

D970000037

FILING COVER SHEET

REFERENCE: 0173. 1240

DATE: 12-19-97

CONTACT: CINDY HICKS 500002382855-6  
-12/26/97 01010 013

FROM: CORPORATE & CRIMINAL RESEARCH SERVICES  
\*\*\*\*402.50 \*\*\*\*402.50

103 N. MERIDIAN STREET  
TALLAHASSEE, FL 32301

TELEPHONE: 222-1173

SUBJECT: Ecktrust - Florida

FILED  
97 DEC 19 PM 12:23  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

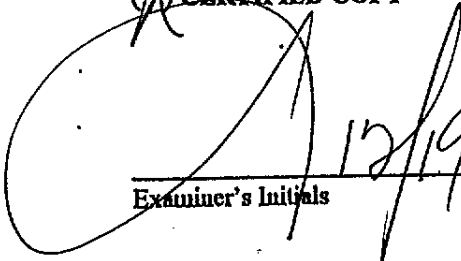
STATE FEES PREPAID WITH CHECK # 1034 FOR \$ 402.50

PLEASE FILE: Business Trust

- ARTICLES OF INC.       AMENDMENT       DISSOLUTION       ANNUAL REPORT
- QUALIFICATION       LIMITED PARTNERSHIP       ANNUAL REPORT
- FICTITIOUS NAME       LIMITED LIABILITY       REINSTATEMENT
- UCC-1       UCC-3

PROVIDE US WITH:

- CERTIFIED COPY       CERTIFICATE OF STATUS       STAMPED COPY

  
12/19  
Examiner's Initials

350.00  
52.50  
402.50

RECORDED  
19 011:05  
CORPORATION

**AFFIDAVIT TO THE SECRETARY OF STATE OF FLORIDA TO**

**FILE OR QUALIFY**

**ECKTRUST-FLORIDA**

**a Delaware business trust**

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

97 DEC 19 PM 12:23

FILED

In accordance with Section 609.02 of the Florida Statutes, pertaining to Common Law Declarations of Trust, the undersigned, the Administrative Trustee of ECKTRUST-FLORIDA, a Delaware business trust, hereby affirms in order to file or qualify ECKTRUST-FLORIDA in the State of Florida:

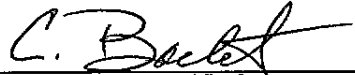
1. Two or more persons are named in the Trust.
2. The principal address is: c/o Regent Properties  
450 North Roxbury Drive  
Suite 600  
Beverly Hills, California 90210

3. The registered agent and office in the State of Florida is:

NRAI Services, Inc.  
526 E. Park Avenue  
Tallahassee, Florida 32301

4. Acceptance by the registered agent: Having been named 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.

NRAI Services, Inc.

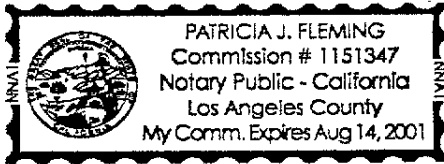
By:   
Name: Charles Baclet  
Title: Vice President

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.

  
Jeffrey Dinkin, Administrative Trustee

COUNTY OF LOS ANGELES }  
STATE OF CALIFORNIA } #s

Subscribed and sworn (affirmed) before me this 17 day of December, 1997. Affiant  
 is personally known to me OR  has produced the following identification:  
JEFFREY A. DMIGN.



Patricia J. Fleming  
Notary Public  
Commission Number: 1151347  
Commission Expires: 08-14-2001

[NOTARIAL SEAL]

**TRUST AGREEMENT**

**OF**

**ECKTRUST-FLORIDA**

**Dated as of December 17, 1997**

**by and among**

**JEFFREY DINKIN  
as Administrative Trustee**

**WILMINGTON TRUST COMPANY,  
as Delaware Trustee**

**ECK FLORIDA CORP., A DELAWARE CORPORATION  
as Independent Trustee**

**and**

**THE ALLEN D. KOHL 1984 TRUST,  
as Beneficiary**

FILED

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

TRUST AGREEMENT  
OF  
ECKTRUST-FLORIDA

THIS TRUST AGREEMENT, dated as of December 17, 1997 (the "Trust Agreement"), is entered into by and among The Allen D. Kohl 1984 Trust, as beneficiary (herein, together with its permitted successors and assigns hereunder, the "Beneficiary"), Jeffrey Dinkin, as trustee (herein, together with its permitted successors and assigns hereunder, the "Dinkin") in its capacity as trustee hereunder, the "Administrative Trustee", ECK Florida Corp., as trustee (together with its permitted successors and assigns hereunder, in its individual capacity, "ECK Florida"; and in its capacity as trustee hereunder, the "Independent Trustee"), and Wilmington Trust Company, as trustee (together with its permitted successors and assigns hereunder, in its individual capacity, the "Bank"; and solely in its capacity as trustee hereunder, the "Delaware Trustee", the Delaware Trustee, the Administrative Trustee, and the Independent Trustee being collectively referred to as the "Trustees").

