTATE INDUSTRY. THE SUBSTANTIALLY PREVAILING PARTY SHALL BE ENTITLED TO AN AWARD OF ITS REASONABLE COSTS AND EXPENSES INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND COSTS. ANY AWARD RENDERED THEREIN SHALL BE FINAL AND BINDING ON EACH AND ALL OF THE PARTIES THERETO AND THEIR PERSONAL**

REPRESENTATIVES, AND JUDGMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

**8.17.2 WAIVER OF LEGAL RIGHTS.** THE PARTIES ACKNOWLEDGE AND AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED UNDER NEW JERSEY LAW AND THAT THEY ARE WAIVING ANY RIGHTS THEY MAY POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THEY ARE WAIVING THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT TO THE EXTENT SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARTICLE. IF EITHER PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER EXECUTION OF THIS AGREEMENT AND INITIALING BELOW, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF NEW JERSEY LAW. EACH PARTY'S AGREEMENT TO THIS ARTICLE IS VOLUNTARY. THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE TO NEUTRAL ARBITRATION.

**8.18 ACCEPTANCE OR REJECTION OF BUYER'S OFFER.** THIS AGREEMENT DOES NOT CONSTITUTE AN OFFER OF ANY KIND BY SELLER AND SHALL NOT BIND SELLER UNLESS DULY EXECUTED AND DELIVERED BY SELLER. TO SUBMIT AN OFFER, BUYER SHALL DELIVER TO SELLER (1) THREE COMPLETED AND EXECUTED ORIGINALS OF THIS AGREEMENT, (2) CASH IN THE AMOUNT OF BUYER'S DEPOSIT, AND (3) THE PURCHASER QUESTIONNAIRE. SELLER SHALL HAVE THIRTY (30) DAYS TO EITHER ACCEPT OR REJECT BUYER'S OFFER. IF SELLER DOES NOT ACCEPT BUYER'S OFFER WITHIN SUCH THIRTY (30)-DAY PERIOD, THE OFFER SHALL BE DEEMED REJECTED. IN THE EVENT THE OFFER IS REJECTED, BUYER'S DEPOSIT SHALL BE RETURNED TO BUYER WITHOUT INTEREST AND THIS AGREEMENT SHALL NOT BECOME EFFECTIVE.

**8.19 Non-Disclosure.** Except as expressly provided otherwise in this Agreement, neither party shall make public disclosure with respect to this transaction before the Closing is completed, except to such attorneys, accountants, present or prospective sources of financing, partners, directors, officers, managers, employees and representatives of either party or of such party's advisors who need to know such information for the purpose of evaluating and consummating this transaction, or as may otherwise be required by applicable law.

*SIGNATURES FOLLOW*

**IN WITNESS WHEREOF**, this Purchase Agreement and Escrow Instructions has been executed as of the Effective Date set forth above.

**SELLER:**

**ARCTRUST Equities, LLC**

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

Its:

**BUYER:**

\_\_\_\_\_

\_\_\_\_\_

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

Its: \_\_\_\_\_



**EXHIBIT E**  
**AGREEMENT OF ASSIGNEE OR TRANSFEREE**  
**OF BENEFICIAL OWNERSHIP**  
**IN**  
**TALLAHASSEE WEST TENNESSEE, 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 Tallahassee West Tennessee, DST, dated as of \_\_\_\_\_, 2017 (the "Trust Agreement"), by and among ARCTRUST Equities, LLC, as Depositor, Tallahassee West Tennessee ST, 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. 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 made by the Depositor, Signatory Trustee or Delaware Trustee including but not limited to any of their respective directors, officers, managers employees or affiliates, 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.
2. Acknowledges that the undersigned (i) has received from the undersigned's transferor or assignor a all due diligence materials regarding the sale of the Beneficial Interests by the Trust and the Trust Agreement, the Real Estate, the Transaction Documents and the Loan and (ii) is familiar with and understands each of the foregoing including the risks associated with making an investment in the Beneficial Interests.
3. Represents and warrants that the undersigned, in determining to acquire the Beneficial Interest, has relied solely upon the undersigned's own due diligence and advice of the

undersigned's legal counsel and accountants or other financial advisors with respect to the suitability of investing in the Beneficial Interests, the tax and other consequences involved in acquiring the Beneficial Interests and that the undersigned is not relying on any statement or representation made by the Delaware Trustee, the Signatory Trustee or the Depositor.

