

Document Number Only

D980000016

CT CORPORATION SYSTEM

660 EAST JEFFERSON STREET

Requestor's Name
TALLAHASSEE, FL 32301

Address
222-1092

City State Zip Phone

CORPORATION(S) NAME

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****358.75 ****358.75

Winter Springs Business Trust

- ☐ Profit
☐ NonProfit
☒ Limited Liability Co.
☒ Foreign Business Trust
☐ Limited Partnership
☐ Reinstatement
☐ Certified Copy
☐ Call When Ready
☒ Walk In
☐ Mail Out
- ☐ Amendment
☐ Dissolution/Withdrawal
☐ Annual Report
☐ Reservation
☐ Photo Copies
☐ Call if Problem
☐ Will Wait
- ☐ Merger
☐ Mark
☐ Other
☐ Change of R.A.
☐ Fictitious Name Filing
☒ CUS
☐ After 4:30
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Name	
Availability	
Document Examiner	
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Verifier	
Acknowledgment	
W.P. Verifier	

MAR 26 1998

Thanks,
Jeff

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

Winter Springs Business Trust

A Delaware Business **TRUST**

FILED
98 MAR 26 PM 1:32
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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 Winter Springs Business Trust

(Name of Trust)

a Delaware Business

(State)

Winter Springs Business Trust

(Name of Trust)

Trust hereby affirms in order to file or qualify

, in the State of Florida.

1. Two or more persons are named in the Trust.
2. The principal address is 570 Delaware Avenue
Buffalo, New York 14202 ATTN: Blaine S. Schwartz, Esq.
3. The registered agent and office in the State of Florida is:
C T Corporation System
1200 South Pine Island Road
Plantation, Florida 33324
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.
Connie Bryan
SPECIAL ASSISTANT SECRETARY
(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.

David H. Baldauf
Name: David H. Baldauf, Vice President of
Chairman of the Board of Trustees Winter Springs SPE, Inc.
Managing Trustee

NOTARY

State of NY, ss
County of Erie

Sworn to before me by David H. Baldauf as Managing
Trustee of Winter Springs SPE, Inc. who is personally
known to me and who did not take an oath

Blaine S. Schwartz

BLAINE S. SCHWARTZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 29, 1998

FILED

98 MAR 26 PM 1:32

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

TRUST AGREEMENT

(WINTER SPRINGS BUSINESS TRUST)

This TRUST AGREEMENT (the "Trust Agreement") of the Winter Springs Business Trust (the "Trust"), dated as of February 27, 1998, is made by and among Victoria Estates, LTD., a Florida limited partnership (the "Owner Participant"), Wilmington Trust Company, a Delaware Banking Corporation (the "Resident Trustee"), and Winter Springs SPE, Inc., a Florida Corporation as trustee (the "Managing Trustee").

WITNESSETH:

WHEREAS, the trust has acquired or will acquire that parcel of land described in Exhibit "A" attached hereto and made a part hereof (the "Land");

WHEREAS, the Buffalo-Victoria Business Trust, a Delaware business trust ("Victoria") Trust has or will acquire the improvements located or being constructed on the Land (the "Improvements") (the Land and Improvements, collectively are described as the "Property");

WHEREAS, the Trust (or the Managing Trustee on behalf of the Trust) as ground lessor, and Victoria (or Victoria's managing trustee on behalf of Victoria), as ground lessee, have entered or will enter into long-term ground leases for the Land (the "Ground Leases");

WHEREAS, Victoria (or the managing trustee on behalf of Victoria), as landlord, will assume that certain lease originally entered into between Ardmore Properties, Inc. as original landlord and Walgreen Co. as Tenant. The Lease is referred to as the "Lease" or "Lease Agreement";

WHEREAS, the Owner Participant, Resident Trustee and Managing Trustee have agreed to create a "Delaware Business Trust" in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del.C. § 3801 et seq. (the "Delaware Business Trust Statute"), the sole purpose of which shall be to acquire the Land, lease the Land to Victoria pursuant to the terms of the Ground Leases, and ultimately sell the Land; and

WHEREAS, the Owner Participant, Resident Trustee and Managing Trustee intend that this Trust Agreement constitute the "governing instrument" (as defined in § 3801(f) of the Delaware Business Trust Statute) of the Trust.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner Participant and each successor Owner, Resident Trustee and Managing Trustee hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions.

a. For all purposes of this Trust Agreement, the capitalized terms set forth below shall have the following meanings:

"Affiliate" shall mean, with respect to any specified Person (i) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, or (ii) any other Person which owns beneficially, directly or indirectly, any interest in such specified Person. For purposes of this specified Person, shall mean the definition, "control", when used with respect to any specified 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.

"BDL" shall have the meaning assigned to such term in the recitals to this Trust Agreement.

"Closing Date" shall mean the date that the Trust acquires title to the Land and enters into the Ground Lease with Victoria.

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

"Financing Documents" shall mean all instruments, agreements and other documents creating, evidencing, or securing the Loan, and any and all amendments, restatements, renewals, extensions or rearrangements thereof, including, without limitation, any promissory note, mortgage, deed of trust or deed to secure debt and assignment of leases and rents; provided, however, that "Financing Documents" shall refer solely to such instruments, agreements and other documents executed in connection with that certain Loan to be assumed by WS (or the Trust) and Victoria which loan is evidenced by that Certain Promissory Note (the "Note") dated December 15, 1993 made by Michael Daly and Audrey Daly ("Borrowers") in favor of Confederation Life Insurance Company ("Original Lender"); which Note is secured by, inter alia, that certain first priority Mortgage and Security Agreement dated December 15, 1993 made by Borrowers in favor of Original Lender and recorded on December 16, 1993, in Public Records of Seminole County, Florida (the "Public Records") in Book 2697, Page 1486 encumbering the Property; which mortgage was assigned to Morgan Guaranty Trust Company of New York, as Investment Advisor for Series Portfolio II on behalf of the Global Strategic Income Portfolio ("Lender") pursuant to that certain Assignment of Mortgage dated May 22, 1997 made by Original Lender in favor of Lender, and recorded on June 17, 1997, in the Public Records in Book 3254, Page 403; and which mortgage is to be assumed by Winter Springs and Victoria pursuant to that certain Loan Assumption and Modification Agreement by and among Borrowers, Winter Springs, Victoria and Lender, and to be recorded in the Public Records.

"Ground Lease" shall have the meaning assigned to such term in the recitals to this Trust Agreement.

"Independent Director" shall be an individual who is not, and has never been at any time during the preceding five (5) years, and does not become subsequently: (i) a

direct or indirect legal or beneficial holder or owner of any stock, partnership or other equity interest in the Managing Trustee (if it is ever a corporation), the Trust, or Owner or any of their respective Affiliates; (ii) a substantial creditor, supplier or customer, or an employee, officer, director (other than during the individual's tenure as Independent Director), trustee, beneficiary, manager or contractor of the Managing Trustee (if it is ever a corporation), the Trust, the Owner or any of their respective Affiliates; (iii) a person who controls (whether directly, indirectly or otherwise) the Managing Trustee (if it is ever a corporation), the Trust, the Owner or their respective Affiliates or any substantial creditor, supplier or customer or an officer, director, beneficiary, manager, trustee or contractor of the Managing Trustee, the Trust, the Owner or their respective Affiliates, or (iv) a spouse, parent, sibling or child of any Person described in clauses (i), (ii) or (iii) above.

"Land" shall have the meaning assigned to such term in the recitals to this Agreement.

"Lease" or "Lease Agreement" shall have the meaning assigned to such term in the recitals to this Agreement.

"Lender" Morgan Guaranty Trust Company of New York, its successors and/or assigns.