Preliminary Statement

WHEREAS the Beneficiary and the Trustees desire to form a business trust (the "Trust") pursuant to the Delaware Business Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del.C. § 3801 *et. seq.* (the "Delaware Act"), for the purpose of holding legal title to the Property (such term and such other initially capitalized terms used but not defined herein being used as defined in Article I hereof);

WHEREAS and each of the Bank, ECK Florida and Dinkin is willing to act as trustee under this Trust Agreement and accepts the Trust, subject to the terms and conditions of this Trust Agreement; and

WHEREAS the Beneficiary and the Trustees intend that this Trust Agreement constitute the "governing instrument" of the Trust;

NOW, THEREFORE, each of the Trustees hereby declares that it holds all estate, right, title and interest of the Trust in the Trust Estate, as Trustee, in accordance with the terms set forth herein and for the exclusive use and benefit of the Beneficiary; and in consideration of the premises and of mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I  
DEFINITIONS

For all purposes of this Trust Agreement, initially capitalized terms used in this Trust Agreement and not otherwise defined herein shall have the meanings assigned to them in this Article I.

1.1 "Administrative Trustee" shall have the meaning ascribed thereto in the first paragraph of this Trust Agreement.

1.2 "Affiliate" shall have the same meaning as now defined in § 101 of the United States Bankruptcy Code (the "Code") and shall include all "insiders" (as such term is now defined in Code § 101) with respect to the Trust and the Independent Trustee, except that the percentage of direct or indirect, legal or beneficial interest required to be held by the relevant entity shall be 10%, not 20%.

1.3 "Assignment" means the Assignment of Lease and Rents, dated on or about December \_\_\_\_, 1997, by and between the Trust and Lender.

1.4 "Bank" shall have the meaning ascribed thereto in the first paragraph of this Trust Agreement.

1.5 "Beneficiary" and "Beneficiaries" shall have the meanings ascribed thereto in the first paragraph of this Trust Agreement.

1.6 "Creditor" means a person or entity (a) to whom the Trust, the Independent Trustee or any Affiliate thereof has at any time from and after the date hereof outstanding indebtedness in an amount equal to or greater than ten percent (10%) of the Trust's, Independent Trustee's, or such Affiliate's respective total outstanding general unsecured indebtedness at such time, or (b) to whom total payments have been made by the Trust, the Independent Trustee or such Affiliate during the immediately preceding fiscal year which are equal to or greater than ten percent (10%) of the respective gross annual revenues of the Trust, Independent Trustee, or such Affiliate for such immediately preceding fiscal year.

1.7 "Default", unless otherwise indicated, shall have the meaning ascribed thereto in the Lease.

1.8 "Delaware Act" shall have the meaning ascribed thereto in the Preliminary Statement of this Trust Agreement.

1.9 "Delaware Trustee" shall have the meaning ascribed thereto in the first paragraph of this Trust Agreement.

1.10 "Event of Default" unless otherwise indicated, shall have the meaning ascribed thereto in the Lease.

1.11 "Indenture" means the Deed of Trust, Security Agreement and Assignment of Leases and Rents from the Trust to the Lender.

1.12 "Independent Director" means an individual who serves as a member of the board of directors of an Independent Trustee that is a corporation, and who qualifies under the requirements for an Independent Trustee assuming such corporation were the Trust referenced in such definition.

1.13 "Independent Trustee" means a corporation or a bank who is not at the time of its appointment as the independent trustee, has not been at any time during the preceding five years, and does not become subsequently: (i) a direct or indirect legal or beneficial holder of any stock, partnership or other equity interest in the Trust, any other Trustee or the Beneficiary or any of their Affiliates; (ii) a Creditor, Supplier, employee, officer, director, trustee (other than during the corporation's or the bank's tenure as the independent trustee of the Trust), beneficiary, family member, manager, or contractor of the Trust, any other Trustee or the Beneficiary or any of their Affiliates; or (iii) a person who controls (whether directly, indirectly or otherwise) the Trust, any other Trustee or the Beneficiary or their Affiliates or any Creditor, Supplier, officer, director, beneficiary, manager, trustee or contractor of the Trust, any other Trustee or the Beneficiary or their Affiliates. The initial Independent Trustee shall be ECK Florida Corp.

1.14 "Lease" means the Lease Agreement, dated on or about December \_\_\_, 1997, between the Trust and the Lessee with respect to the Property.

1.15 "Lender" means Bostonia American Lending Group - I, Inc.

1.16 "Lessee" means Eckerd Corporation or its affiliate.

1.17 "Loan Documents" means the Loan Agreement between Lender and the Trust (the "Loan Agreement"), the Indenture, UCC-1 Financing Statements, an Assignment of Leases and Rents related to the Lease, and a pledge of any other of the Trust's assets, and any other agreements, certificates, instruments and documents as may be necessary or convenient in connection with such loan transaction with Lender ("Loan").