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 F 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.

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.

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.

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 real estate investments, 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.

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 set forth in the Trust Agreement.

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.

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 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.

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.

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.

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.

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.

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 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.

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 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 (iv) an agency of the government of a Sanctioned Country, (v) an organization controlled by a Sanctioned Country, or (vi) 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.

17. The representations, warranties, acknowledgments, understandings and indemnities of transferee or assignee set forth herein above shall survive the undersigned's acquisition of the Beneficial Interest.

IN WITNESS WHEREOF, the undersigned has caused this Agreement of Assignee or Transferee Of Beneficial Ownership in TALLAHASSEE WEST TENNESSEE, DST to be duly executed as of the \_\_\_\_\_, 2017.

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

Title:

STATE OF                    )  
                                  )SS.:  
COUNTY OF                )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before the undersigned, a notary public, personally appeared, \_\_\_\_\_ known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged that he, as an officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the \_\_\_\_\_ by himself as an officer.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

Notary Public:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT F**  
**FORM OF LIMITED LIABILITY COMPANY AGREEMENT OF**  
**TALLAHASSEE WEST TENNESSEE, LLC**

*(Name to be confirmed pending availability at time of filing.)*

**THIS LIMITED LIABILITY COMPANY AGREEMENT** (this "Agreement") of TALLAHASSEE WEST TENNESSEE, LLC, a Delaware limited liability company (the "Company"), is made and entered into as of \_\_\_\_\_, \_\_\_\_ 20\_\_ (the "Effective Date"), by and among TALLAHASSEE WEST TENNESSEE, DST, a Delaware statutory trust (the "DST" or the "Trust"), TALLAHASSEE WEST TENNESSEE ST, 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 (each a "Member" collectively, the "Members").

**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 real property located at 1964 West Tennessee Street, Tallahassee, Florida 32304, as more particularly described in Exhibit B (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 Members 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:

**ARTICLE I**  
**FORMATION OF COMPANY**

**1.1 Authority.** The Company has been formed in accordance with the requirements of the Delaware Limited Liability Company Act (the "Act"), and Signatory Trustee has been designated the Manager of the Company. The Manager shall have the authority to perform, or cause to be performed, such other filings, recordings and actions and will comply with all formation requirements under the Act and the laws of such other states in which the Company elects to do business.

**1.2 Membership; Rights and Obligations.** Upon the consummation of the transactions described in the Recitals, the Members will become members of the Company. The rights and obligations of the Company and the Members will, except as otherwise provided herein, be governed by the Act.

**1.3 Name.** The name of the Company is "TALLAHASSEE WEST TENNESSEE, LLC" and its affairs will be conducted under the Company name or such other name(s) as the Manager may select. The Manager will execute and file with the proper offices any and all certificates required by the fictitious name or assumed name statutes of the states in which the Company elects to do business. The Company will have the exclusive ownership of and right to use the Company name.

**1.4 Purposes of the Company.** The purposes of the Company are: (i) to own, hold, manage, develop, improve, lease, dispose of, finance and refinance or otherwise deal with the Real Property; (ii) to assume and to satisfy the obligations of DST set forth in the Loan Documents and the Lease; and (iii) to engage in such other activities, enterprises, ventures and undertakings permitted under this Agreement and/or the Act that are necessary or appropriate to the foregoing purposes.

**1.5 Characterization.** It is the intention of the Manager and the Members that the Company constitute a partnership for federal, state and local income tax purposes. Each Member will report its Membership Interest in a manner consistent with the foregoing, and neither the Manager nor any Member will take any action inconsistent with the foregoing.

**1.6 Principal Office of the Company.** The principal office of the Company is 1401 Broad Street, Clifton, NJ 07013, or at such other place as the Manager may designate. The Company may have other offices in such place or places as selected by the Manager.

**1.7 Registered Office and Registered Agent.** The registered agent of the Company in the State of Delaware is United Corporate Services, and the registered office of the registered agent is 874 Walker Road, Suite C, Dover, Delaware 19904. The Manager may from time to time in accordance with the Act change any of the Company's registered agents and/or registered offices and designate a registered agent and registered office in each state the Company is required to maintain or appoint one.

**1.8 Term of Existence of the Company.** The term of the Company commenced upon the filing of its Certificate of Formation with the Secretary of State and will be perpetual unless sooner terminated as provided in Article VIII.