"Lien" shall mean any mortgage, deed of trust, pledge, security interest, encumbrance, lien, easement, restriction, servitude or charge of any kind encumbering the Property, including, without limitation, any irrevocable license, conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to execute as "debtor", any financing or continuation statement under the Uniform Commercial Code of any jurisdiction or any federal, state or local lien imposed pursuant to any environmental Law.

"Loan" shall mean the loan to be obtained from Lender which loan is to be evidenced by the financing documents (as any of the same may be thereafter amended, restated, renewed, extended or assumed) by the Trust and Victoria (upon the direction of Lender or Owner of Victoria as provided in the Victoria Trust Agreement).

"Managing Trustee" shall mean the Person identified by such term in the first paragraph of this Trust Agreement and each successor of such Person pursuant to Section 10.1 hereof.

"Note" shall have the meaning assigned to such term in the definition of "Loan."

"Owner" shall mean the Owner Participant and each of its successors in interest as beneficiaries of the Trust pursuant to Article III hereof.

"Owner Participant" shall have the meaning assigned to such term in the first paragraph of this Trust Agreement.

"Person" shall mean a natural person, corporation, limited partnership, general partnership, business trust or other form of association.

"Property" shall have the meaning assigned to such term in the recitals to this Trust Agreement.

"Qualified Independent Trustee" shall be an individual who, or a "single purpose entity" which, is not, and has never been at any time during the preceding five (5) years,

and does not become subsequently: (i) a direct or indirect legal or beneficial holder or owner of any stock, partnership or other equity interest in the Trust or Owner or any of their respective Affiliates, (ii) a substantial creditor, supplier or customer, or an employee, officer, director, trustee (other than during the Person's tenure as a Qualified Independent Trustee of the Trust), beneficiary, manager or contractor of the Trust, the Owner or any of their respective Affiliates; (iii) a Person who controls (whether directly, indirectly or otherwise) the Trust, the Owner or their respective Affiliates or any substantial creditor, supplier or customer or an officer, director, beneficiary, manager, trustee or contractor of the Trust, the Owner or their respective Affiliates, or (iv) a spouse, parent, sibling or child of any Person described in clauses (i), (ii) or (iii) above.

"Resident Trustee" shall mean the Person identified by such term in the first paragraph of this Trust Agreement and each successor of such Person pursuant to Section 10.1 hereof.

"Victoria" shall have the meaning assigned to such term in the recitals to this Trust Agreement.

"Trust Property" shall mean the Property, the Ground Lease, the Lease and any other assets of the Trust that may hereafter be acquired.

"Trustee" shall mean any one of the Resident Trustee and Managing Trustee and "Trustees" shall mean all of the Resident Trustee and Managing Trustee.

b. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to them in the Financing Documents.

Section 1.2 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 1.3 References. All section references, unless otherwise indicated, shall be to sections of this Trust Agreement.

ARTICLE II

FORMATION OF TRUST

Section 2.1 Name. The Trust created hereby shall be a Delaware business trust and the name of the Trust shall be the Victoria Springs Business Trust.

Section 2.2 Office. The office of the Trust shall be in care of the Managing Trustee, at the address set forth in Section 14.5 or at such other address as the Managing Trustee may designate by notice to the Owner.

Section 2.3 Intent: Business Trust Purposes.

a. The Trust shall hold the Trust Property for investment purposes only and not for the active conduct of a trade or business. The Trust shall conduct no

business nor, except as provided under the Financing Documents, acquire any property or assume, suffer or create any liabilities other than as specifically set forth in this Section 2.3. The Trust is intended to qualify as a fixed investment trust within the meaning of Treasury Regulations Section 301.7701-4(c) and it is neither the purpose nor the intent of the parties hereto to create a partnership, joint venture, or association taxable as a corporation between or among any or all of the Owner, Resident Trustee, Managing Trustee and/or Independent Trustee. In furtherance of the foregoing, the purpose of the Trust shall be to protect and conserve the assets of the Trust, and the Trust shall not at any time engage in or carry on any kind of business or any kind of investment activity, except that which pertains to the owning, leasing, maintenance and sale of the Trust Property. In no event shall any of the Trustees or any other person have any "power to vary the investment" of the Owner in this Trust, or to substitute new investments or reinvest so as to enable the Trust to take advantage of variations in the market to improve the investment of the Owner. Any ambiguity in this Trust Agreement shall be interpreted consistently with the above described intent and with the Trust's status as a fixed investment grantor trust for federal income tax purposes. Each Owner agrees to report with all governmental and taxing authorities its interest in the Trust in a manner consistent with the foregoing and each Owner and Trustee agrees otherwise not to take any action that would be inconsistent with the foregoing and that the provisions of the Trust Agreement shall be construed to further the foregoing. The Trust shall be treated as a grantor trust for federal income tax purposes.

b. The Trust is a special purpose entity that has been organized as a Delaware Business Trust, and will be operated at the discretion of the Owner for the following sole and exclusive purposes:

i. To acquire, own, hold, lease, manage and sell the Property which is or will be leased to Victoria pursuant to the terms of the Ground Lease.

ii. To execute, deliver and perform any and all of the obligations of the lessor or landlord under the Ground Lease of the Land with Victoria and any and all other leases, or other occupancy agreements with Victoria;

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

iv. To execute, deliver and perform the Financing Documents;

v. 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 expressly permitted in Section 2.8 hereof and the Financing Documents;

vi. 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, 12 Del.C. §3801 et seq.) 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 Managing Trustee, is required;

vii. To elect to be organized as a Delaware Business Trust pursuant to 12 Del.C. §3801 et seq.;

viii. To sell the Property at such time, for such price and upon such terms as the Managing Trustee shall determine to be in the best interest of the Trust and which is not inconsistent with the applicable terms of the Financing Documents;

ix. 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 or appropriate for the accomplishment of the foregoing purposes; and consistent with the intent expressed herein.

Section 2.4 Declaration of Trust. As of the date of this Trust Agreement, the Owner Participant has granted to the Managing Trustee and its successors and assigns, forever, all right, title and interest of the Owner Participant in and to the sum of ten dollars (\$10.00), and the right for the Trust to acquire the Improvements and Property, which constitute the initial assets of the Trust, and the Managing Trustee hereby acknowledges receipt of such sums, rights and other property, to have and to hold, together with any other Trust Property, until this Trust Agreement terminates pursuant to Article IX hereof. Managing Trustee hereby declares that it will hold the Trust Property upon the terms and subject to the conditions set forth herein for the use and benefit of the Owner as owner giving due consideration to the status of the Trust for federal income tax purposes as described above in Section 2.3 hereof, subject to the obligations of the Trust under the Financing Documents. It is the intention of the parties hereto that the Trust constitute a "business trust" under Chapter 38 of Title 12 of the Delaware Code. The Trustees shall cause the filing of a Certificate of Business Trust (the "Certificate of Trust") with the Secretary of State of the State of Delaware (the "Secretary of State") pursuant to Section 3810 of title 12 of the Delaware Code.

Section 2.5 Limitation on Certain Activities. Notwithstanding any provisions of this Trust Agreement and any provision of law that otherwise so empowers the Trustees or the Owner, neither the Trustees nor the Owner shall cause the Trust nor shall the Owner direct the Trustees, or any of them, to cause the Trust to perform any act in contravention of the intended characterization for federal income tax purposes of the Trust as set forth in Section 2.3 hereof.

Section 2.6 Authority to Execute and Perform Various Documents. Notwithstanding any provision to the contrary contained in this Article 11 or otherwise in this Trust Agreement, the Trust is hereby authorized, without the consent or approval of, or other action by, any Person, to enter into and assume the Loan by executing, delivering and performing, inter alia, the Financing Documents and a hazardous substance indemnity agreement to be dated on or about the closing date made by WS and Victoria in favor of Lender. The Owner hereby authorizes and directs the Managing Trustee, acting alone and without the consent, joinder or approval of the other Trustee to execute and deliver on behalf of the Trust each of the foregoing documents and such other documents, agreements, instruments and certificates relating to the Lease or Financing Documents as the Managing Trustee may deem appropriate.