1.18 "Operative Agreements" means the Loan Documents and the Lease.

1.19 "Person" means a natural person, or an entity in its own or any representative capacity.

1.20 "Property" means the parcels of real property to be acquired by the Trust located in the City of Mary Esther, Florida.

1.21 "Supplier" means a person or entity who provides or has provided goods or services to the Trust, the Independent Trustee, and any Affiliate thereof such that the total payments received by or due to such person or entity by the Trust, Independent Trustee, and such

Affiliate during such person's or entity's immediately preceding fiscal year are equal to or greater than ten percent (10%) of such person's or entity's total annual gross revenue for such person's or entity's immediately preceding fiscal year.

1.22 - "Trust Agreement" means this agreement.

1.23 "Trust Estate" means all legal title to the Property and all other property, real or personal, of the Trust.

1.24 "Trustees" shall have the meaning ascribed thereto in the first paragraph of this Trust Agreement.

## ARTICLE II TRUST PURPOSE AND RESTRICTIONS; AUTHORITY OF TRUSTEES

2.1 Business Trust Purpose: The Trust is a special purpose entity that has been organized as a Delaware business trust, and will be operated for the following sole and exclusive purposes:

2.1.1 To acquire, own, hold and manage the Property, which is leased to the Lessee for use as a retail store;

2.1.2 To execute, deliver and perform any and all of obligations of the lessor or landlord under the Lease and any and all other leases, or other occupancy agreements with the Lessee or other tenants on the Property;

2.1.3 To execute, deliver and perform any and all other agreements or obligations relating to the acquisition, ownership, operation or management of the Property;

2.1.4 To execute, deliver and perform the Operative Documents;

2.1.5 To borrow money and otherwise incur indebtedness from third parties and to pledge or otherwise grant security interests in its assets to secure such indebtedness, but only to the extent permitted hereunder;

2.1.6 To take any and all other action necessary to maintain the existence of the Trust as a business trust in good standing under the laws of the State of Delaware (pursuant to, among other things, the Delaware Act) and to qualify the Trust to do business as a business trust in any other state in which such qualification, in the opinion of the trustees, is required;

2.1.7 To elect to be organized as a Delaware business trust pursuant to the Delaware Act (12 Del. C. § 3801 *et seq.*); and



2.1.8 To engage in any lawful acts or activities and to exercise any powers permitted to business trusts under the laws of the state of Delaware; provided that any such act, activity or power is related or incidental to and necessary, appropriate or convenient for the accomplishment of the foregoing purposes.

2.2 Restrictions on Trust Action: Notwithstanding any other provision of this Agreement and any provision of law that would so empower the Trust, until the date which is one year and one day after all of the obligations of this Trust under the Loan Documents have been indefeasibly and fully satisfied, the Trust shall not do any of the following:

2.2.1 Engage in any business or activity other than those set forth in Section 2.1 above;

2.2.2 Incur any indebtedness, or assume or guaranty any indebtedness of any other entity other than (i) indebtedness to the Lender; and (ii) indebtedness permitted under the Loan Documents;

2.2.3 Dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity or change its form by electing not to be a Delaware business trust;

2.2.4 Acquire all, or substantially all, of the assets or capital stock or other ownership interest of any other corporation or entity;

2.2.5 Without the affirmative vote of all of the Trustees of the Trust, including the Independent Trustee (and its Independent Director, if applicable), institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file, or consent to, a petition seeking reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Trust or any substantial part of its property, or make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action; provided however, that if the Trust shall not have at least one Trustee who is an Independent Trustee, then no vote shall be taken unless and such an Independent Trustee shall have been duly elected and voting;

2.2.6 Authorize the amendment of this Agreement to: (i) provide for the removal and/or substitution of the Independent Trustee provided for hereunder unless a new Independent Trustee is appointed and accepts such appointment; (ii) enlarge or alter the permitted business purposes of the Trust as provided in Section 2.1 above; (iii) remove ECK Florida Corp. as the Independent Trustee of the Trust (even upon the insolvency or institution of bankruptcy proceedings involving the Trust) unless a new Independent Trustee is appointed and accepts such appointment; or (iv) permit or cause the Trust to dissolve or to liquidate; or

2.2.7 Elect not to be organized as a Delaware business trust pursuant to 12 Del. C. § 3801 et seq.

2.3 Authority of Trustees.

2.3.1 The Beneficiary and the Trustees authorize and direct the Independent Trustee: (i) to execute and deliver, in the name and on behalf of the Trust, each Operative Agreement and all other agreements, instruments, certificates or documents related to the transactions contemplated thereby to which the Trust is a party, and to execute, deliver and issue the note related to the loan transaction with Lender; and (ii) to take whatever action shall be required to be taken by the Trustees or the Trust by the terms of, and exercise the rights and perform the duties under, each of the documents, agreements, instruments and certificates referred to in clause (i) above. Except as specified in this Trust Agreement and expressly subject to all terms and conditions of the Operative Agreements and Sections 2.1, 2.2, 3.2, 4.7, 7.1, 7.4 and Article 9 of this Agreement, the Independent Trustee shall take no action hereunder except as expressly directed by the Beneficiary.