**1.9 Provisions Relating to Loan.**

(a) This Section 1.9 is intended to qualify the Company 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 1.9 shall be in full force and effect; provided, however, that the provisions of this Section 1.9 shall be of no further force and effect at any time when no portion of the Loan is outstanding. The terms of this Agreement are further limited by and subject to the provisions of the Financing Documents while the Loan is outstanding.

(b) With respect to the Company, a "Single Purpose Entity" means a Delaware limited liability company 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 personal property 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 or liquidate and dissolve (or suffer any liquidation of 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) 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: (i) 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; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; or (iii) 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 1.9;
- (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 this Agreement or other applicable organizational documents;
- (9) shall not own any subsidiary or make any investment in, any other Person;
- (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 Company's assets may be included in a consolidated financial statement of its Affiliate provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (ii) such assets shall also be listed on the Company's own separate balance sheet;

- (13) shall only enter into any contract or agreement with any Member or Affiliate of the Company 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;
- (17) shall file its own tax returns separate from those of any other Person, except to the extent that the Company is treated as a "disregarded entity" or investment Company 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; 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;
- (25) 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 Company it shall be compensated at a fair market rate for its services);



- (26) shall not become involved in the day-to-day management of any other person;
- (27) 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.

Failure of the Manager or Members 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 Beneficial Owners.

- (c) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, so long as any obligation evidenced or secured by any of the Financing Documents remains outstanding, the provisions of this Section 1.9 may not be amended without the consent of the Lender.

## **ARTICLE II**

### **MEMBERSHIP INTERESTS: CAPITAL CONTRIBUTIONS**

**2.1 Membership Interest.** Each Member's percentage ownership interest in the Company shall be equal to such Member's beneficial ownership interest in DST immediately prior to the transactions described in the Recitals. The amount of each Member's percentage ownership interest in the Company ("Membership Interest") is set forth opposite such Member's name on Exhibit C hereto. The Company Property shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in the Company Property in his or her individual name or right, and a Member's Membership Interest shall be personal property for all purposes.

#### **2.2 Capital Contributions.**

- (a) Each Member will be credited with an initial capital contribution ("Capital Contribution") in the amount set forth opposite such Member's name on Exhibit A hereto, which amount shall be equivalent to the value of such Member's interest as an Owner in the DST.
- (b) The Manager may request at any time that the Members make additional Capital Contributions to the Company on a pro rata basis in proportion to each Member's Membership Interest. The Members are not required to comply with any such request. The Manager shall adjust the Members' Capital Contributions and Membership Interests set forth on Exhibit C hereto to equitably reflect any additional capital contributions made by the Members.

## **ARTICLE III**

### **ACCOUNTING, ALLOCATIONS AND DISTRIBUTIONS**

#### **3.1 Books of Account.**

- (a) The Manager shall maintain the books of account of the Company.
- (b) The books of account will be closed promptly after the end of each calendar year, which will be the Company's fiscal year ("Fiscal Year"). Promptly after the close of the Fiscal Year (but in all events within 90 days thereafter), the Company will cause to be prepared such partnership income tax information and other returns required under applicable law and regulation, including any and all statements necessary to advise all Members promptly about their investment in the

Company for federal income tax reporting purposes. The Manager will be responsible for the prompt filing and delivery of all such returns and statements. All elections and options available to the Company for tax purposes will be taken or rejected by the Company in the sole discretion of the Manager.

**3.2 Capital Accounts.** A separate capital account ("Capital Account") shall be maintained for each Member. Each Member's initial Capital Account shall be equal to the amount of such Member's Capital Contribution. Thereafter, each Member's Capital Account will, inter alia, be increased by (i) the amount of money contributed by such Member to the Company, (ii) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752) and (iii) allocations to such Member of Company income and gain (or items thereof), including income and gain exempt from tax; and decreased by (iv) the amount of money distributed to such Member (as a Member) by the Company, (v) the fair market value of property distributed to such Member (as a Member) by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752), (vi) allocations to such Member of expenditures of the Company described in Code Section 705(a)(2)(B) and (vii) allocations to such Member of Company loss and deduction (or items thereof).

**3.3 Profit and Loss Allocations.** Except as otherwise required by Code Section 704 and the Treasury Regulations thereunder, net profit or net loss of the Company, determined for income tax purposes, will be allocated to the Members pro rata with their Membership Interests.

**3.4 Special Tax Allocations.** In accordance with Code Sections 704(b) and 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company will, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value at the time of contribution to the Company.