Section 2.7 Title to Trust Property. Title to all of the Trust Property shall be vested in the Trust as a separate legal entity; provided, however, that if the laws of any jurisdiction in which any of the Trust Property is located require that title to any part of the Trust Property be vested or deemed to be vested in a trustee of the Trust, then title to that part of the Trust Property shall be vested or deemed to be vested in the Managing Trustee exclusively (but specifically excluding the Resident Trustee) or any co-trustee or separate trustee of the Managing Trustee, as the case may be, appointed pursuant to Section 10.2 hereof.

Section 2.8 Further Restrictions on Trust Action: Notwithstanding any other provision of this Trust Agreement and any provision of law that would so empower the Trust, until the date that the full balance of the Loan has been indefeasibly paid, the Trust shall not, and shall not permit the Trustees or Owner to (and the Trustees and Owner agree not to) direct or cause the Trust to do, or consent to the Trust's doing, any of the following:

- i. engage in any business or activity other than those set forth in Section 2.3 above;
- ii. incur or permit to remain outstanding to, or assume or guarantee any indebtedness of, any Person, or assume or guaranty the performance of any obligation of any Person other than (A) indebtedness to Lender, (B) indebtedness expressly permitted under the Financing Documents, (C) obligations to the Tenant under the Lease or to other tenants or occupants of the Property under any other lease of the Property and (D) normal and reasonable unsecured operating, administrative and trade expenses;
- iii. dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity, or, except as expressly permitted by the Financing Documents, convey or transfer its properties and assets to any Person or change its form by electing not to be a Delaware business trust;
- iv. own or acquire any obligations, assets, capital stock, securities or other ownership interest of any other Person;
- v. pledge any of the Trust's property for the benefit of any Person, except as provided in the Financing Documents, and shall not allow any Person to guaranty the liabilities or obligations of the Trust, or pledge any of its assets for the benefit of the Trust;
- vi. hold itself out as responsible for the debts and obligations of any of its Affiliates or any other Person;
- vii. permit the respective assets or funds of the Trust to be used to satisfy the liabilities of any other Person, or use the assets or funds of any other Person to satisfy the liabilities of the Trust;
- viii. without the affirmative vote of a Qualified Independent Trustee of the Trust, 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 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 any action in furtherance of any such action; provided however, that if the Trust shall not have at least one trustee which is a Qualified Independent Trustee, then no vote shall be taken unless and until such Qualified Independent Trustee shall have been duly elected and voting;
- ix. authorize the amendment of this Trust Agreement or any of its other organizational documents in violation of Section 11.1 hereof, and
- x. elect not be organized as a Delaware business trust pursuant to 12 Del.C. § 3801 et seq.

Section 2.9 Maintenance of Separate Business: The Trust shall, and shall cause the Trustees and Owner (and the Trustees and Owner agree to) direct, and cause the Trust to, at all times: (a) to the extent its office 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 and not engage in any business transaction with any of its Affiliates unless on an arm's-length basis, (b) maintain its books of account, financial statements, accounting records and other trust documents and records separate from those of any of its Affiliates or any other Person and characterize itself as a separate entity from any of its Affiliates or any other Person in each and every report, tax return or financial statement, and file its tax returns, (c) not commingle its funds and other assets with those of any of its Affiliates or any other Person, (d) maintain its books of account, bank accounts and payroll accounts separate from those of any of its Affiliates or any other Person, (e) act solely in its own name and through its own authorized trustees, employees and agents, conduct all business correspondence using separate stationery, invoices and checks and in all respects, hold itself out as a separate entity separate and distinct from its trustees or beneficiaries and any other Person, (f) 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), (g) separately manage the Trust's liabilities from those of its trustees and its beneficiaries and all of its other Affiliates and pay from its own separate assets, from and after the date hereof, its own obligations, indebtedness and liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, and maintain a sufficient number of employees in light of the Trust's contemplated business operations, (h) pay from the Trust's assets all obligations and indebtedness of any kind incurred by the Trust, (i) not acquire obligations or securities of the Trust's trustees or beneficiaries or any of their respective Affiliates, (j) not become involved in the day-to-day management of any other Person, (k) not pledge the Trust's assets for the benefit of any other Person or make any loans or advances to any Person, (l) correct any known misunderstanding regarding the Trust's separate identity, and (m) 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 accepted accounting principles in a manner that indicates the separate existence of the Trust and its assets and liabilities. The Trust shall (i) pay from its own assets all its liabilities, (ii) not assume or pay the liabilities of the Trustees, the Owner or any of their respective Affiliates or any other Person or their respective creditors, and (iii) not guarantee the liabilities of the Trustees, the Owner or any of their respective Affiliates or any other Person, except for the indemnities contained in Articles VIII, XII and XIII hereof. The trustees and beneficiaries of the Trust (as appropriate) shall make decisions with respect to the business and daily operations of the Trust independent of and not dictated by any trustee or beneficiary or any of their respective Affiliates. The Trustees and beneficiaries of the Trust shall consider the interests of the creditors of the Trust in connection with all actions conducted by the Trust. All transactions and agreements between the Trust, on the one hand, and the Trustees and Owner, and any of their respective Affiliates, on the other hand, will be consistent with each of such Persons having a separate legal existence, and no actions or other written instruments shall reflect other than that such Trust, Trustees and Owner are separate legal entities.

Section 2.10 Subordination. Any obligation which the Trust may owe to any of its beneficiaries or 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 Financing Documents, to the extent the Trust has cash flow or other available liquid

assets (exclusive of reserve accounts, if any, to be maintained under the Loan Agreement) in excess of the amount necessary to make current payments of principal and interest due on the Loan, the Trust may pay obligations and distributions hereunder due to the beneficiaries and/or trustees of the Trust.

Section 2.11 Qualified Independent Trustee. Until all obligations of the Trust under the Financing Documents are indefeasibly and fully satisfied, the Trust shall at all times include at least one (1) Qualified Independent Trustee. When voting on matters subject to the vote of all the trustees, including those matters specified in Section 2.8 and Section 11.1 hereof, notwithstanding that the Trust is not then insolvent, the Qualified Independent Trustee shall take into account the interests of the creditors of the Trust as well as the interests of the Trust.

Section 2.12 Contributions. The Owner Participant shall contribute to the Trust cash in an amount equal to any and all cash required by the Trust to form the Trust and close the acquisition of the Property and the obtainment of the Loan, after taking into account the proceeds provided pursuant to the Financing Documents. Except as provided in this Section 2.12, the Owner Participant shall have no obligation to contribute cash or any other property to the Trust.

Section 2.13 Ratification. Each agreement, instrument and other document, including, without limitation, the ground Leases, the Lease Agreements and Financing Documents, heretofore executed and delivered by or on behalf of, or otherwise binding upon, the Trust or the Managing Trustee is hereby authorized, ratified and approved in all respects.

ARTICLE III.

OWNERSHIP AND TRANSFER OF BENEFICIAL INTEREST

Section 3.1 Beneficial Owner of Trust. The beneficial interest(s) of the Trust shall be owned exclusively by the Owner. The Trustees shall own no beneficial interest in the Trust and shall have no right to become an Owner.

Section 3.2 Restrictions on Transfer. The beneficial interest of any Owner, or any portion thereof, may be assigned or transferred without the prior consent of any other Owner or the Trustees. The beneficial interest of any Owner, or any portion thereof, may be assigned or transferred to any Person only in accordance with any applicable terms of the Financing Documents. In the event of any such assignment or transfer of all of an Owner's interest in the Trust, the Owner will be released from any and all liability or obligations hereunder subject to the applicable terms of the Financing Documents.