2.3.2 The Beneficiary authorizes and directs the Trustees to execute, and to cause to be filed in the Office of the Secretary of State of the State of Delaware, a Certificate of Trust in the form required by the Delaware Act, and to execute and cause to be filed in the office of the Secretary of State of the State of Delaware such amendments to such Certificate of Trust as may, from time to time, be required under 3810(b) of the Delaware Act.

ARTICLE III  
DISTRIBUTIONS

3.1 Order of Distribution. Subject to the terms and requirements of the Operative Agreements, all payments and amounts received by the Trust, or by any Trustee on its behalf, shall be applied forthwith upon receipt in the following order of priority; first, so much of such payment or amount as shall be required to pay or reimburse the Bank for any fees, compensation, indemnification or expenses (including reasonable attorneys' fees and expenses) not otherwise paid or reimbursed to the Bank and as to which the Bank is entitled to be paid or reimbursed hereunder shall be retained by the Bank; and, second, the balance, if any, of such amounts remaining thereafter shall be distributed promptly following receipt by the Trustee to the Beneficiary or as the Beneficiary shall direct.

3.2 Subordination. Any obligation which the Trust may owe to any of the Beneficiary or the Trustees, whether characterized as a loan, salary, a fee or indemnification, shall be subject to and subordinate to the prior payment in full of the Loan, provided however, so long as no Default or Event of Default exists under the Loan Documents to the extent the Trust has cash flow or other available liquid assets (exclusive of any of the reserve accounts to be maintained under the Loan Documents) in excess of the amount necessary to make current payments of principal and interest due under the Loan Documents, the Trust may pay obligations hereunder due to the Beneficiary or the Trustees of the Trust.

ARTICLE IV  
DUTIES OF THE ADMINISTRATIVE TRUSTEE;  
CERTAIN RIGHTS OF TRUSTEES

4.1 Notice of Certain Events. In the event the Administrative Trustee shall have actual knowledge of any Default or Event of Default, the Administrative Trustee shall give prompt telephonic notice thereof followed by written confirmation to the Beneficiary and any other person identified in writing by the Beneficiary to the Administrative Trustee. Subject to the provisions of Section 4.3, the Administrative Trustee shall take or refrain from taking such action, not inconsistent with the provisions of the Operative Agreements, with respect thereto as the Beneficiary shall direct by written instructions to the Administrative Trustee. If the Administrative Trustee shall have given the Beneficiary notice of any event and shall not have received written instructions as above provided within thirty (30) days after giving notice in accordance with Section 10.4 of such event to the Beneficiary, the Administrative Trustee may, but shall be under no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any action with respect thereto, not inconsistent with the provisions of the Operative Agreements, as the Administrative Trustee shall deem advisable and in the best interests of the Beneficiary.

4.2 Action upon Instructions. Subject to the provisions of Section 4.3, upon the written instructions of the Beneficiary, the Independent Trustee will take or refrain from taking such action or actions, not inconsistent with the provisions of the Operative Agreements, as may be specified in such instructions.

4.3 Indemnification. No Trustee shall be required to take or refrain from taking any action under this Trust Agreement or any Operative Agreement unless such Trustee shall have been indemnified by the Beneficiary, in manner and form reasonably satisfactory to such Trustee, against any liability, fee, cost or expense (including reasonable attorneys' fees and expenses) that may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of such Trustee or, with respect to the Administrative Trustee, from the failure of the Administrative Trustee to use ordinary care in the receiving, handling and distribution of funds.

4.4 No Duties Except as Specified in Trust Agreement or Instructions. No Trustee shall have any duty or obligation to manage, control, use, make any payment in respect of register, record, insure, inspect, sell, dispose of or otherwise deal with the Property, or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any Operative Agreement, except as expressly provided by the terms of this Trust Agreement or in written instructions from the Beneficiary; and no implied duties or obligations shall be read into this Trust Agreement against of the Trustees.

4.5 No Independent Action. The Trustees agree that they will not manage, control, use, sell, dispose of or otherwise deal with the Property or any other part of the Trust Estate, except as directed by the Beneficiary hereunder in accordance with the express terms of this Trust Agreement or any Operative Agreement.

4.6 Delegation to Agents, Etc. The Administrative Trustee, in the exercise or administration of the trusts and powers hereunder, including its obligations under Section 4.2 hereof, may, at the reasonable expense of the Trust, employ agents, attorneys, accountants and auditors and enter into agreements with any of them, and the Administrative Trustee shall not be liable, either in its individual capacity or in its capacity as Trustee, for the default or misconduct of any such agents, attorneys, accountants or auditors if such agents, attorneys, accountants or auditors shall have been selected by it in good faith.