**3.5 Distributions.**

(a) Company Cash Flow for any Fiscal Year will consist of all cash received by the Company (other than as a capital contribution) less cash expenditures for Company debts, expenses, capital expenditures and reasonable reserves as determined by the Manager in its sole discretion.

(b) Company Cash Flow for any Fiscal Year will be distributed to the Members in proportion to their Membership Interests.

(c) No Member has the right to partition, or otherwise demand an in kind distribution of, the Company Property. If the Company distributes Company Property to the Members, the fair market value of such property at the time of such distribution will be determined by the Manager in its sole discretion, and any such distribution will be made to the Members in proportion to their Membership Interests.

**ARTICLE IV**

**RIGHTS, DUTIES, LIABILITIES AND RESTRICTIONS OF THE MANAGER**

**4.1 The Manager.** The Manager will have the sole and exclusive right to manage, control and conduct the affairs of the Company and to manage the Company Property including, but not limited to: (i) entering into any agreement for the sale, transfer, or exchange of all or any substantial

portion of the Real Estate; (ii) entering into, modifying, extending, renewing or canceling the Lease or any other lease with respect to the Real Estate; (iii) entering into, modifying, extending, renewing or canceling any agreement pertaining to any indebtedness to be secured in whole or in part by any mortgage, trust deed, pledge, lien or other encumbrance upon the Real Estate (other than the assumption by the Company of the Loan and the obligations of DST under the Loan Documents, consent to which is deemed to have been given); (iv) developing, re-developing, improving or otherwise dealing with the Real Estate (iv) admitting new Members to the Company in exchange for Capital Contributions by such persons to the Company. Notwithstanding the foregoing, the Manager shall have no authority to take any action in violation of Section 1.9 above.

**4.2 Duties and Responsibilities of the Manager.** The Manager will diligently, faithfully and competently perform its duties and responsibilities, and will devote such time to the Company's business as, in the judgment of the Manager, is reasonably required. No fee shall be payable to the Manager for management of the affairs of the Company.

**4.3 Officers of the Company.** The Manager may appoint one or more persons to serve as officers of the Company, in such capacities and with such delegated rights and powers as the Manager may approve; provided, however, that no such officer will have any different or greater rights and powers than the Manager. The Manager may provide that compensation be paid to persons who provide services to the Company as officers.

**4.4 Expenditures by Manager.** The Company will reimburse the Manager and its Affiliates for any costs and expenses reasonably incurred by them on behalf of the Company.

**4.5 Potential Conflicts.** The Company may purchase goods or services from the Manager or its Affiliates, provided that any such transaction will be conducted on commercially reasonable terms. The Manager may engage in business ventures of any nature and description independently or with others, including, but not limited to, the business or businesses engaged in by the Company, and neither the Company nor any of the other Members will have any rights in or to such independent ventures or the profits derived therefrom.

**4.6 Liability of Manager.** The Manager will not be liable to any Member or the Company for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Company, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company. The Manager may consult with counsel and accountants in respect of Company affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants, provided that they will have been selected with reasonable care. The Members will look solely to the Company Property for the return of their capital and, if the assets of the Company remaining after payment or discharge of the debts and liabilities of the Company are insufficient to return such capital, they will have no recourse against the Manager for such purpose. The provisions of this Section 4.6 will not relieve the Manager of any liability, notwithstanding any of the foregoing to the contrary, by reason of the gross negligence, willful misconduct or intentional wrongdoing or to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but will be construed so as to effectuate the provisions of this Section 4.6 to the fullest extent permitted by law.

**4.7 Indemnification.** The Company shall indemnify the Manager, in its individual capacity, from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions, suits, costs, expenses and disbursements including reasonable legal fees and expenses which may be imposed on, incurred by or assailed at any time against them, in their individual capacities and

not indemnified against by other Persons; which relate to or arise out of the Company Property or the Loan Documents. The indemnities contained in this Section 4.8 shall survive the termination of this Agreement.

**4.8 Successor to Manager.** If the Manager resigns, a successor manager will be selected by Members holding a majority of the Membership Interests. The Manager shall not be permitted to resign at any time the Loan remains outstanding without the approval of Lender.