Section 3.3 Conditions to Admission of New Owner. Any assignee or transferee shall become an Owner upon the assignor and the assignee executing and delivering such instruments as the Managing Trustee may reasonably deem necessary or desirable for the assignee to become an Owner, including the written acceptance and adoption by the assignee of the provisions of this Trust Agreement. In order to satisfy the foregoing provision, the Managing Trustee shall take such actions and execute such documents as the Managing Trustee shall determine to be necessary or advisable to effect such transfer.

ARTICLE IV

PAYMENTS

Section 4.1 Payments From Trust Property Only. All payments to be made by Managing Trustee under this Trust Agreement or otherwise pursuant to the Financing Documents shall be made only from the income and proceeds from the Trust Property and only to the extent that Managing Trustee shall have received income or proceeds from the Trust Property, except as specifically provided in Section 7.1 hereof. The Owner agrees to look solely to the income and proceeds from the Trust Property to the extent available for payment as herein provided and that, except as specifically provided in Section 7.1 hereof, Managing Trustee shall not be liable in its individual capacity to the Owner for any amounts payable under this Trust Agreement and shall not be subject to any liability in its individual capacity under this Trust Agreement.

Section 4.2 Method of Payment. All amounts payable to the Owner pursuant to this Trust Agreement shall be paid, in each case, to such Owner or its nominee in immediately available funds.

ARTICLE V

DISTRIBUTIONS

Section 5.1 Distributions. As required by the Financing Documents or otherwise, the Managing Trustee shall make the payments necessary to satisfy the Trust's obligations under the Financing Documents and so much of such payment or amount as shall be required to pay or reimburse Managing Trustee for any fees, expenses or indemnification not otherwise paid or reimbursed to Managing Trustee as to which Managing Trustee is entitled to be paid or reimbursed hereunder. The Managing Trustee shall then distribute the balance, if any, of such amount remaining thereafter (to the extent not due to any other Persons by the express terms of the Financing Documents) to the Owner pro rata in accordance with their percentage interests in the beneficial interest.

Section 5.2 Compliance with Withholding Requirements. Notwithstanding any provision of this Trust Agreement, the Managing Trustee shall comply with all federal withholding requirements with respect to payments on the Note or to the Owner. The consent of the Owner shall not be required for any such withholding. In the event the Managing Trustee withholds any such amounts pursuant to the federal withholding requirements, the Managing Trustee shall file such information returns as are required by applicable federal tax law which shall indicate the amount withheld and shall provide the Lender or Owner from whom the amounts were withheld a report stating the amount withheld.

Section 5.3 Expenses. The Owner shall be responsible for paying and or reimbursing Resident Trustee and/or Independent Trustee for any fees, expenses or indemnification for which the Trust is so obligated. The Trust shall only be responsible for the payment or reimbursement of these expenses if the Owner fails in a timely manner to make such payment as required by the preceding sentence.

ARTICLE VI

DUTIES OF MANAGING TRUSTEE

Section 6.1 Notice of Default. In the event Managing Trustee shall have knowledge of an event of default under the Ground Lease, Lease Agreement or Financing Documents, Managing Trustee shall give prompt telephonic notice to the Owner. Subject to the terms of Section 6.3 hereof, Managing Trustee shall take or refrain from taking such action with respect thereto as Managing Trustee shall be instructed in writing by the Owner. If Managing Trustee shall not have received such instructions within 20 days after giving notice or confirmation of such event to the Owner, Managing Trustee, subject to instructions received from the Owner pursuant to the preceding sentence and subject to the provisions of the Financing Documents, may, but shall be under no duty to, take or refrain from taking any action with respect thereto as Managing Trustee shall deem advisable and in the best interests of the Owner subject to prohibitions of filing of bankruptcy petitions as may be contained herein and in the Financing Documents. For all purposes of this Trust Agreement, Managing Trustee shall not be deemed to have knowledge of any event referred to in the first sentence of this Section 6.1 unless it receives written notice thereof from the Owner, the Tenant or the Lender.

Section 6.2 Action Upon Instructions. Subject to the terms of Section 6.3 hereof, and provided that such Instructions are consistent with the Trust's status as a fixed investment trust and not an association taxable as a corporation or a partnership for federal income tax purposes, upon the written instructions at any time and from time to time from the Owner, Managing Trustee will take or refrain from taking such action or actions, regarding any matter concerning the Trust Property, as may be specified in such instructions, including, but not limited to, the following:

i. Give such notice or direction or exercise such right, remedy or power hereunder or under the Lease, the Financing Documents or in respect of all or any part of the Trust Property, or give such consent, waiver or extension thereunder, or execute such amendment, supplement or modification thereof, or take such other action, as shall be specified in such instructions.

ii. take such action to preserve or protect the Trust Property as may be specified in such instructions; and

iii. approve as satisfactory to it or consent to all matters required by the terms of the Financing Documents to be satisfactory to the Trust. it being understood that, without the written instructions of the Owner, Managing Trustee shall not approve any such matter as satisfactory to it or consent to any such action.

Section 6.3 Indemnification. Managing Trustee shall not be required to take or refrain from taking any action under this Trust Agreement or the Financing Documents (other than the actions specified in the first sentence of Section 6.1 hereof) if the Managing Trustee shall reasonably determine, or shall have been advised by counsel, that such actions (i) may result in personal liability, unless Managing Trustee shall have been indemnified by the Owner, in manner and form reasonably satisfactory to Managing Trustee, against any liability, fee, cost or expense (including reasonable legal fees and expenses) which may be incurred or charged in connection therewith (except that the Owner shall not be required so to indemnify Managing Trustee with respect to any of the matters described in the last sentence of Section 7.1 hereof), or (ii) are contrary to law or the terms hereof, and if the Owner shall have directed Managing Trustee to take or refrain from taking any such action, the Owner agrees to furnish such indemnity as shall be required and, in addition, to the extent not otherwise paid pursuant to the provisions of

this Trust Agreement, to pay the reasonable compensation of Managing Trustee for the services performed or to be performed by it pursuant to such direction.

Section 6.4 No Duties Except as Specified in Trust Agreement or Instructions. Managing Trustee shall have no duty or obligation to, and shall not manage, control, use, sell, dispose of or otherwise deal with the Property or any other part of the Trust Property, or otherwise take or refrain from taking any action under or in connection with the Ground Lease, Lease or Financing Documents except as expressly provided by this Trust Agreement or in written instructions received pursuant to Section 6.1 or 6.2 hereof, and no implied duties or obligations shall be read into this Trust Agreement against Managing Trustee. Managing Trustee shall not in any instance have any duty to inspect the Property or any of the Trust Property or any records pertaining thereto. Managing Trustee nevertheless agrees that it will, at its own cost and expense (without any right of indemnity in respect of any such cost or expense under Section 8.1), promptly take such action as may be necessary to duly discharge and satisfy in full all Liens against the Trust Property created as a result of the breach by Managing Trustee of any of the Managing Trustee's duties and obligations under this Trust Agreement.

Section 6.5 No Action Except Under Specified Documents or Instructions. Managing Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any part of the Trust Property except (i) as required or permitted by the terms of the Ground Lease, Lease or Financing Documents to which the Trust as current owner of the Property is subject, (ii) in accordance with the powers granted to or the authority conferred upon Managing Trustee pursuant to this Trust Agreement, or (iii) in accordance with the express terms hereof or written instructions received pursuant to Section 6.1 or 6.2 hereof. The Managing Trustee hereby covenants and agrees to notify the Owner prior to the Managing Trustee taking any action required of the Managing Trustee pursuant to Section 6.5(i) hereof in a timely manner so as to provide the Owner with a reasonable opportunity to provide the Managing Trustee with instructions pursuant to Section 6.1 or 6.2 hereof.