4.7 Maintenance of Separate Business: The Trust shall at all times:

4.7.1 To the extent its office is located in the offices of any Affiliate, pay fair market rent for its office space located therein and not engage in any business transaction with any Affiliate or other entity unless on an arm's-length basis;

4.7.2 Maintain its books, financial statements, accounting records and other corporate documents and records separate from those of any Affiliate or any other entity and characterize itself as a separate entity from any Affiliate in each and every report, tax return or financial statement;

4.7.3 Not commingle its assets with those of any Affiliate or other entity;

4.7.4 Maintain its books of account, bank accounts and payroll separate from those of any Affiliate;

4.7.5 Act solely in its own name and through its own authorized officers and agents, use separate stationery, invoices and checks and in all respects, hold itself out as a separate entity separate and distinct from its Trustees or the Beneficiary and any other entity;

4.7.6 Make investments directly or by brokers engaged and paid by the Trust 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);

4.7.7 Separately manage the Trust's liabilities from those of its Trustees and the Beneficiary and all other Affiliates and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except a Trustee or other Affiliate may pay the organizational expenses of the Trust and maintain a sufficient number of employees in light of the Trust's contemplated business operations;

4.7.8 Pay from the Trust's assets all obligations and indebtedness of any kind incurred by the Trust;

4.7.9 Not acquire obligations or security of the Trust's Trustees or the Beneficiary or Affiliates;

4.7.10 Use separate stationery, invoices and checks;

4.7.11 Not pledge the Trust's assets for the benefit of any entity or make any loans or advances to any entity;

4.7.12 Correct any known misunderstanding regarding the Trust's separate identity; and

4.7.13 Maintain adequate capital in light of its contemplated business operations.

The Trust shall abide by all organizational formalities, including the maintenance of current minute books, and the Trust shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Trust and its assets and liabilities. The Trust shall (i) pay all its liabilities, (ii) not assume the liabilities of any Trustee or the Beneficiary or other Affiliate or incur any liability to any Affiliate or its respective creditors, and (iii) not guarantee the liabilities of any Trustee or the Beneficiary or any other Affiliate or any other party. The Independent Trustee shall make its decisions under the Operative Agreements independent of, and not dictated by, any Beneficiary of other Affiliate. The Trustees (other than the Delaware Trustee) and the Beneficiary shall be required to consider the interests of the creditors of the Trust in connection with all actions conducted by the Trust.

## ARTICLE V THE TRUSTEES

### 5.1 Acceptance of Trust and Duties.

(a) The Trustees accept the Trust hereby created and agree to perform in their capacities as Trustees, but only upon the terms and conditions of this Trust Agreement. The Trustees shall not be answerable or accountable under any circumstances, except for (i) their own willful misconduct or gross negligence, (ii) the inaccuracy of any of their representations or warranties contained in this Trust Agreement, (iii) taxes based on or measured by any fees, commissions or compensation received by them for acting as Trustees in connection with any of the transactions contemplated by the Operative Agreements, or (iv) with respect to the Administrative Trustee, the failure of the Administrative Trustee to use ordinary care in receiving, handling and disbursing of funds.

(b) The Delaware Trustee is appointed to serve as the Trustee of the Trust in the State of Delaware for the sole purpose of satisfying the requirement of Section 3807 of the Delaware Act that the Trust have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto and the Beneficiary that the Delaware Trustee shall have none of the duties or liabilities of the other Trustees. The duties of the Delaware Trustee shall be limited to (a) accepting legal process served on the Trust in the State of Delaware and (b) the execution of any certificates required to be filed with the Delaware Secretary of State which

the Delaware Trustee is required to execute under Section 3811 of the Delaware Act. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Beneficiary, it is hereby understood and agreed by the other parties hereto and the Beneficiary that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

5.2 Furnishing of Documents. Each Trustee other than the Independent Trustee and the Delaware Trustee will furnish to the Beneficiary, and to such other Persons as the Beneficiary shall direct in writing, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other instruments or writings furnished to such Trustee hereunder or to the Trust under the Operative Agreements, unless by the express terms of any Operative Agreement a copy of the same is required to be furnished by some other Person directly to the Beneficiary, or such Trustee shall have determined that the same has already been furnished to the Beneficiary.

5.3 No Representations or Warranties as to any Property or Operative Agreements. Neither the Bank, the Delaware Trustee, Dinkin, the Administrative Trustee, ECK Florida, the Independent Trustee nor any Beneficiary makes any representation or warrants, either express or implied, as to the title, value, condition, design, operation, merchantability or fitness for use of any property or any other representation, express or implied, with respect to any property whatsoever; and no representation or warranty as to the validity or enforceability of any Operative Agreement or as to the correctness of any statement made by a Person other than it contained in any thereof, except that each of the Bank, Dinkin, ECK Florida and the Beneficiary represents, warrants and covenants that this Trust Agreement has been, and that each of the other Operative Agreements to which it is a party has been or will be, duly executed and delivered by a Person who is, or will be, duly authorized to execute and deliver such documents on its behalf.