**4.9 Tax Matters Partner.** The Manager will be the Company's Tax Matters Partner as defined in Code Section 6231(a)(7) (the "TMP"). The TMP will have the right to resign as such by giving 30 days written notice to the Members. Upon the resignation of the TMP, a successor TMP will be selected by the Manager. The TMP will employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service (the "Service") and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The Company will not be obligated to pay any compensation to the TMP in his capacity as such; provided, however, that all reasonable expenses incurred by the TMP in serving as the TMP will be Company expenses and the TMP will be reimbursed by the Company in accordance with Section 4.4 above. The TMP will keep the Members informed of all administrative and judicial proceedings, as required by Code Section 6223(g), and will furnish to each Member who so requests in writing a copy of each notice or other communication received by the TMP from the Service, except such notices or communications as are sent directly to such Member by the Service.

## **ARTICLE V**

### **MEMBERS**

**5.1 Powers of the Members.** Notwithstanding anything to the contrary in this Agreement, so long as any obligation evidenced or secured by any of the Loan Documents remains outstanding and not discharged in full, the Members will have no right to vote on any matters relating to the Company or its assets.

**5.2 Liability.** No Member will be personally liable for any of the debts of the Company or any of the losses thereof beyond the amount of such Member's Capital Contribution to the Company.

**5.3 Meetings of the Members.** A meeting of the Members may be called at any time by the Manager or by Members holding more than twenty five percent (25%) of the Membership Interests. The meetings will be held at the Company's principal place of business or any other place designated by the Manager. The Manager will give the Members at least ten (10) days prior written notice stating the time, place and purpose of the meeting. At a meeting of the Members, the presence of Members holding more than fifty percent (50%) of the Membership Interests, in person or by proxy, will constitute a quorum. A Member may vote either in person or by written proxy signed by the Member or by his, her or its duly authorized attorney in fact. Persons present by telephone will be deemed to be present "in person" for purposes hereof.

## **ARTICLE VI**

### **ASSIGNMENT PROVISIONS**

**6.1 Transfers by Members.**

(a) Subject to Section 6.2, a Member may Transfer some or all of its Membership Interests in the Company. For purposes hereof, "Transfer" means, when used as a noun, any sale,

hypothecation, pledge, assignment, gift, or other transfer, be it voluntary or involuntary, to any person, inter vivo, testamentary, by operation of laws of devise and descent or other laws, and, when used as a verb; to sell, hypothecate, pledge, assign, gift or otherwise transfer to any person, be it voluntarily or involuntarily, inter vivo, testamentary, by operation of the laws of devise or descent or any other laws.

(b) Notwithstanding anything contained herein to the contrary, no Transfer of any Membership Interest will be permitted if such Transfer would: (i) be in contravention of or constitute an event of default under the Loan Documents; (ii) result in a termination of the Company for federal income tax purposes that would have a material adverse effect on the Company or any of the Members; (iii) result in the Company not qualifying for an exemption from the registration requirements of any applicable federal or state securities laws; (iv) result in any violation of any applicable federal or state securities laws; (v) result in the Company having to register as an investment company under the Investment Company Act of 1940, as amended; (vi) require the Company, the Manager or any affiliate to register as an investment advisor under the Investment Advisers Act of 1940, as amended; or (vii) result in the Company being treated as a publicly traded partnership for federal tax purposes.

**6.2 General Provisions.** The following rules will apply to the Transfer of interests in the Company.

(a) no person will be admitted as an assignee or transferee hereunder unless and until: (i) the Manager has, in its sole discretion, consented to such transfer; (ii) the assignment is made in writing, signed by the assignor and accepted in writing by the assignee, and a duplicate original of the assignment is delivered to and accepted by the Manager; (iii) the prospective assignee executes and delivers to the Company a written agreement, in form and substance satisfactory to the Manager, pursuant to which said person agrees to be bound by this Agreement; and (iv) an appropriate amendment hereto is executed and, if required, filed of record;

(b) the effective date of such assignment or admission will be no earlier than the date that the documents specified in subsection (a) above are delivered to and accepted by the Manager,

(c) the Company and the Manager will treat the assignor of the assigned interest as the absolute owner thereof and will incur no liability for distributions made in good faith to such assignor prior to such time as the documents specified in subsection (a) above have been delivered to and accepted by the Manager,

(d) unless admitted as a Member to the Company by the Manager pursuant to the provisions of Article VII, the assignee or transferee of an interest in the Company hereunder will not be entitled to become or exercise any rights of a Member, but will, to the extent of the interest acquired, be entitled only to the predecessor Member's Membership Interest in the Company. No person, including the legal representatives, heirs or legatees of a deceased Member, will have any rights or obligations greater than those set forth herein and no person will acquire an interest in the Company or become a Member except as permitted hereby;

(e) the costs incurred by the Company in processing an assignment (including attorneys' fees) will be borne by the assignee, and will be payable prior to and as a condition of admission to the Company; and

(f) upon the Transfer of a Membership Interest which satisfies this Section 6.2, Exhibit A to this Agreement will be revised to reflect such Transfer.