Section 6.6 Limitations on Duties. Except as required by the terms of the Ground Lease, Lease or Financing Documents or in accordance with written instructions received pursuant to Section 6.1 or 6.2 hereof, Managing Trustee shall not have any duty (i) to 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) to obtain, effect or maintain any insurance on the Trust Property, (iii) to maintain the Trust Property, (iv) to pay or discharge any tax levied against any part of the Trust Property, (v) to confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the Ground Lease, Lease or Financing Documents to provide such, or (vi) to inspect the Property at any time or to ascertain or inquire as to the performance or observance of any of the covenants of the Trust or any other Person under the Ground Lease, Lease or Financing Documents.

ARTICLE VII

MANAGING TRUSTEE

Section 7.1 Acceptance of Trusts and Duties. Managing Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. Managing Trustee also agrees to receive and disburse all money received by it constituting part of the Trust Property upon the terms hereof subject to the conditions and limitations of the Ground Lease, Lease and Financing Documents. Managing Trustee shall not be answerable or accountable under any circumstances in its individual capacity,

except (i) for its own willful misconduct or gross negligence, (ii) in the case of the inaccuracy of any of its representations or warranties contained in Section 7.3 hereof, (iii) as arising from its failure to perform obligations expressly undertaken by it in the first sentence of Section 6.1 hereof, or (iv) for taxes, fees or other charges on, based on or measured by any fees, commissions or compensation received by it for acting as trustee in connection with any of the transactions contemplated by the Lease or Financing Documents, or (v) the failure to use ordinary care to disburse in accordance with the terms hereof money actually received by it.

Section 7.2 Furnishing of Documents. Managing Trustee will furnish to the Owner, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and any other writings furnished to Managing Trustee pursuant to the Lease or Financing Documents, unless the Managing Trustee receives evidence that Owner otherwise received the same.

Section 7.3 No Representations or Warranties as to the Property or Documents. Managing Trustee makes (i) NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY WHATSOEVER and (ii) no representation or warranty as to the validity or enforceability of the Ground Lease, Lease or Financing Documents or as to the correctness of any statement contained in any thereof, and except that Managing Trustee represents and warrants to the Owner that this Trust Agreement has been and, assuming that this Trust Agreement has been duly authorized, executed and delivered by the Owner, Resident Trustee and Independent Trustee, the Financing Documents, Ground Lease and Lease Agreement to which Managing Trustee is a party and each other document which contemplates execution thereof by Managing Trustee has been or will be, duly executed and delivered.

Section 7.4 No Segregation of Moneys: No Interest. Except as otherwise provided herein, in the Financing Documents, in the Ground Lease or Lease or in written instructions from the Owner, moneys received by Managing Trustee hereunder need not be segregated in any manner, except to the extent required by applicable law and may be deposited under such general conditions as may be prescribed by law, and Managing Trustee shall not be liable for any interest thereof, provided, however, in no event shall moneys of the Trust be commingled with moneys of the Owner.

Section 7.5 Reliance. Advice of Counsel. Managing Trustee shall not incur any liability to anyone in acting in reliance 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 to be signed by the proper party or parties. Managing Trustee may accept a copy of a resolution of the board of directors or other governing body of any corporate party, certified by the secretary or a senior officer thereof, as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, Managing Trustee may for all purposes hereof rely on an officers' certificate of the relevant Person as to such fact or matter, and such certificate shall constitute full protection to Managing Trustee for any action taken, suffered or omitted in good faith in reliance thereon. In the administration of the trusts created hereby, Managing Trustee (i) may execute any of the trusts or powers hereof and perform any of its powers and duties, including the holding of title to all or any part of the Trust Property, hereunder directly or through agents or attorneys and the Managing Trustee shall not be liable for the default or misconduct of any agent or attorney appointed by the Managing Trustee in good faith, and (ii) may consult with

counsel, accountants and other skilled Persons to be selected and employed by it, and Managing Trustee shall not be liable for the default or misconduct of any agent or attorney appointed by the Managing Trustee in good faith, and (iii) may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and Managing Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons selected by it in good faith.

Section 7.6 Not Acting in Individual Capacity. Except as otherwise provided in this Article VII, in accepting the trusts hereby created, Managing Trustee acts solely as trustee hereunder and not in its individual capacity, and all Persons other than the Owner, as provided herein, having any claim against Managing Trustee by reason of the transactions contemplated hereby and by the Ground Lease, Lease Agreement and Financing Documents shall look only to the Trust Property (or a part thereof, as the case may be) for payment or satisfaction thereof, but subject to the liens created pursuant to the Financing Documents.

Section 7.7 Ambiguity or Conflict of Provisions. If the Managing Trustee is uncertain as to the application of any provision of this Trust Agreement, the Ground Lease, the Lease or the Financing Documents, or such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision hereof, or if this Trust Agreement permits any determination by the Managing Trustee or is silent or incomplete as to the course of action which the Managing Trustee is required to take with respect to a particular set of facts, the Managing Trustee may require and, as between the Managing Trustee and the Owner, may rely upon written instructions of the Owner, and in such case, shall have no liability to, and shall be held harmless by, the Owner from, any liability, costs or expenses incurred by the Managing Trustee in its individual capacity from acting upon such instructions, except that the Owner shall not be required so to indemnify the Managing Trustee with respect to any of the matters described in the last sentence of Section 7.1 hereof.

Section 7.8 Books, Records and Tax Returns. Managing Trustee shall be responsible for the keeping of all customary and appropriate books and records relating to the receipt and disbursement of all money which it may receive hereunder. The Owner shall be responsible for causing to be prepared and filed all tax returns and reports required to be filed by the Managing Trustee or the Trust with respect to the Trust or the Trust Property. The parties hereto acknowledge, and it is understood, that the Trust shall be treated as a grantor trust for federal income tax purposes. Except as otherwise provided by law and subject to Section 6.6 hereof, the Managing Trustee shall pay from the Trust Property all taxes due with respect to the Trust Property not paid by the tenant of the Property. The Managing Trustee, upon request, will furnish the Owner with all such information in the possession of the Managing Trustee as may be reasonably required from the Managing Trustee in connection with the preparation of such tax returns and reports.

ARTICLE VIII

INDEMNIFICATION AND PAYMENT OF MANAGING TRUSTEE

Section 8.1 The Owner to Indemnify Managing Trustee. The Owner shall pay (or reimburse Managing Trustee for) all reasonable fees and expenses of Managing Trustee hereunder, including, without limitation, the reasonable compensation, expenses and disbursements of such agent, representatives, experts and counsel as Managing Trustee may employ in connection with the exercise and performance of its rights and

duties under this Trust Agreement, the Ground Lease, the Lease and the Financing Documents, whether or not the transactions contemplated hereby or thereby are consummated. Managing Trustee shall be entitled to compensation for any extraordinary services rendered hereunder. The Owner agrees to assume liability for, and to indemnify and hold harmless Managing Trustee, from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted at any time against Managing Trustee in any way relating to or arising out of the Trust Property, the administration of the Trust Property or any action or inaction of Managing Trustee hereunder or under the Lease or Financing Documents, except that the Owner shall not be required so to indemnify Managing Trustee with respect to any of the matters described in the last sentence of Section 7.1 hereof. The liabilities of the Owner hereunder shall be several in accordance with their interests in the Trust. If the Managing Trustee has an indemnification right against the Tenant or other third party, the Managing Trustee shall first exercise such right but is not required to exhaust its remedies prior to seeking indemnifications against the Owner. The indemnities contained in this Section 8.1 shall survive the termination of this Trust Agreement.