5.4 Reliance on Advice of Counsel. No Trustee shall incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. A Trustee may accept and rely upon (a) a certified copy of a resolution of the board of directors or other governing body of any corporate party and (b) a copy certified by any general partner of any resolution of any partnership party as conclusive evidence that such resolution has been duly adopted by such party and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, a Trustee may for all purposes hereof rely on an officer's or general partner's certificate of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to such Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the Trust, a Trustee: (i) may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and such Trustee shall not be liable for the default or misconduct of any agent or attorney selected by it in good faith; and (ii) may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and no Trustee shall be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled Persons.

5.5 Liability with Respect to Documents. Neither any Trustee, in its individual capacity or as Trustee, nor the Beneficiary shall incur any liability to any Person for or in respect of the recitals herein, the validity or sufficiency of this Trust Agreement or for the due execution hereof by any other party hereto or for the form, character, genuineness, sufficiency, value or validity of any part of the Trust Estate or for or in respect of the validity or sufficiency of any of the Operative Agreements and neither Trustee, in its individual capacity or as trustee, nor the Beneficiary shall assume or incur any liability, duty or obligation to any other Person except as expressly provided herein.

5.6 No Acting in Individual Capacity. All Persons (other than the Beneficiary to the extent provided herein) having any claims against any Trustee, in its individual capacity or as Trustee, by reason of the transactions contemplated by the Operative Agreements shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article V.

5.7 Books and Records; Tax Returns.

5.7.1 For federal and state income tax purposes the parties hereto intend that this Trust constitutes and shall report income tax returns as an Illinois land trust of the type described in Revenue Ruling 92-105, 1992-2 C.B. 204.

5.7.2 No Trustee, either in its trust or individual capacity, shall be under any obligation to appear in, prosecute or defend any action, which in its opinion may require it to incur any out-of-pocket expense or any liability unless it shall be furnished with such reasonable security and indemnity against such expense or liability as it may require. The Beneficiary may, but shall be under no duty to, undertake such action as it may deem necessary at any and all times, without any further action by the Trustees to protect the Trust Estate and the rights and interests of the beneficiary pursuant to the terms of this Trust Agreement.

ARTICLE VI  
INDEMNIFICATION AND COMPENSATION OF THE TRUSTEES

6.1 The Beneficiary to Indemnify Dinkin, ECK Florida and the Bank. The Beneficiary agrees to assume liability for, and to indemnify and hold harmless each of Dinkin, ECK Florida and the Bank and each of their respective officers, directors, employees and agents (hereinafter, the "Indemnities") from and against, any and all obligations, liabilities, losses, actions, suits, penalties, taxes (other than any taxes on, based on or measured by the compensation received by such Indemnatee for acting as Trustee hereunder), claims, demands, costs and expenses (including without limitation reasonable attorneys fees and expenses) of any nature whatsoever which may be imposed on, incurred by or asserted at any time against such Indemnatee in any way relating to or arising out of the Trust, the administration of the Trust Estate or any action or inaction of such Indemnatee hereunder, under the Operative Agreements or any transaction contemplated thereby, or in any way relating to or arising out of or alleged to arise out of (a) the financing, refinancing, purchase, acceptance, rejection, ownership, design, construction, delivery,

nondelivery, leasing, subleasing, possession, use, operation, repair, modification, transportation, condition, sale, return, repossession (whether by summary proceedings or otherwise), or any disposition of the Property or any part of the Trust Estate; (b) any latent or other defects whether or not discoverable; (c) a violation of environmental laws, or other loss of or damage to the Property or the environment relating to the Property or the Beneficiary; (d) any breach by the Beneficiary of any of its representations or warranties under the Operative Agreements or failure by the beneficiary to perform or observe any covenant or agreement to be performed by it under any of the Operative Agreements; (e) personal injury, death or property damage, including claim based on strict liability in tort; and (f) any liability incurred by the Bank or Independent Trustee, in connection with the filing of any tax return of the Trust except only that the beneficiary shall not be required to indemnify such Indemnitee for expenses arising or resulting from any of the matters described in the last sentence of Section 5.1 hereof. The indemnities contained in this Section 6.1 shall survive the resignation or removal of the Trustee and the termination of the Trust and this Trust Agreement.

6.2 Compensation and Expenses. The Bank shall receive from the Beneficiary as compensation for its services hereunder such fees as shall, from time to time, be agreed upon by the Beneficiary and the Bank. The Bank shall also be entitled to be reimbursed by the Beneficiary for its reasonable expenses (including reasonable attorneys' fees) incurred in the performance of its duties as Trustee hereunder and to be compensated reasonably for any extraordinary services rendered hereunder at the request of the Beneficiary.

## ARTICLE VII

### TERMINATION OF TRUST AGREEMENT; RESTRICTIONS ON ASSIGNMENT

7.1 Termination of Trust Agreement. This Trust Agreement and the Trust shall terminate and, subject to the provisions of the other Operative Agreements and Article III hereof, the Trust Estate shall be distributed to the Beneficiary, and this Trust Agreement shall be of no further force or effect, upon the earlier of (1) the written request of the Beneficiary following the sale or other final disposition of all property constituting part of the Trust Estate and the final distribution by the Trustee or its agent of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article IV and (ii) the date that is one hundred and ten (110) years after the earliest execution of this Trust Agreement by any party hereto. Notwithstanding the foregoing and any other provision of this Trust Agreement to the contrary, so long as the lien of the Indenture has not been released and the full repayment of all obligations under the Loan have not been made, neither this Trust Agreement nor the Trust may be terminated, nor may the purpose or the power of the Trust be amended, by the Beneficiary or any Trustee.

7.2 Actions by the Administrative Trustee upon Termination. Upon termination of this Trust Agreement and the Trust pursuant to Section 7.1 or 7.2 and the winding up of the Trust, the Administrative Trustee shall execute and file in the Office of the Secretary of State of the State of Delaware a Certificate of Cancellation in the form required by Section 3810(d) of the Delaware Act.



7.3 Restrictions on Assignment. If the assignment of any beneficial interest in the Trust results in any assignee becoming the owner of 49% or more of the outstanding beneficial interest in the Trust, written confirmation shall be required to be received from each rating agency then maintaining a rating on any security issue to fund the debt described in the Loan Documents that such assignment will not result in the failure of such rating agency to maintain or reaffirm its rating.

## ARTICLE VIII SUCCESSOR TRUSTEES, CO-TRUSTEES AND SEPARATE TRUSTEES

### 8.1 Resignation of Trustee: Appointment of Successor.

8.1.1 Any Trustee (other than the Independent Trustee) may resign at any time without cause by giving at least thirty (30) days' prior written notice to the Beneficiary, such resignation to be effective on the acceptance of appointment by a successor Trustee under Section 8.1(b). Any Trustee other than the Independent Trustee may be removed with or without cause at any time by the Beneficiary with five (5) days' prior written notice. Any such removal shall be effective in accordance with its terms. In case of the resignation or removal of a Trustee, the Beneficiary may appoint a successor Trustee by an instrument signed by the Beneficiary. If a successor Trustee shall not have been appointed within 30 days after the giving of written notice of a resignation by Trustee, such Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed by the Beneficiary.

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

8.2 Co-Trustees and Separate Trustees. Whenever the Beneficiary shall deem it necessary or prudent in order either to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to make any claim or bring any suit with respect to the Trust Estate, or any Operative Agreement, or the Beneficiary shall be advised by counsel satisfactory to the Beneficiary, that it is necessary or prudent, the Beneficiary shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action, necessary or proper to appoint one or more Persons (and the Beneficiary, may appoint one or more of its officers) either as co-trustee or co-trustees jointly with the Trustees of all or any part of the Trust Estate, or as separate trustee or separate co-trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or

any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Beneficiary. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee, without the appointment of a successor to such co-trustee or separate trustee.

## ARTICLE IX AMENDMENTS

Notwithstanding any other provision of this Trust Agreement or any provision of law, until the date which is one year and one day after all of the obligations under the Loan Documents have been indefeasibly and fully satisfied, the following provisions of this Agreement shall not be amended, altered, changed unless the Independent Trustee is then in office and voting and the Independent Trustee affirmatively votes in favor of such amendment, alteration, change or repeal and unless at least thirty (30) days prior written notice of any such proposed amendment is sent to the Lender and written confirmation is received from each rating agency then maintaining a rating on any securities issued to fund the debt described in the Loan Documents that such amendment, alteration, change or repeal will not result in the failure of such rating agency to maintain or reaffirm its rating:

- (a) The limitations on its permitted business purposes in Section 2.1 hereof;
- (b) The restrictions on Trust action in Section 2.2 hereof;
- (c) This Article IX;
- (d) The maintenance of separate business provisions in Section 4.7 hereof;
- (e) The definitions in Article I;
- (f) The subordination provisions of Section 3.2 hereof; or
- (g) The restrictions on assignment of Section 7.4 hereof.

## ARTICLE X MISCELLANEOUS

10.1 No Legal Title to Trust Estate in the Beneficiary. The Beneficiary shall not have legal title to any part of the Trust Estate; provided, however, that the Beneficiary shall have the sole beneficial interest in the Trust Estate. No transfer, by operation of law or otherwise, of any right, title or interest of the Beneficiary in and to the Trust Estate or hereunder shall operate to

terminate this Trust Agreement or the trusts created hereby or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

10.2 Sale of Properties by the Administrative Trustee is Binding. Any sale, transfer, mortgage, or other conveyance of any of the Trust Estate or any part thereof by the Administrative Trustee on behalf of the Trust made pursuant to the terms of this Trust Agreement or any other Operative Agreement shall bind the Beneficiary and shall be effective to sell, transfer, mortgage, and convey all right, title and interest of the Administrative Trustee and the Beneficiary in and to the Trust Estate or any part thereof intended to be sold, transferred, mortgaged or conveyed. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale, mortgage or conveyance or as to the application of any sale or other proceeds with respect thereto by the Administrative Trustee. Nothing herein shall be deemed to permit any sale, transfer or other conveyance of the Trust Estate or any part thereof by the Administrative Trustee on behalf of the Trust other than in accordance with the terms of the Operative Agreements.

10.3 Limitations on Rights of Others. Nothing in this Trust Agreement, whether express or implied, shall be construed to give to any Person, other than Dinkin, the Administrative Trustee, ECK Florida, the Independent Trustee, the Bank, the Delaware Trustee and the Beneficiary any legal or equitable right, remedy or claim under or in respect of this Trust Agreement, any covenants, conditions or provisions contained herein or in the Trust Estate. Without limiting the generality of the foregoing, as provided in Section 3805 of the Delaware Act, no creditor of a Beneficiary shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the Trust Estate.

10.4 Notices. Unless otherwise expressly specified or permitted by the terms hereof, notices and communications required or permitted to be given or made under the terms hereof shall be in writing. Any such communication or notice shall be deemed to have been duly made or given (i) upon personal delivery, including, without limitation, by express mail or courier service, (ii) in the case of mail delivery, upon receipt, refusal of delivery or return for failure of the intended recipient to retrieve such communication, or (iii) in the case of transmission by facsimile, upon telephone and return facsimile confirmation and, in each case, if addressed to the intended recipient at the following office, or to such other address or addressee as the parties may from time to time designate in writing to the parties hereto:

If to the Beneficiary:

The Allen D. Kohl 1984 Trust  
c/o Regent Properties, Inc.  
450 North Roxbury Drive, Suite 600  
Beverly Hills, California 90210  
Phone: (310) 276-5330

with a copy to:

Leigh Morris, Esquire  
Troop Meisinger Steuber & Pasich, LLP  
10940 Wilshire Boulevard, Suite 800  
Los Angeles, California 90024-3902  
Phone: (310) 443-7507

If to the Delaware Trustee:

Wilmington Trust Company  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Administration  
Phone: (302) 651-1000  
Fax: (302) 651-8882

If to the Administrative Trustee:

Jeffrey Dinkin  
c/o Regent Properties, Inc.  
450 North Roxbury Drive, Suite 600  
Beverly Hills, California 90210  
Phone: (310) 276-5330

If to the Independent Trustee:

ECK Florida Corp.  
c/o Regent Properties, Inc.  
450 North Roxbury Drive, Suite 600  
Beverly Hills, California 90210  
Phone: (310) 276-5330

10.5 Severability. Any provision of this Trust Agreement that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.6 Limitation on the Beneficiary's Liability. The Beneficiary shall not have any liability for the performance of the Trust except as expressly set forth herein.

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

10.8 Successors and Assigns. All covenants and agreements contained herein shall be binding upon, and insure to the benefit of, the parties hereto and their respective successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Beneficiary shall bind the successors and assigns of the Beneficiary.

10.9 Headings and Table of Contents. The headings and table of contents 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.

10.10 Governing Law. This Trust Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware. The Trust created hereby shall be deemed a Delaware business trust for all purposes of the Delaware Act.

10.11 Performance by the Beneficiary. Any obligation of a Trustee hereunder or under any Operative Agreement or other document contemplated herein may be performed by the Beneficiary and any such performance shall not be construed as a revocation of the trust created hereby,

10.12 No Implied Waiver. No term or provision of this Trust Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing entered into as provided in Article IX; and any such waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

10.13 Name. The name of the Trust created by this Trust Agreement is "EckTrust-Florida."

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

BENEFICIARY:  
The Allen D. Kohl 1984 Trust

By: Allen Kohl  
Allen D. Kohl, Trustee

By: Bonnie Kohl by Jeffrey Dink as atty in fact  
Bonnie Aaron Kohl, Trustee

DELAWARE TRUSTEE:  
Wilmington Trust Company, a Delaware banking corporation

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

ADMINISTRATIVE TRUSTEE:

Jeffrey Dinkin  
Jeffrey Dinkin

INDEPENDENT TRUSTEE:  
ECK Florida Corp., a Delaware corporation

By: Jeffrey Dinkin  
Name: Jeffrey Dinkin  
Title: President

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