## **ARTICLE VII**

### **ADMISSION OF ADDITIONAL MEMBERS: RESIGNATIONS AND WITHDRAWALS**

#### **7.1 Admission of Additional Members.**

(a) Subject to compliance with applicable securities laws, the Loan Documents and this Agreement, new Members may be admitted to the Company in exchange for Capital Contributions by such persons to the Company in the manner provided in Section 4.1 of this Agreement. The Members hereby grant the Manager the power of attorney to amend the Company's Certificate of Formation and this Agreement to effect any issuance of Membership Interests pursuant this subsection. Upon the admission of any new Members to the Company, the Manager shall adjust the Members' Membership Interests set forth on Exhibit A hereto to equitably reflect the Capital Contributions made by new Members.

(b) Additional Members admitted pursuant to Section 7.1(a) will be entitled to all of the rights and privileges of the original Members hereunder and will be subject to all of the obligations and restrictions hereunder, and in all other respects their admission will be subject to all of the terms and provisions hereof.

(c) No Member shall have any preemptive or similar rights to increase or maintain such Member's Membership Interest in the Company.

**7.2 Resignations and Withdrawals.** A Member who withdraws from the Company will forfeit all Membership Interests and rights as a Member, including his right to receive any distributions from the Company and the right to vote. Upon the withdrawal of a Member, the Company will not have any obligation to purchase such Member's Membership Interests or any part thereof. The Manager shall adjust the Members' Membership Interests set forth on Exhibit A hereto to equitably reflect the withdrawal of a Member.

## **ARTICLE VIII**

### **TERMINATION AND WINDING UP**

#### **8.1 Termination.**

(a) The Company will terminate upon the earlier to occur of the following:

(i) The Manager and Members holding a majority of the Membership Interests vote to terminate the Company; or

(ii) The Company's sale, exchange or other disposition of the Real Property.

(b) Notwithstanding the foregoing, or any other provision of this Agreement to the contrary, for so long as the Company's obligations under the Loan Documents remain outstanding, the Company may not be terminated without the prior written consent of the Lender.

(c) This Agreement generally and Article VIII in particular will govern the conduct of the parties during the winding up of the Company.

**8.2 Liquidation Procedures.** Upon termination of the Company, the Company's affairs will be wound up and the Company will be dissolved. A proper accounting will be made of the profit or loss of the Company from the date of the last previous accounting to the date of termination.

**8.3 Liquidating Trustee.** Upon the winding up of the Company, the Manager will act as the liquidating trustee or will appoint a liquidating trustee. The liquidating trustee will have full power to sell, assign and encumber the Company Property. All certificates or notices thereof required by law will be filed on behalf of the Company by the liquidating trustee.

**8.4 Distribution on Winding Up.** The proceeds of liquidation will be applied by the end of the taxable year in which the liquidation occurs or, if later, within 90 days after the date of such liquidation, in the following order.

- (a) first, to the creditors of the Company, in the priority and to the extent provided by law; and
- (b) thereafter, to the Members in proportion to their Membership Interests.

**8.5 No Dissolutions.** The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member (an "assignee") shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Membership Interest shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**9.1 Definitions.** The following items not otherwise defined herein will have the meanings ascribed to them below

(a) "Affiliate" (whether or not such term is capitalized) shall mean, with respect to any specified Person, any other Person (i) owning beneficially, directly or indirectly, any ownership interest in such specified Person, (ii) directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, or (iii) who is an immediate family member of such Person.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(c) "Control" (whether or not such term is capitalized) when used with respect to any specified Person, shall mean 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.

(d) "Lease" shall mean that lease agreement relating to the Real Estate with all amendments, supplements and modifications thereto.

(e) "Lender" shall mean Sabadell Bank, NA, or an affiliate thereof, and its successors and assigns with respect to the Loan.

(f) "Loan" shall mean that certain loan or loans from Lender to the Trust in the approximate

amount of \$\_\_\_\_\_ or as much thereof as remains outstanding as evidenced and secured by the Loan Documents.