Section 8.2 Rights Against Trust Property. The Managing Trustee shall be entitled to payment from the Trust Property for any compensation, reimbursement of expenses and indemnification owing to the Managing Trustee pursuant to this Trust Agreement to the extent not promptly paid by the Owner or others, but without releasing any of them from their respective agreements of compensation, reimbursement and indemnification; and to secure the same the Managing Trustee shall have a claim on the Trust Property which shall be prior to any interest therein of the Owner but subject and fully subordinate to any liens under the Financing Documents, and the Managing Trustee agrees and acknowledges that the Managing Trustee's claim on the Trust Property under this Section 8.2 is a second lien, subordinate to the first priority perfected lien and security interest of the Lender under the Financing Documents. For the benefit of the Lender, the Managing Trustee shall not exercise any remedies against the Trust Property until the satisfaction and discharge of the Financing Documents.

Section 8.3 Environmental Indemnification of the Managing Trustee.

a. Without limiting the generality of the foregoing, Owner agrees to indemnify and hold harmless the Managing Trustee from and against any and all liabilities, sums paid in settlement of claims, obligations, charges, actions (formal or informal), claims (including, without limitation, claims for personal injury under any theory or for real or personal property damage), liens taxes administrative proceedings, losses, damages (including, without limitation, punitive damages, penalties, fines, court costs, administrative services fees, response and remediation costs), stabilization costs, encapsulation costs, treatment, storage or disposal costs, groundwater monitoring or environmental study, sampling or monitoring costs, other causes of action and any other costs and expenses (including, without limitation, reasonable attorneys', experts' and consultants' fees and disbursements and investigation, laboratory and data review fees) imposed upon or incurred by the Managing Trustee (whether or not indemnified against by any other party) arising directly or indirectly out of:

(1) the past, present or future treatment, storage, disposal, generation, use, transport, movement, presence, release, threatened release, spill, installation, sale, emission, injection, leaching, dumping, escaping, or seeping of any Hazardous Substances, material containing or alleged to contain Hazardous Substances at or from any properties or assets of the Trust or the Trust Property or any part thereof, and/or

(2) the violation or alleged violation by the Trust (excluding any violations caused by the negligence or malfeasance of Managing Trustee) or any third party of any Environmental Laws with regard to the past, present or future ownership, operation, use or occupying of any property or asset of the Trust or the Trust Property or any part thereof.

b. The indemnities set forth in this Section 8.3 shall be in addition to any other rights the Managing Trustee may have. The indemnities and obligations contained herein shall survive the termination of the Trust, removal or resignation of the Managing Trustee, any disposition by the Managing Trustee of its interests in the Trust Property or an other event. However, the indemnities contained in this Section 8.3 shall not expand any liability of the Managing Trustee or the Owner to third parties. The indemnities contained in this Section 8.3 shall apply only if personal liability shall be imposed on the Managing Trustee, and shall not apply if liability is imposed on the Trust or Trust Property.

c. For purposed of this Section, the following terms shall have the following meanings:

"Environmental Laws" means any federal, state or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, judicial decision, common law rule, decree, agency interpretation, injunction or other authorization or requirement whenever promulgated, issued, or modified, including the requirement to register underground storage tanks, relating to:

(1) emissions, discharges, spills, releases or threatened releases of pollutants, contaminants, Hazardous Substances (as hereafter defined), materials containing Hazardous Substances, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, septic systems or onto land;

(2) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Substances, materials containing Hazardous Substances or hazardous and/or toxic wastes, material, products or by-products (or of equipment or apparatus containing Hazardous Substances) as defined in or regulated under the following statutes and their implementing regulations: the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq. the Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901 et seq., and/or the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., each as amended from time to time: or

(3) otherwise relating to pollution or the protection of human health or the environment.

"Hazardous Substances" means (A) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under the following statutes and their implementing regulations as they may be amended from time to time: the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Act, 15 U.S.C. § 2601 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., (B) petroleum and petroleum products including crude oil and any fractions

thereof, (C) natural gas, synthetic gas, and any mixtures thereof, (D) asbestos and/or any material which contains any hydrated mineral silicate, including without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or active whether friable or nonfriable, (E) PCBs or PCB containing materials or fluids, (F) radon, (G) any other hazardous radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste, and (H) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring or remediation.

Section 8.4 Representations. The Managing Trustee represents, warrants and agrees as follows:

a. The Managing Trustee, if it is other than a natural person, has observed and will observe all applicable organizational procedures and formalities, including, where applicable, the holding of regular periodic and special meetings of governing bodies, the recording and maintenance of minutes of such meetings, and the recording and maintenance of resolutions, if any, adopted at such meetings.

b. The Managing Trustee has paid and will pay its liabilities (including liabilities in respect of guaranties) and losses from its separate funds.

c. The Managing Trustee does not and will not hold itself out to be responsible for the debts and obligations of any other Person. The Managing Trustee, if it is other than a natural person, has and will have at all times sufficient officers and employees to run its businesses and operations. The Managing Trustee will manage its own assets and liabilities.

d. The Managing Trustee will pay, from its own assets, its fair share of any office, office supplies or equipment or administrative (including, without limitation, any costs relating to salaries or other compensation for services rendered to the Managing Trustee) expenses shared with the Trust or Owner.

e. The Managing Trustee has not taken and will not take any action that would give any creditor of the Managing Trustee cause to believe that any indebtedness incurred by the Managing Trustee is or will be an obligation of the Trust or Owner or that the Managing Trustee is not or will not remain a Person separate and distinct from the Trust and the Owner.

f. The Managing Trustee has not taken and will not take any action that is inconsistent with any of the representations, warranties and agreements set forth in this list or that would give (a) any future creditor of the Managing Trustee cause to believe mistakenly that any such future obligation incurred by the Managing Trustee would be not only the obligation of the Managing Trustee, but also of the Trust or the Owner, or (b) any future creditor of the Managing Trustee cause to mistakenly believe that the Managing Trustee was not or would not continue to remain separate and distinct from the Trust and the Owner.

g. No transaction relating to or contemplated by this Trust Agreement is being or will be entered into by the Managing Trustee (i) in bad faith or with intent to delay, hinder, or defraud any of its creditors or (ii) with the intent of removing assets from the Trust to the detriment of the Trust's creditors.

h. The Managing Trustee, if it is other than a natural person, will not consensually merge or consolidate with the Trust or the Owner.

i. The Managing Trustee does not own or does not have any direct right, title or interest in, to or under any of the Trust Property, except as applicable law may require record title to be held in the name of Managing Trustee for the benefit of the Trust.

ARTICLE IX.

TERMINATION OF TRUST AGREEMENT

Section 9.1 Termination in General. Subject to Section 2.8 hereof, except as otherwise provided in Section 9.2 hereof, this Trust Agreement and the trusts created hereby shall terminate and the Trust Property shall, subject to Article V hereof, be distributed to the Owner, and this Trust Agreement shall be of no further force or effect on December 31, 2036, provided the Note shall have been paid in full, unless the Owner elects to extend the term of the Trust.

Section 9.2 Termination at Option of the Owner. Subject to Section 2.8 hereof, notwithstanding Section 9.1 hereof, this Trust Agreement and the trusts created hereby shall terminate and the Trust Property shall be distributed to the Owner, and this Trust Agreement shall be of no further force and effect, upon the election of the Owner by notice to the Trustees, if such notice shall be accompanied by the written agreement (in form and substance satisfactory to the Managing Trustee) of the Owner assuming all the obligations of the Trustees and the Trust and releasing the Trustees therefrom. The Trust may not be terminated prior to the satisfaction and discharge of the Financing Documents, except as expressly permitted thereby or following the conveyance of all of the Trust Property to a third party if permitted by the Financing Documents.

Section 9.3 Certificate of Cancellation. Subject to Section 2.8 hereof, upon the termination of the Trust pursuant to this Article IX, the Trustees shall cause a Certificate of Cancellation to be filed with the Delaware Secretary of State.

ARTICLE X

SUCCESSOR TRUSTEES. CO-TRUSTEES AND SEPARATE TRUSTEES

Section 10.1 Resignation and Successors. Subject to Section 2.11 hereof, a Trustee or the Trustees, or any of their respective successors, may resign at any time without cause by giving at least sixty (60) days prior written notice to the Owner, and, subject to the approval of Lender, the Owner may at any time remove a Trustee or the Trustees without cause by written notice to such Trustee or Trustees, such resignation or removal to be effective upon the acceptance of appointment by a successor trustee as hereinafter provided. In case of the resignation or removal of any Trustee, the Owner may appoint a successor by written instrument. If a successor trustee shall not have been appointed within thirty (30) days after the giving of such notice, such Trustee or the Owner may apply to any court of competent jurisdiction in the United States to appoint a successor trustee to act until such time, if any, as a successor shall have been appointed as provided above. Any successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as provided above within one year from the date of the appointment by such court. Any successor, however appointed, shall execute and deliver to its predecessor trustee and the Trust 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 trustee in the trusts hereunder with like effect as if originally named a Trustee

herein; but upon the written request of such successor, and upon the payment to the predecessor trustee of the amounts due to it under this Trust Agreement, 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 moneys or other property then held by such predecessor upon the trusts herein expressed. Any right of the Owner against the predecessor trustee, in its individual capacity shall not be prejudiced by the appointment of any successor trustee and shall survive the termination of the trusts created hereby. Any successor to the Independent Trustee, however appointed, shall satisfy the requirements for a Qualified Independent Trustee and, if such Independent Trustee is other than a natural person, it shall be a special purpose entity with at least one Independent Director. Any corporation into which Managing Trustee, if it is other than a natural person, may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Managing Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Managing Trustee may be transferred, shall, subject to the preceding sentence, be the Managing Trustee under this Trust Agreement without further act. Any successor trustee, however appointed, shall be competent and qualified to (i) serve as a trustee of a business trust formed pursuant to Chapter 38 of Title 12 of the Delaware Code, (ii) own, buy, lease, sell and mortgage land in its capacity as trustee in the state where the Property is located and (iii) as to the Independent Trustee, take all actions required by a Qualified Independent Trustee pursuant to the Financing Documents.

Section 10.2 Co-Trustees and Separate Trustee. Subject to Section 2.11 hereof, whenever the Managing Trustee or the Owner 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 Property shall be situated or to make any claim or bring any suit with respect to the Trust Property, the Ground Lease, the Lease or the Financing Documents, or the Managing Trustee or the Owner shall be advised by counsel satisfactory to it that it is so necessary or prudent, the Managing Trustee and the Owner shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other actions, necessary or proper to constitute one or more Persons (and the Managing Trustee, if it is other than a natural person, may appoint one or more of its officers, general partners or other principals) either as co-trustee or co-trustees jointly with the Managing Trustee of all or any part of the Trust Property, or as separate trustee or separate trustees of all or any part of the Trust Property, and to vest in such persons, in such capacity, such title to the Trust Property or any part hereof 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 Managing Trustee and the Owner and, until the Note is paid in full, as are reasonably satisfactory to the Lender. In no event shall any Trustee hereunder (including the Independent Trustee, Managing Trustee and Resident Trustee) be liable for the default or misconduct of any other trustee hereunder. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Property 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 Managing Trustee, without the appointment of a successor to such co-trustee or separate trustee.

ARTICLE XI

SUPPLEMENTS AND AMENDMENTS

Section 11.1 Amendments. Notwithstanding any other provision of this Trust Agreement or any provision of law, (1) until the date all of the obligations under the

Financing Documents have been indefeasibly and fully satisfied. the following provisions of this Trust Agreement shall not be amended, altered, changed or repealed unless a Qualified Independent Trustee is then in office and voting and affirmatively votes in favor of such amendment and unless at least thirty (30) days prior written notice of any such proposed amendment is sent to the Lender and the Lender provides written consent to such amendment and prior written confirmation is received from each rating agency then maintaining a rating on any securities secured by or related to the Financing Documents that such amendment will not result in a negative rating action of any kind with respect to such securities: Sections 1.1, 2.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3.1, 3.2, 4.1, 5.1, 6.4, 8.2 through 8.4, 9.1, 9.2 and 11.1 hereof, and (ii) this Trust Agreement may be amended, supplemented or otherwise modified only by a written instrument approved and executed by the Resident Trustee or Independent Trustee, as applicable, if such amendment, supplement or other modification affects the rights, powers, duties, obligations or immunities of the Resident Trustee or Independent Trustee, as applicable.

ARTICLE XII

PROVISIONS REGARDING RESIDENT TRUSTEE

Section 12.1 Acceptance of Trusts and Duties. Resident Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. Resident Trustee shall not be answerable or accountable to any person under any circumstances in its individual capacity, except that such limitation shall not limit the Resident Trustee's personal liability, if any, to the Owner to the extent that such liability results from (i) the Resident Trustee's gross negligence or willful misconduct, or (ii) the inaccuracy of any of its representations or warranties contained in Section 12.2 hereof.

Section 12.2 Representations. Resident Trustee hereby represents, warrants and certifies to Owner, Trust, Independent Trustee and Managing Trustee that Resident Trustee is a national banking association with trust powers, duly formed and created and validly existing under applicable federal laws of the United States of America, has requisite power and authority under the laws of the State of Delaware and federal laws of the United States of America governing its banking and trust powers, to execute and deliver, and perform its obligations and duties under, this Trust Agreement, and has its principal place of business in the State of Delaware.

Section 12.3 Duties of Resident Trustee. Notwithstanding any other provision of this Trust Agreement, the Resident Trustee shall not be entitled to exercise any powers, nor shall the Resident Trustee have any of the duties and responsibilities of the Managing Trustee described in this Trust Agreement. The Resident Trustee shall be a Trustee for the sole and limited purpose of fulfilling of the requirements of § 3807 of the Delaware Business Trust Statute, and, except as otherwise expressly required by the Delaware Business Trust Statute, the sole and exclusive duties of the Resident Trustee shall be the following:

- a. To execute and cause the filing of the Certificate of Trust, as provided in Section 2.4 hereof,
- b. To execute and cause to be filed the Certificate of Cancellation of the Trust, pursuant to the provisions of Section 9.3 hereof, and

c. To receive and forward to the Managing Trustee any and all service of process and other official notices and the like received by the Resident Trustee on behalf of the Trust.

Section 12.4 Limitations on Duties. Resident Trustee shall not have any duty (i) to 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) to obtain, effect or maintain any insurance on the Trust Property, (iii) to maintain the Trust Property, (iv) to pay or discharge any tax levied against any part of the Trust Property, (v) to confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the Ground Lease, Lease and Financing Documents to provide such, or (vi) to inspect the Property at any time or to ascertain or inquire as to the performance or observance of any of the covenants of the Trust or any other Person under the Ground Lease, Lease and Financing Documents.

Section 12.5 Indemnification. Resident Trustee shall not be required to take or refrain from taking any action under this Trust Agreement, the Ground Lease, the Lease or the Financing Documents (other than the actions specified in Section 12.3 hereof) if the Resident Trustee shall reasonably determine, or shall have been advised by counsel, that such actions (i) may result in personal liability, unless Resident Trustee shall have been indemnified by the Owner, in manner and form reasonably satisfactory to Resident Trustee, against any liability, fee, cost or expense (including reasonable legal fees and expenses) which may be incurred or charged in connection therewith (except that the Owner shall not be required so to indemnify Resident Trustee with respect to any of the matters described in the last sentence of Section 12.1 hereof), or (ii) are contrary to law or the terms hereof, and if the Owner shall have directed Resident Trustee to take or refrain from taking any such action, the Owner agrees to furnish such indemnity as shall be required and, in addition, to the extent not otherwise paid pursuant to the provisions of this Trust Agreement, to pay the reasonable compensation of Resident Trustee for the services performed or to be performed by it pursuant to such direction.

Section 12.6 Reliance, Advice of Counsel. Resident Trustee shall not incur any liability to anyone in acting in reliance 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 to be signed by the proper party or parties. Resident Trustee may accept a copy of a resolution of the board of directors or other governing body of any Person, certified by the secretary or a senior officer thereof, as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, Resident Trustee may for all purposes hereof rely on an officers' certificate of the relevant Person as to such fact or matter, and such certificate shall constitute full protection to Resident Trustee for any action taken, suffered or omitted in good faith in reliance thereon. In the administration of the trusts created hereby, Resident Trustee (i) may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and Resident Trustee shall not be liable for the default or misconduct of any such agent or attorney appointed by the Resident Trustee in good faith, and (ii) may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and Resident Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons selected by it in good faith.

Section 12.7 Not Acting in Individual Capacity. Except as otherwise expressly provided in this Article XII, in accepting the trusts hereby created, Resident Trustee acts solely as trustee hereunder and not in its individual capacity, and all Persons other than

the Owner, as provided herein, having any claim against Resident Trustee by reason of the transactions contemplated hereby and by the Lease and Financing Documents shall look only to the Trust Property (or a part thereof, as the case may be) for payment or satisfaction thereof, but subject to the liens created pursuant to the Financing Documents.

Section 12.8 Ambiguity or Conflict of Provisions. If the Resident Trustee is uncertain as to the application of any provision of this Trust Agreement, the Lease or the Financing Documents, or such provision is ambiguous as to its application, or is, or appears to be, in conflict with any other applicable provision hereof, or if this Trust Agreement permits any determination by the Resident Trustee or is silent or incomplete as to the course of action which the Resident Trustee is required to take with respect to a particular set of facts, the Resident Trustee may require and, as between the Resident Trustee and the Owner, may rely upon written instructions of the Owner, and in such case, shall have no liability to, and shall be held harmless by, the Owner from, any liability, costs or expenses incurred by the Resident Trustee in its individual capacity from acting upon such instructions, except that the Owner shall not be required so to indemnify the Resident Trustee with respect to any of the matters described in Sections 12.1(i) and (ii) hereof.

Section 12.9 Compensation. The Owner shall pay (or reimburse Resident Trustee for) all fees and expenses required to be paid or reimbursed to Resident Trustee pursuant to that certain agreement between Resident Trustee and Trust, Owner or an Affiliate of either relating hereto. Resident Trustee shall be entitled to compensation for any extraordinary services rendered hereunder. The Owner agrees to assume liability for, and to indemnify and hold harmless Resident Trustee, from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted at any time against Resident Trustee in any way relating to or arising out of the Trust Property, the administration of the Trust Property or any action or inaction of Resident Trustee hereunder or under the Lease and Financing Documents, except that the Owner shall not be required so to indemnify Resident Trustee with respect to any of the matters described in Sections 12.1(i) and (ii) hereof. The liabilities of the Owner hereunder shall be joint and several in accordance with their interests in the Trust. The indemnities contained in this Article XII shall survive the termination of this Trust Agreement and the resignation or removal of the Resident Trustee.

Section 13.1 INTENTIONALLY OMITTED

ARTICLE XIV

MISCELLANEOUS

Section 14.1 No Legal Title to Trust Property in the Owner, Etc. The Owner shall not have legal title to any part of the Trust Property. Neither the bankruptcy, death or other incapacity of any Owner nor the transfer, by operation of law or otherwise, of any right, title or interest of the Owner in and to the Trust Property or hereunder shall operate to terminate this Trust Agreement or the Trust hereunder. Except as expressly set forth herein, the Owner shall not be liable for any liabilities or obligations of the Trust or Trustees or for the performance of this Trust Agreement.

Section 14.2 Sale of Trust Property by Managing Trustee is Binding. Any sale or other conveyance of the Trust Property or any part thereof by Managing Trustee made pursuant to the terms of this Trust Agreement, the Ground Lease, the Lease or the Financing Documents shall bind the Owner and shall be effective to transfer or convey all rights, title and interest of Managing Trustee and the Owner in and to the Trust Property or such part thereof, if owner has consented to such sale or other conveyance. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by Managing Trustee.

Section 14.3 Unanimous Consent of Owner. Any action or consent of the Owner referred to in this Trust Agreement shall require the unanimous written consent of the Person or Persons then constituting Owner.

Section 14.4 Limitations on Rights of Others. Nothing in this Trust Agreement, whether expressed or implied, shall be construed to give to any Person other than the Trustees and the Owner any legal or equitable right, remedy or claim under or in respect of this Trust Agreement, any covenants, conditions or provisions contained herein or the Trust Property.

Section 14.5 Notices, Etc. All notices, requests, demands, consents and other communications ("Notices") required or contemplated by the provisions hereof shall refer on their face to this Trust Agreement (although failure to do so shall not make such Notice ineffective), shall, unless otherwise stated herein, be in writing and shall be (i) personally delivered, (ii) sent by reputable overnight courier service, (iii) sent by certified or registered postage prepaid and return receipt requested or (iv) transmitted by telephone facsimile, in each case as follows:

If to Managing Trustee: Winter Springs SPE, Inc.
570 Delaware Avenue
Buffalo, New York 14202
Fax: (716)886-2269

if to Resident Trustee: Wilmington Trust Company
Corporate Trust Administration
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attn: John M. Beeson, Jr.
Fax: 302-651-8882

if to the Owner: Victoria Estates, LTD
570 Delaware Avenue
Buffalo, New York 14202
Attn: Randall Benderson
Fax: (716) 886-2269

or at such other address and telephone facsimile number as shall be designated, respectively, by any Trustee or the Owner in a written notice to the other Persons receiving Notices pursuant to this Section. Notices given pursuant to this Section shall be deemed given upon the earliest of the following to occur: (i) upon personal delivery, (ii) on the fifth day following the day sent, if sent by registered or certified mail, (iii) on the

next business day following the day sent, if sent by reputable overnight courier; and (iv) if transmitted by telephone facsimile, on the day sent if such day is a business day of the addressee and the telephone facsimile is received by the addressee by 5:00 p.m., local time of the addressee, on such day, otherwise on the first business day of the addressee after the day that the telephone facsimile is sent.

Section 14.6 Severability. Any provision of this Trust Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 14.7 Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

Section 14.8 Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Trustees and their respective successors and assigns and the Owner and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other writing or action by the Owner shall bind each of its successors and assigns.

Section 14.9 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 14.10 Governing Law. THIS TRUST AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, INCLUDING ALL MEANS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

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

OWNER PARTICIPANT:

Victoria Estates, LTD

By: Benderson-Victoria, L.C., its general partner

By: David H. Baldauf Bd
David H. Baldauf, Manager

RESIDENT TRUSTEE:

WILMINGTON TRUST COMPANY

By: [Signature]
Name: JAMES P. LAWLER
Its: Vice President

MANAGING TRUSTEE:

VICTORIA TRUST SPE, INC.

David H. Baldauf
David H. Baldauf, Vice President

Exhibit "A"

Lots 1, 2, 3, 4, 31 and 32, Block 2, REPLAT OF PART OF NORTH
ORLANDO FIRST AND SECOND ADDITION, according to the plat
thereof, recorded in Plat Book 14, Page(s) 16, Public Records of
Seminole County, Florida.