(g) "Loan Documents" shall mean any and all documents evidencing or securing the Loan or any assumptions thereof including, without limitation, any promissory notes (individually, a "Note" and collectively, "Notes"), mortgages, deeds of trust, deeds to secure debt, assignments of leases and rents, indemnity agreements, certificates, escrow agreements, consents or subordination agreements or the functional equivalent of any of the aforementioned, and any and all other documents related to the Loan.

(h) "Person" (whether or not such term is capitalized) shall mean a natural person, corporation, limited partnership, general partnership, limited liability company, 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

(i) "Section" shall mean a section in this Agreement unless the context clearly indicates otherwise.

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

(k) "Treasury Regulations" shall mean U.S. Treasury Regulations promulgated under the Code.

**9.2 Notices.** All notices, offers or other communications required or permitted to be given pursuant to this Agreement will be in writing and will be considered as properly given or made upon personal delivery or on the third business day following mailing from within the United States by first class United States mail, postage prepaid, certified mail return receipt requested, and addressed to the address of the Company set forth in Section 1.6, if to the Company, and to the address beneath a Member's name on the signature pages hereto, if to a Member. Any Member may change its address by giving fifteen (15) days' advance written notice stating its new address to the Manager. The Company may change its address by giving fifteen (15) days' advance written notice to the Members stating its new address. Commencing with the giving of such notice, such newly designated address will be such Member's address for purposes of all notices or other communications required or permitted to be given pursuant to this Agreement.

**9.3 Third Party Reliance.** Third parties dealing with the Company shall be entitled to conclusively rely on the signature of the Manager and/or any officer of the Company to bind the Company.

**9.4 Successors.** This Agreement and all the terms and provisions hereof will be binding upon and will inure to the benefit of all Members and their legal representatives, heirs, successors and permitted assigns, except as expressly herein otherwise provided.

**9.5 Governing Law.** This Agreement will be construed in conformity with the laws of the State of Delaware, without regard to conflicts of law provisions.

**9.6 Benefits of Agreement; No Third-Party Rights.** Except for the Lender, its successors or assigns as holders of the Loan with respect to the provisions related to the Single Purpose Entity nature of the Company, (i) 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 Members, and (ii) 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. The Lender, its successors or assigns are intended third-party beneficiaries of this Agreement and may enforce the provisions related to the Single Purpose Entity nature of the Company.

**9.7 Counterparts.** This Agreement may be executed in counterparts; each of which will be an original, but all of which will constitute one and the same instrument.

**9.8 Pronouns and Headings.** As used herein, all pronouns will include the masculine, feminine, neuter, singular and plural thereof wherever the context and facts require such construction- The headings, titles and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof

**9.9 Members Not Agents.** Nothing contained herein will be construed to constitute any Member the agent of another Member, except as specifically provided herein, or in any manner to limit the Members in the carrying on of their own respective businesses or activities.

**9.10 Entire Understanding.** This Agreement constitutes the entire understanding among the Members and supersedes any prior understanding and/or written or oral agreements among them with respect to the Company.

**9.11 Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, will be held invalid by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid by such court, will not be affected thereby.

**9.12 Further Assurances.** Each of the Members will hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof. Recognizing that each Member may find it necessary from time to time to establish to third parties; such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, each Member agrees, upon the written request of another Member (including the Manager, for and on behalf of the Company), from time to time, to furnish promptly a written statement of the status of any matter pertaining to this Agreement or the Company to the best of the knowledge and belief of the Member making such statements.

*SIGNATURES FOLLOW*

IN WITNESS WHEREOF, the undersigned have executed this Limited Liability Company Agreement of TALLAHASSEE WEST TENNESSEE, LLC this    day of \_\_\_\_\_, 20\_\_\_\_.

**MANAGER:**

TALLAHASSEE WEST TENNESSEE ST, LLC  
a Delaware limited liability company

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

**MEMBER(S):**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

**EXHIBIT A**  
**TO THE LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF**  
**TALLAHASSEE WEST TENNESSEE, LLC**

**CAPITAL CONTRIBUTION**

NAME AND ADDRESS OF MEMBER(S)	CAPITAL CONTRIBUTION	MEMBERSHIP INTEREST
		____.00%
		____.00%
		____.00%
TOTAL		100.00%

**FILED**  
2017 APR 25 PM 4:32  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA