

AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT

Dated as of January 30, 2021

between

COPPER BIDCO LLC,

and

GLAS TRUST COMPANY LLC,

as Trustee

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AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT

This AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT (as it may be further amended, modified, supplemented or restated from time to time, this “Trust Agreement”) dated as of January 30, 2021, is made and entered into by COPPER BIDCO LLC and GLAS TRUST COMPANY LLC (the “Trustee”), solely in its capacity as Trustee for purposes of this Trust Agreement and for the Copper Property CTL Pass Through Trust (and not in an individual capacity).

WITNESSETH:

WHEREAS, the Copper Property CTL Pass Through Trust (as continued by this Trust Agreement, the “Trust”) was initially established under that certain Pass Through Trust Agreement, dated as of December 21, 2020 (the “Original Trust Agreement”) between J.C. Penney Corporation, Inc. and the Trustee;

WHEREAS, the Trust was established and exists for the purpose of collecting, holding, administering, distributing, and liquidating the Trust Assets for the benefit of the Certificateholders in accordance with the terms of this Trust Agreement;

WHEREAS, the Original Trust Agreement is hereby amended and restated and in all respects replaced by this Trust Agreement;

WHEREAS, the Trust owns 100% of the equity in certain wholly-owned subsidiaries (each, a “Property Owner”), that hold, collectively, the 160 retail properties described in Schedule I hereto and the six (6) distribution center properties described in Schedule II hereto, along with the related Trust Assets;

WHEREAS, the Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Trust as set forth in this Trust Agreement;

WHEREAS, the Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulation (hereinafter “Treasury Regulation”) Section 301.7701-4(d) or in the event it is not so treated, a partnership other than a partnership taxable as a corporation under Section 7704 of the Internal Revenue Code of 1986, as amended (the “Code”), and to be exempt from the requirements of the Investment Company Act of 1940 and the Property Owners will be treated as “title holding companies” whose separate existence from the Trust is disregarded for such purposes;

WHEREAS, the Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the Code, et seq., with the initial beneficial owners of the Trust Interests treated as the initial grantors of the Trust for U.S. federal income tax purposes; and

WHEREAS, all of the conditions and requirements necessary to make this Trust Agreement, when duly executed and delivered, a valid, binding and legal instrument in accordance with its terms and for the purposes herein expressed, have been done, performed and

fulfilled, and the execution and delivery of this Trust Agreement in the form and with the terms hereof have been in all respects duly authorized by the parties hereto;

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

ARTICLE I DEFINITIONS

Section 1.01 Definitions. For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) the terms used herein that are defined in this Article I have the meanings assigned to them in this Article I, and include the plural as well as the singular; (b) all references in this Trust Agreement to designated “Articles”, “Sections”, “Subsections” and other subdivisions are to the designated Articles, Sections, Subsections and other subdivisions of this Trust Agreement; (c) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision; (d) unless the context otherwise requires, whenever the words “including”, “include” or “includes” are used herein, they shall be deemed to be followed by the phrase “without limitation”; and (e) the term “this Trust Agreement” refers, unless the context otherwise requires, to this Trust Agreement creating the Trust and establishing the series of Certificates issued or to be issued in respect thereof, with reference to the Trust and such series of Certificates, as this Trust Agreement may be further supplemented with respect to the Trust and such series of Certificates.

“Account”: Means each of:

- (i) the Collections Account–Rental Proceeds,
- (ii) the Collections Account–Sales Proceeds,
- (iii) the Distributions Account–Rental Proceeds,
- (iv) the Distributions Account–Sales Proceeds,
- (v) the Distributions Account—Indebtedness Proceeds,
- (vi) the Trustee’s Reserve Account,
- (vii) the Manager’s Reserve Account,
- (viii) the Post-Closing Reserve Account,
- (ix) the Indebtedness Payment Account, and
- (x) any other accounts established in accordance with this Trust Agreement.

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

“Agreed Bank”: Means, initially, JPMorgan Chase Bank N.A. or any successor thereto or any replacement bank selected by the Trustee, in each case, so long as it: (a) has an investment grade rating by Fitch Ratings Inc. (minimum ratings of BBB or F2) or Moody’s (minimum ratings of Baa2 or P-2); and (b) can act as a securities intermediary under the UCC.

“Agreed Sale”: Means any sale that: (a) is made pursuant to a PSA; (b) satisfies the Threshold Purchase Price; (c) is consummated within the Targeted Disposal Period; and (d) is not made to a buyer (including any permitted assignee of the buyer under the applicable PSA) that is a Certificateholder or an Affiliate thereof, unless (for purposes of this clause (d) only): (1) such sale was on arms’ length terms; (2) such sale was the result of a bona fide marketing and sale process that afforded potential interested third parties an adequate opportunity to participate in such sale, and was otherwise conducted in a commercially reasonable manner; (3) no Certificateholder or an Affiliate thereof was provided an advantage over any non-Certificateholder in such marketing and sale process; (4) such sale process produced at least one qualified bid in addition to that made by any Certificateholder or its Affiliates, and the highest bid received in the sale process was selected; and (5) the Manager certifies to the Trustee in writing that in its good faith judgment each of the foregoing clauses (1) through (4) has been satisfied or complied with. For the avoidance of doubt, a sale shall be deemed an “Agreed Sale” for all purposes hereunder if it is consummated on the basis of a Direction from Certificateholders holding the requisite percentage of Trust Interests in respect of such action or on the basis of an amendment or waiver under this Trust Agreement.

“Annual Budget”: Means: (a) the initial budget for the Trust and the Trust Assets prepared by the Manager on or prior to the date hereof and approved by BidCo; and (b) each subsequent annual budget (and any updates thereto) for the Trust and the Trust Assets prepared by the Manager pursuant to the Management Agreement.

“Auditor”: Means PricewaterhouseCoopers LLP or any successor thereto as appointed by the Trustee at the direction of the Manager or at the direction of the Majority Certificateholders pursuant to Section 7.06(e).

“Authorized Agent”: Means, with respect to the Certificates, any Paying Agent, transfer agent or Registrar for the Certificates.

“Balance”: Means, with respect to any Account as of any date, the sum of the cash deposits in such Account.

“Benefit Plan Investor”: Means: (a) any employee benefit plan (as defined in Section 3(3) of ERISA), that is subject to the fiduciary provisions of Title I of ERISA; (b) any plan to which

Section 4975 of the Code applies; and (c) any entity whose underlying assets include plan assets by reason of an employee benefit plan's or a plan's investment in the entity or otherwise.

"BidCo": Means Copper Bidco LLC.

"Business Day": Means, with respect to the Certificates, any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in New York, New York, or, so long as any Certificate is outstanding, the city and state in which the Trustee maintains its Corporate Trust Office or receives and disburses funds.

"Certificate": Means each certificate executed and authenticated by the Trustee, substantially in the form specified in Exhibit A.

"Certificate Owner": Means, with respect to the Certificates, for purposes of Section 3.05, a Person who owns a Global Certificate.

"Certificateholder": Means the Person in whose name a Certificate is registered in the Register for the Certificates or, as the context may require, each holder of a beneficial interest in a Global Certificate.

"Charitable Beneficiary": Means, with respect to any Charitable Trust, such one or more organizations described in Section 501(c)(3) of the Code that are named as the beneficiary or beneficiaries of such Charitable Trust in accordance with the provisions of Section 4.05. Notwithstanding anything in Article IV or elsewhere in this Trust Agreement to the contrary, a Charitable Beneficiary may transfer its beneficial ownership in such Charitable Trust to a wholly-owned entity that is taxable as a corporation for U.S. federal income tax purposes, which shall thereafter be the "Charitable Beneficiary."

"Charitable Trust": Means any separate trust created pursuant to Section 4.05(c) and administered in accordance with the terms of Section 4.05(g) for the exclusive benefit of one or more Charitable Beneficiaries.

"Charitable Trustee": Means such one or more Persons selected by the Trustee and who or that is not affiliated with the Trust to serve as the trustee(s) of a Charitable Trust.

"Clearing Agency": Means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended.

"Clearing Agency Participant": Means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects, directly or indirectly, book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Collection Period": Means: (a) with respect to the first Distribution Date, the period commencing on the date of this Trust Agreement and ending on the Determination Date related to such Distribution Date; and (b) with respect to each Distribution Date other than the first Distribution Date, the period commencing on the first day of the calendar month immediately preceding the month in which such Distribution Date occurs and ending on the Determination Date related to such Distribution Date.

“Collections”: Means, with respect to each Collection Period, all amounts (without duplication) received by the Trust, or the Trustee on behalf of the Trust, including, but not limited to: (a) Lease Payments; (b) amounts received in respect of claims for damages or in respect of any breach of contract for nonpayment of the foregoing; and (c) any other amounts received by the Trust, or by the Trustee on behalf of the Trust, other than Sales Proceeds.

“Constructive Ownership”: Means, with respect to the Trust, any Tenant or any other relevant Person (as applicable), the direct or indirect ownership of any stock, partnership or member interest or other equity or beneficial interest in (or, as applicable, in the assets or net profits of) the Trust, such Tenant or such other Person (a “Relevant Equity Interest”), together with any deemed or constructive ownership of such Relevant Equity Interest that results from the application of Section 318 of the Code, as modified by Sections 856(d)(5) and 7704(d)(3)(B) of the Code. The terms “Constructive Owner,” “Constructively Owns,” “Constructively Own,” and “Constructively Owned” shall have correlative meanings.

“Corporate Trust Office”: Means, with respect to the Trustee, the office of such Person in the city at which at any particular time its corporate trust business shall be principally administered.

“Credit Bid”: Has the meaning specified in that certain asset purchase agreement, dated as of October 28, 2020, among Copper Retail JV LLC and BidCo, as purchasers, and J. C. Penney Company, Inc. and the other sellers named therein, as sellers.

“DC Master Lease”: Means that certain Distribution Center Master Lease, dated as of December 7, 2020, by and between the applicable Property Owner, as landlord, and DC Tenant, as tenant, with respect to the DC Properties, as amended, modified or supplemented from time to time pursuant to the terms thereof.

“DC Properties”: Means each property listed on Schedule II hereto; provided, however, that once a DC Property is sold pursuant to an Agreed Sale, such sold Property shall no longer be a DC Property.

“DC Tenant”: Means Penney Tenant II LLC, a Delaware limited liability company.

“Debtors”: Means J. C. Penney Company, Inc. and certain of its subsidiaries that commenced voluntary proceedings under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas.

“Designated Trust Interest”: Means any Trust Interest designated as a Designated Trust Interest pursuant to Section 4.05(c).

“Determination Date”: Means the last day of the calendar month immediately preceding each Distribution Date.

“DTC Letter of Representations”: Means that certain blanket letter of representations to be sent to DTC in order to make the Global Certificates eligible for deposit into DTC.

“Electronic Transmission”: Means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient, including, without limitation, email or online voting or consents, (whether by proxy or otherwise); and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee.

“Eligible Account”: Means a “deposit account” (within the meaning of Section 9-102(a)(29) of the UCC) or a “securities account” (within the meaning of Section 8-501(a) of the UCC), in each case maintained with the Agreed Bank for the benefit of the Trustee (on behalf of the Certificateholders) in accordance with this Trust Agreement.

“ERISA”: Means the Employee Retirement Income Security Act of 1974, as amended, from time to time, or any successor federal statute.

“Final Distribution”: Means the final distribution distributed under this Trust prior to its dissolution, which distribution shall include any collected and undistributed Collections and Sales Proceeds (including any unused and undistributed Balances in the Trustee’s Reserve Account, the Manager’s Reserve Account and the Post-Closing Reserve Account), subject to the priority of distribution set forth in Section 5.05.

“Financial Advisor”: Means any nationally recognized investment bank or appraisal firm engaged by or on behalf of the Trust with the approval of the Majority Certificateholders, including for the purpose of overseeing the Real Estate Broker, whose engagement letter remains operative and identified to the Trustee as a “Financial Advisor” for purposes hereof.

“Fractional Undivided Interests”: Means the fractional undivided interest in the Trust that is evidenced by a Certificate relating to the Trust.

“Hilco”: Means Hilco JCP, LLC, a Delaware limited liability company.

“Lease”: Means, individually or collectively, as the context may require: (a) the DC Master Lease; and (b) the Retail Master Lease, as the same may be modified from time to time, including after the execution and delivery by the landlord of one or more Severed Leases entered into in connection with the sale of a Property or Properties.

“Lease Payments”: Means all Rent payable by the Retail Tenant under the Retail Master Lease, all Rent payable by the DC Tenant under the DC Master Lease, and all rights of the Trust, or the Trustee on its behalf, to receive moneys due and to become due under or pursuant to the Retail Master Lease and/or the DC Master Lease.

“Leasing Agent”: Means, initially and solely for the “Consideration” set forth in the Management Agreement, Hilco (and any other Person engaged in such capacity by Hilco on behalf of the Trust pursuant to the Management Agreement) and, upon termination of Hilco in accordance with the Management Agreement, any entity engaged by or on behalf of the Trust with the approval of the Majority Certificateholders, for the purpose of assisting the Manager in managing, and administering the DC Master Lease and the Retail Master Lease and re-marketing any Properties that are not subject to a lease, whose engagement letter remains operative and identified to the Trustee as a “Leasing Agent” for purposes hereof.

“Majority Certificateholders”: Means Certificateholders with Fractional Undivided Interests aggregating not less than a majority of the Trust Interests.

“Management Agreement”: Means that certain management agreement dated as of January 30, 2021 between the Trust and the Manager substantially in form of Exhibit G, pursuant to which the Manager is performing certain specified services for the Trust and, upon termination of Hilco as Manager pursuant to such Management Agreement, the replacement management agreement then entered into with a replacement manager, in each case as amended, modified or supplemented from time to time pursuant to the terms thereof.

“Manager”: Means, as of the date hereof, Hilco and, in the event of the resignation or termination of Hilco pursuant to the Management Agreement, any replacement managers engaged by the Trustee on behalf of the Trust at the direction of the Majority Certificateholders from time to time to assist with managing the Trust and the Trust Assets pursuant to a management agreement substantially similar to the Management Agreement.

“Manager’s Reserve Account”: Means that certain non-interest bearing account established at the Agreed Bank in which the Trust may hold up to \$10.0 million (or such greater amount approved by the Majority Certificateholders). The initial Balance of the Manager’s Reserve Account on the date hereof will be \$10.0 million.

“Monthly / Quarterly Report”: Means the monthly / quarterly reports to be prepared in substantially the form of Exhibit B-1 or, in respect of any Retail Properties owned by the Trust (directly or indirectly) and subject to a Severed Lease, Exhibit B-2 or, in respect of any DC Properties owned by the Trust (directly or indirectly) and subject to a Severed Lease, Exhibit B-3 and distributed hereunder.

“Ownership”: Means actual or Constructive Ownership of any Trust Interest or Relevant Equity Interest, as applicable, by a Person, whether such Trust Interest or Relevant Equity Interest, as applicable, is held directly or indirectly (including by a nominee). The terms “Owner,” “Owns,” “Own,” and “Owned” shall have correlative meanings.

“Paying Agent”: Means, with respect to the Certificates, the paying agent maintained and appointed for such Certificates pursuant to Section 7.09 of this Trust Agreement.

“Permitted Indebtedness”: Means any one or more debt facilities, indentures, or other arrangements with banks, other financial institutions providing for loans, notes, bonds, debentures, letters of credit or other indebtedness for borrowed money, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time: (w) incurred by the Trust or one or more of its subsidiaries (including any guarantee); (x) in a private loan transaction, a registered offering of securities under the Securities Act of 1933 (as amended) or in a private offering of securities exempt from registration under the Securities Act of 1933 (as amended) or any combination of the foregoing; (y) on an unsecured basis or secured by all or a portion of the Trust Assets; and (z) involving arrangers, bookrunners, underwriters or similar agents, initial lenders, noteholders, certificateholders or other creditors (or participants of any of the foregoing), in each case, none of whom (and none of whose Affiliates) are, directly or indirectly, Certificateholders or

Affiliates of Certificateholders; provided that any Qualified Marketmakers for such Permitted Indebtedness may also be an arranger, bookrunner, underwriter or similar agent to the extent they only hold Certificates in their capacity as Qualified Marketmaker for the Certificates. For the avoidance of doubt, Permitted Indebtedness will not include any Permitted Intercompany Transaction.

“Permitted Intercompany Transaction”: Means any transaction or arrangement solely between the Trust and one or more of its direct or indirect wholly-owned subsidiaries, or between one or more such direct or indirect wholly-owned subsidiaries, including any instrument evidencing such transaction or arrangement (such as, but without limitation, an intercompany loan or lease).

“Permitted Transferee”: Means any Person designated as a Permitted Transferee in accordance with the provisions of Section 4.05(g)(iv).

“Person”: Means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, trustee, unincorporated organization or government or any agency or political subdivision thereof.

“Post-Closing Liabilities”: Means any potential post-closing liabilities of the seller under a PSA, including any taxes imposed on (or filing fees in connection with) and payable or reasonably estimated to be payable by the Trust as a result of such sale, or in connection with a casualty or condemnation.

“Post-Closing Reserves”: Means reasonable reserves established by the Trust at the direction of the Manager for any Post-Closing Liabilities, which reserves: (a) will be based on the recommendation of the Manager; (b) will be subject to the approval of the Majority Certificateholders if such reserves exceed five percent (5%) of the gross purchase price under the PSA pursuant to which one or more Retail Properties and/or DC Properties are to be sold; and (c) will be subject to the approval of the Majority Certificateholders if such reserves are to be reserved for longer than 18 months after the applicable Agreed Sale of such Property.

“Prohibited Owner”: Means any Person: (a) that Owns Fractional Undivided Interests aggregating 4.9% or more of the Trust Interests but is not an Excepted Holder; or (b) whose Ownership of Trust Interests would cause the Trust, together with any and all of the Section 4.05 Subsidiaries, to own in the aggregate (i) in the case of any Tenant listed on Schedule III (as of the date Ownership of such Trust Interests was obtained) that is a corporation for U.S. federal income tax purposes, stock of such Tenant possessing ten percent (10%) or more of the total combined voting power of all classes of stock entitled to vote or ten percent (10%) or more of the total value of shares of all classes of stock of such Tenant, within the meaning of Section 856(d)(2)(B)(i) of the Code; or (ii) in the case of any Tenant listed on Schedule III (as of the date Ownership of such Trust Interests was obtained) that is not a corporation for U.S. federal income tax purposes, an interest of ten percent (10%) or more in the assets or net profits of such Tenant, within the meaning of Section 856(d)(2)(B)(ii) of the Code.

“Projected Winddown Amount”: Means an amount equal to the sum of the operating and/or administrative expenses by or on behalf of the Trust or its subsidiaries or relating to the

Properties or the management thereof (including such amounts expended by the Manager on behalf of the Trust pursuant to the Management Agreement) and administrative expenses of the Trustee relating to its role as such, in each case payable or reimbursable (or expected to be payable and reimbursable in the good faith judgment of the Manager) before the dissolution of the Trust pursuant to Section 10.02, as set forth in a written notice to be delivered by Manager to the Trustee on or before the next Distribution Date after the last Property has been sold or from time to time thereafter.

“Property(ies)”: Means, collectively, the DC Properties and the Retail Properties and, individually, any DC Property and any Retail Property.

“Property Manager”: Means, initially and solely for the “Consideration” set forth in the Management Agreement, Hilco and, upon termination of Hilco in accordance with the Management Agreement, any entity engaged by or on behalf of the Trust with the approval of the Majority Certificateholders, for the purpose of assisting the Manager in managing the Properties, whose engagement letter remains operative and identified to the Trustee as a “Property Manager” for purposes hereof.

“PSA”: Means a purchase and sale agreement pursuant to which one or more Properties is sold: (a) that: (i) substantially incorporates the provisions of the form PSA attached as Exhibit D hereto, together with such negotiated changes thereto as may be determined by the Manager pursuant to the Management Agreement; or (ii) is otherwise agreed to by the Majority Certificateholders; (b) that has been fully executed and delivered by the seller and the buyer thereunder; and (c) where the buyer (including any permitted assignee of the buyer) is not the Manager, the Trustee or an Affiliate of the foregoing.

“Qualified Marketmaker”: Means an entity that (x) holds itself out to the market as standing ready in the ordinary course of its business to purchase from customers and sell to customers interests in or loans to the Trust or enter with customers into long and short positions in or loans to the Trust, in its capacity as a dealer or market maker in such interests in and loans to the Trust, and (y) is in fact regularly in the business of making a market in interests in and loans to issuers or borrowers (including debt securities or other debt).

“Real Estate Broker”: Means one or more third-party real estate brokers engaged by the Manager on behalf of the Trust from time to time to sell any Property whose engagement letter remains operative and identified to the Trustee as a “Real Estate Broker” for purposes hereof; provided, however, that an Affiliate of the Manager may serve in a co-brokerage capacity pursuant to, and only for such “Consideration” as is set forth in, the Management Agreement.

“Record Date”: Means, with respect to the Trust or the Certificates, for Collections or Sales Proceeds to be distributed on any Distribution Date, other than the Final Distribution, the day (whether or not a Business Day) preceding such Distribution Date, or such other date as shall be specified herein.

“Registrar”: Has the meaning, with respect to the Certificates, specified in Section 4.04 and includes the registrar appointed pursuant to Sections 4.04 and 7.09 of this Trust Agreement.

“Rent”: Has the meaning given to it in the applicable Lease.

“Reserve Amount”: Means the aggregate amount held in the Manager’s Reserve Account and the Trustee’s Reserve Account, which shall be \$25.0 million.

“Responsible Officer”: Means, with respect to any Trustee, any officer in the corporate trust department or similar department of the Trustee, or any other officer customarily performing functions similar to those performed by the persons who at the time shall be such officers or to whom any corporate trust matter is referred because of his knowledge of and familiarity with a particular subject.

“Retail Master Lease”: Means that certain Retail Master Lease, dated as of December 7, 2020, by and between the applicable Property Owner, as landlord, and Retail Tenant, as tenant, with respect to the Retail Properties, as amended, modified or supplemented from time to time pursuant to the terms thereof.

“Retail Property(ies)”: Means each property listed on Schedule I hereto; provided, however, that once a Retail Property is sold pursuant to an Agreed Sale, such sold Property shall no longer be a Retail Property.

“Retail Tenant”: Means Penney Tenant I LLC, a Delaware limited liability company.

“Sales Proceeds”: Means with respect to each Collection Period, the aggregate amount of cash, consideration or other amounts received by or on behalf of the Trust in connection with: (a) any sale of a Property (including in a Strategic Disposition Transaction); (b) any casualty insurance proceeds (including rental loss interruption proceeds) in connection with a casualty to any Property; and (c) any condemnation proceeds in connection with a condemnation to any Property, *less*, in each case and only to the extent provided for under this Trust Agreement: (i) any costs, expenses (including legal costs and expenses), commissions and fees paid by or on behalf of the Trust to third parties in connection with such sale, casualty or condemnation; and (ii) Post-Closing Reserves in connection with the related sale (in each case without double counting).

“Section 4.05 Market Price”: Means, on any date, the fair market value of the relevant Trust Interest, as determined in good faith by the Trustee or by the Manager at the direction of the Trustee.

“Section 4.05 Non-Transfer Event”: Means an event, other than a purported Section 4.05 Transfer, that would cause any Person to violate the provisions of Section 4.05(a) or (b). Section 4.05 Non-Transfer Events include, but are not limited to: (a) the granting of any option or entering into any agreement for the sale, transfer, or other disposition of a Trust Interest or Ownership interest therein; (b) the sale, transfer, assignment, or other disposition of any securities or rights convertible into or exchangeable for a Trust Interest or Ownership interest therein; or (c) a redemption, repurchase, restructuring or similar transaction with respect to a Person that Owns any Trust Interest.

“Section 4.05 Subsidiary”: Means any direct or indirect subsidiary of the Trust that is not treated as a corporation for U.S. federal income tax purposes.

“Section 4.05 Transfer”: Means (as a noun) any issuance, sale, transfer, gift, assignment, devise, or other disposition of a Trust Interest or Ownership interest therein (including any transaction treated as a transfer of a Trust Interest or Ownership interest therein for U.S. federal income tax purposes), whether voluntary or involuntary, whether of record, constructively or beneficially, and whether by operation of law or otherwise. “Section 4.05 Transfer” (as a verb) shall have the correlative meaning.

“Severed Lease”: Has the meaning given to such term in each Lease.

“Similar Law”: Means a foreign, federal, state, or local law which is substantially similar to the prohibited transaction provisions of Title I of ERISA or Section 4975 of the Code.

“Stock”: Means the common or preferred stock of the third party engaged in a Strategic Disposition Transaction and any other class of securities into which such securities may hereafter be reclassified or changed, in each case which is listed or quoted on the New York Stock Exchange, NASDAQ Stock Market or any other principal U.S. national securities exchange.

“Strategic Disposition Transaction”: Means a merger, amalgamation, consolidation, sale of equity interests or assets or similar transaction of the Trust or one or more of its subsidiaries (on one hand) and a third party (on the other hand), so long as (a) such third party is not the Manager, the Trustee, a Certificateholder or an Affiliate of the foregoing, unless approved by the Majority Certificateholders; (b) any non-cash consideration received by the Trust will be distributed to each Certificateholder, *pro rata* as between them, on the closing date of such transaction; and (c) the Majority Certificateholders (or, if the purchase price is below the Threshold Purchase Price, the Supermajority Certificateholders), including at least three (3) Certificateholders who are not Affiliates of one another, have approved such transaction.

“Supermajority Certificateholders”: Means Certificateholders with Fractional Undivided Interests aggregating not less than two thirds (2/3) of the Trust Interests.

“Targeted Disposal Period”: Means a period of six (6) months (with respect to any DC Property) or twelve (12) months (with respect to any Retail Property), which period shall commence on: (a) the applicable Lockout Period Expiration Date, if such Property is: (i) a DC Property; or (ii) a Non-S/B Landlord Option Property, an S/B Landlord Option Property or an S/B Non-Landlord Option Property (as each such term is defined in the Retail Master Lease) (each of the foregoing, a “Lockout Purchase Property”); or (b) the date hereof, if such Property is not a Lockout Purchase Property. For purposes of this definition, “Lockout Period Expiration Date” means: (a) March 7, 2021, with respect to the fifteen (15) Non-S/B Landlord Option Properties and the forty-six (46) S/B Non-Landlord Option Properties; and (b) April 6, 2021, with respect to the eight (8) S/B Landlord Option Properties and the DC Properties.

“Tenant”: Means any Retail Tenant, any DC Tenant or any sub-tenant of any Property (or portion of such Property), including any Person identified as a tenant or sub-tenant on Schedule III (or, if such tenant or sub-tenant is a disregarded entity for U.S. federal income tax purposes, the regarded owner of such tenant or sub-tenant).

“Threshold Purchase Price”: Means, with respect to each proposed sale of a Property and based on a determination made in good faith by the Manager, a gross purchase price in an

amount that is equal to or greater than the minimum sales price per square foot with respect to a Retail Property or DC Property or group of Retail Properties or DC Properties (as set forth in the pricing parameters provided to the Trustee), after taking into account and aggregating: (a) all pending sales with executed PSAs and completed prior sales of Properties and the gross purchase price per square foot received by the Trust therefor; (b) the gross purchase price per square foot to be received by the Trust for such proposed sale; and (c) the gross purchase price per square foot for the remaining Properties not included in clause (a) or (b) above based on the most recent BOVs (as defined herein).

“Trading Day”: Means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which the Stock is not traded on the applicable securities exchange.

“Trust Asset(s)”: Means: (a) the Properties held by the Property Owners as the property of the Trust (including fixtures, equipment and other goods (other than inventory) contained within such properties), the Retail Master Lease, the DC Master Lease, and all proceeds at any time paid or payable to or for the benefit of the Trust in respect of the foregoing; (b) funds from time to time deposited in the Accounts; (c) all equity interests held by the Trust, directly or indirectly, in the Property Owners; (d) all rights of the Trust, the Trustee, on behalf of the Trust, and the Property Owners (as applicable) under this Trust Agreement, the Retail Master Lease and the DC Master Lease, including, without limitation, all rights to receive all monies and other property payable thereunder, and any tort claims, insurance proceeds and general intangibles directly related to the properties; and (e) all monies or other property receivable under any Trust Transaction Documentation by or for the benefit of the Trust.

“Trust Interests”: Each Certificateholder’s interests in the Trust, as represented by such Certificateholder’s Certificates.

“Trust Transaction Documentation”: Means this Trust Agreement, the Certificates, the Management Agreement, the Retail Master Lease and the DC Master Lease.

“Trustee’s Reserve Account”: Means that certain non-interest bearing account established at the Agreed Bank in which the Trust may hold up to the Reserve Amount (or such greater amount approved by the Majority Certificateholders). The initial Balance of the Trustee’s Reserve Account on the date hereof will be \$15.0 million.

“UCC”: Means the Uniform Commercial Code as in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of any interest in the Trust Assets is governed by the Uniform Commercial Code as in effect in any other jurisdiction, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

“VWAP”: Means, for any Trading Day, the price for the Stock determined by the daily volume weighted average price per share of the Stock for such Trading Day on the trading market on which the Stock is then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of

such regular trading session) as reported on the New York Stock Exchange or NASDAQ Stock Market, or if such Stock is not listed or quoted on the New York Stock Exchange or NASDAQ Stock Market, as reported by the principal U.S. national securities exchange (including, for such purpose, the Over The Counter Bulletin Board or Pink Sheets) on which such Stock is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the price per share of Stock using a volume weighted average price method selected by an independent nationally recognized investment bank or other qualified financial institution selected by the Trustee with the approval of the Majority Certificateholders.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
Act	Section 1.04(a)
Assignee/Subtenant Attributable Rent Percentage	Section 6.09(j)
Avoidable Tax	Section 7.06(g)
BOV	Section 6.09(d)
Code	Recitals
Collections Account–Rental Proceeds	Section 5.01(a)(i)
Collections Account–Sales Proceeds	Section 5.01(a)(ii)
Commission	Section 6.06(b)
Conversion Trigger Date	Section 2.02(b)
Definitive Certificates	Section 3.05(a)
Direction	Section 1.04(a)
Direction Record Date	Section 1.04(d)
Disregarded Holder	Section 1.04(c)
Distribution Date	Section 3.03(a)
Distribution Date Schedule	Section 5.04(b)
Distributions Account—Indebtedness Proceeds	Section 5.01(a)(v)
Distributions Account–Rental Proceeds	Section 5.01(a)(iii)
Distributions Account–Sales Proceeds	Section 5.01(a)(iv)
DTC	Section 3.03(b)
DTC Participants	Section 3.05(b)
Excepted Holder	Section 4.05(a)
Expense Cap	Section 7.13(a)

Expenses	Section 7.13(b)
Global Certificate	Section 3.05(b)
Indebtedness Payment Account	Section 5.01(a)(ix)
Indemnified Persons	Section 7.13(b)
Indirect Participants	Section 3.05(b)
Investor Website	Section 6.06(i)
MNPI	Section 6.06(j)
Original Trust Agreement	Recitals
Plan of Conversion	Section 2.02(b)
Post-Closing Reserve Account	Section 5.01(a)(viii)
Property Owner	Recitals
Property Value Threshold	Section 2.02(b)
Qualifying Income Threshold Violation	Section 4.05(f)
Register	Section 4.04
Relevant Equity Interest	Section 1.02
Treasury Regulation	Recitals
Trust	Recitals
Trust Agreement	Preamble
Trustee	Preamble
UMB	Section 7.01(d)(iv)

Section 1.03 Form of Documents. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters and any such Person may certify or give an opinion as to such matters in one or several documents.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Trust Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.04 Directions of Certificateholders.

(a) Any direction, consent, request, demand, authorization, notice, waiver or other action provided by this Trust Agreement or in respect of the Certificates to be given or taken by Certificateholders (a “Direction”) may be embodied in and evidenced by one or more

instruments of substantially similar tenor signed by such Certificateholders or by an agent or proxy duly appointed in writing (which consent, instrument or proxy may be transmitted by Electronic Transmission and shall become effective when received by the Trustee unless otherwise expressly provided by its terms). Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Certificateholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent or proxy shall be sufficient for any purpose of this Trust Agreement and conclusive in favor of the Trustee, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or such other officer, and where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may be proved in any other reasonable manner which the Trustee deems sufficient (which instrument or writing may be transmitted by Electronic Transmission).

(c) In determining whether the Certificateholders of the requisite Fractional Undivided Interests of Certificates have given any Direction, consent or approval under this Trust Agreement, Certificates owned by: (i) the Debtors (or any successors in interest thereto); (ii) Simon Property Group (or any successor in interest thereto), Brookfield Asset Management (or any successor in interest thereto), Penney Intermediate Holdings LLC or any tenant of a Retail Property or DC Property; (iii) the Trustee, the Manager, the Financial Advisor, any Real Estate Broker or any other advisor engaged by or on behalf of the Trust at any time during the term of this Trust Agreement (including without limitation, any Leasing Agents or Property Managers); (iv) any Person holding Permitted Indebtedness in contravention of clause (z) of the definition of “Permitted Indebtedness”; (v) any party to a Strategic Disposition Transaction or any shareholder or beneficial owner of such party; or (vi) any Affiliate of any of the foregoing Persons (any Person identified in any of clauses (i) through (vi) above, a “Disregarded Holder”) shall be disregarded (from both the numerator and the denominator) and deemed not to be outstanding for purposes of any such determination. In determining whether the Trustee shall be protected in relying upon any such Direction, only Certificates which the Trustee actually knows to be so owned shall be so disregarded. By giving any Direction, the relevant Certificateholder shall represent and warrant that it is not a Disregarded Holder and that neither it nor any of its Affiliates has entered into an arrangement with a Disregarded Holder to vote any Certificates in a particular way in exchange for compensation, remuneration or other consideration. Notwithstanding the foregoing, (x) if any such Person owns Fractional Undivided Interests aggregating not less than 100% of the Trust Interests, such Certificates shall not be so disregarded, and (y) if any amount of Certificates owned by any such Person has been pledged in good faith, such Certificates shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Certificates and that the pledgee is not a Disregarded Holder.

(d) The Trustee may, at its option, set a record date (a “Direction Record Date”) to determine the Certificateholders in respect of the Certificates entitled to give any Direction. Such Direction Record Date shall be specified by the Trustee in a notice in writing distributed to the Certificateholders no later than ten (10) Business Days prior to such Direction Record Date, which shall be a date not more than thirty (30) days prior to the first solicitation of Certificateholders in connection therewith. If such a Direction Record Date is fixed, such Direction may be given before or after such record date, but only the Certificateholders of record at the close of business on such record date shall be deemed to be Certificateholders for the purposes of determining whether Certificateholders of the requisite proportion of outstanding Certificates have authorized or agreed or consented to such Direction, and for that purpose the outstanding Certificates shall be computed as of such record date; provided, however, that no such Direction by the Certificateholders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Trust Agreement not later than six (6) months after such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new Direction Record Date for any action for which a Direction Record Date has previously been set pursuant to this paragraph (whereupon the Direction Record Date previously set shall automatically and with no action by any Person be deemed cancelled and of no effect).

(e) Any Direction by the Certificateholder of any Certificate shall bind the Certificateholder of every Certificate issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such Direction is made upon such Certificate.

(f) Except as otherwise provided in Section 1.04(c), Certificates owned by or pledged to any Person shall have an equal and proportionate benefit under the provisions of this Trust Agreement, without preference, priority or distinction as among all of the Certificates.

(g) The Trustee may make reasonable rules for action by or at a meeting of Certificateholders.

ARTICLE II DECLARATION OF TRUST

Section 2.01 Declaration of Trust. The terms and conditions of the Original Trust Agreement are hereby amended and restated in all respects. The activities of the Trust shall be limited to those activities set forth in this Trust Agreement. The Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) or, in the event it is not so treated, as a partnership other than a partnership taxable as a corporation under Section 7704 of the Code. The primary purpose of the Trust shall be to dispose of and distribute the Trust Assets, and the Trustee understands and agrees that the Trust has no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. The Trustee, by the execution and delivery of this Trust Agreement, acknowledges its acceptance of all right, title and interest in and to the Trust Assets to be acquired pursuant to this Trust Agreement and the Trustee will hold such right, title and interest for the benefit of all present and future Certificateholders, upon the trusts set forth in this Trust Agreement.

Section 2.02 Tax Treatment of Transfer of Trust Assets.

(a) For all U.S. federal, state, and local income tax purposes, the Debtors, the initial Certificateholders, the initial beneficial owners of the Trust Interests and the Trustee shall treat the transfer of the Trust Assets to the Trust as a deemed transfer of the Trust Assets by the Debtors to the initial beneficial owners of the Trust Interests on account of their allowed claims under the Credit Bid and the related plan of reorganization, followed by a deemed transfer of the Trust Assets by such Persons to the Trust in exchange for their beneficial interests in the Certificates. Thus, the initial beneficial owners of the Trust Interests shall be treated as the initial grantors and owners of the Trust for U.S. federal income tax purposes.

(b) If, on the Conversion Trigger Date, the Trust (directly or through its subsidiaries) owns any Properties after the Manager has (in accordance with the Performance Standard set forth in the Management Agreement) tried to sell the Properties, then the Manager, with the advice of legal and tax advisors to the Trust, will: (i) promptly notify the Certificateholders; and (ii) in accordance with the Management Agreement, develop a plan, which shall be subject to approval in writing by the Majority Certificateholders, including at least three (3) Certificateholders who are not Affiliates of one another, for the conversion of one or more subsidiaries of the Trust (a “Plan of Conversion”) to a REIT under the Code (or the distribution to the Certificateholders of the one or more entities formed by the Trust that may elect to be treated as a REIT under the Code). If so approved the Manager may, in its discretion, list the securities of such subsidiary or distributed entity or entities on an internationally-recognized stock exchange. “Conversion Trigger Date” means: (A) the final day of the last expiring Targeted Disposal Period (as such period may have been extended by the Majority Certificateholders), if on such date the Property Value Threshold is greater than 10%; or (B) the 6-month anniversary of the final day of the Targeted Disposal Period (as such period may have been extended by the Majority Certificateholders), if clause (A) does not apply. “Property Value Threshold” means (1) the value of Properties still owned, directly or indirectly, by the Trust based on their most recently-delivered quarterly BOVs (it being understood that any Trust Assets other than Properties, such as cash and other assets, shall not be included in such calculation), net of (2) any liabilities of the Trust as of such date; each as estimated in good faith by the Manager, divided by the value of all Properties initially transferred to the Trust (based on their initial quarterly BOVs).

Section 2.03 Nature of Trust. The Trust is irrevocable, but this Trust Agreement is subject to amendment, supplement and waiver as provided in this Trust Agreement. Except for tax purposes to the extent otherwise provided herein, the Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, joint stock company, or association, nor shall the Trustee, or the Certificateholders, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Certificateholders, on the one hand, to the Trust and the Trustee, on the other hand, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

Section 2.04 Trust Activities. The Trust shall conduct such activities, directly or indirectly, required pursuant to this Trust Agreement (including but not limited to such activities

in Article V) or that are reasonably related, complementary or ancillary thereto and reasonable extensions thereof.

Section 2.05 Other Agreements. The Trustee shall not consent or agree to any material amendment, modification, supplement or waiver of the Retail Master Lease or the DC Master Lease, unless: (a) the Majority Certificateholders have consented thereto; or (b) the Trustee has posted a notice of such proposed material amendment, modification, supplement or waiver to the Investor Website and within thirty (30) days thereafter, Certificateholders representing Fractional Undivided Interests aggregating more than 50% of all Trust Interests have not objected in writing. The Trustee shall not consent or agree to any amendment, modification, supplement or waiver of the Management Agreement, in each case, which (in the Trustee's good faith judgment) may have an adverse effect on the Certificateholders without the consent of the Majority Certificateholders.

ARTICLE III ISSUANCE AND TERMS OF THE CERTIFICATES

Section 3.01 The Certificates.

(a) This Trust Agreement creates a series of Certificates designated as "Copper Property CTL Pass Through Certificates". Each Certificate shall bear upon its face the designation "Copper Property CTL Pass Through Certificate". All Certificates shall be substantially identical except as otherwise provided for in this Trust Agreement.

(b) Each Certificate represents a Fractional Undivided Interest in the Trust created hereby and represents a Certificateholder's Trust Interests. All Certificates shall be in all respects equally and ratably entitled to the benefits of this Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of this Trust Agreement. The Certificates shall be the only instruments evidencing a Fractional Undivided Interest in the Trust.

(c) The Certificates do not represent indebtedness of the Trust.

Section 3.02 Authentication of Certificates.

(a) On the date hereof, the Trustee shall duly execute, authenticate and deliver a Global Certificate representing 75,000,000 Certificates evidencing the entire ownership of the Trust. Thereafter, the Trustee shall duly execute, authenticate and deliver the Certificates as herein provided.

(b) No Certificate shall be entitled to any benefit under this Trust Agreement, or be valid for any purpose, unless there appears on such Certificate a certificate of authentication substantially in the form set forth in this Trust Agreement relating to such Certificates executed by the Trustee by manual signature, and such certificate of authentication upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly authenticated and delivered hereunder. All Certificates shall be dated the date of their authentication.

Section 3.03 Terms and Conditions. The terms and conditions applicable to the Certificates and the Trust are as follows:

(a) The distribution dates with respect to any payment of Collections and of Sales Proceeds (each such distribution date, a “Distribution Date”) shall be the tenth (10th) day of each month, commencing on March 10, 2021, until the Final Distribution has been made; provided, however, that, if any such day shall not be a Business Day, the related distributions shall be made on the next succeeding Business Day.

(b) The Certificates shall be subject to the conditions set forth in the DTC Letter of Representations between the Trust and The Depository Trust Company and any successor agency thereto (“DTC”), as initial Clearing Agency, attached hereto as Exhibit C.

Section 3.04 Temporary Certificates. Until Definitive Certificates are ready for delivery, the Trustee shall execute, authenticate and deliver temporary Certificates. Temporary Certificates shall be substantially in the form of Definitive Certificates but may have insertions, substitutions, omissions and other variations determined to be appropriate by the officers executing the temporary Certificates, as evidenced by their execution of such temporary Certificates. If temporary Certificates are issued, the Trustee will cause Definitive Certificates to be prepared without unreasonable delay. After the preparation of Definitive Certificates, the temporary Certificates shall be exchangeable for Definitive Certificates upon surrender of such temporary Certificates at the Corporate Trust Office or the office or agency of the Trustee designated for such purpose pursuant to Section 7.09, without charge to the Certificateholder. Upon surrender for cancellation of any one or more temporary Certificates, the Trustee shall execute, authenticate and deliver in exchange therefor Definitive Certificates of like series, of a like Fractional Undivided Interest. Until so exchanged, such temporary Certificates shall be entitled to the same benefits under this Trust Agreement as Definitive Certificates.

Section 3.05 Global and Definitive Certificates.

(a) Certificates in registered form shall be issued in limited circumstances pursuant to Section 3.05(d) and shall be in substantially the form set forth as Exhibit A hereto (the “Definitive Certificates”) and shall be issued in fully physical, registered form and shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner, all as determined by the officers of the Trustee executing such Definitive Certificates, as evidenced by their execution of such Definitive Certificates.

(b) The Certificates shall be issued initially in definitive, fully registered, global form, substantially in the form of Exhibit A hereto (the “Global Certificates”), duly executed and authenticated by the Trustee as hereinafter provided, to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Each Global Certificate delivered to DTC shall initially (i) be registered on the Register in the name of Cede & Co., the nominee of the initial Clearing Agency, or in the name of a nominee for DTC for credit to the account of members of, or participants in, DTC (“DTC Participants”) or to the account of indirect participants that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly (“Indirect Participants”), and (ii) be deposited with the Trustee, at its

Corporate Trust Office, as custodian for DTC. Unless and until Definitive Certificates have been issued pursuant to Subsection (d) below:

- (i) the provisions of this Section 3.05 shall be in full force and effect;
 - (ii) the Trust, or the Trustee on its behalf, the Paying Agent, the Registrar and the Trustee may deal with the Clearing Agency for all purposes (including the making of distributions on the Certificates);
 - (iii) to the extent that the provisions of this Section 3.05 conflict with any other provisions of this Trust Agreement (other than any provisions of this Trust Agreement expressly amending this Section 3.05), the provisions of this Section 3.05 shall control;
 - (iv) the rights of Certificate Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Certificate Owners and the Clearing Agency Participants; and until Definitive Certificates are issued pursuant to Subsection (d) below, the Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit distributions, if any, on the Certificates to such Clearing Agency Participants;
 - (v) such Certificates may be transferred in whole, but not in part, and in the manner provided in Section 4.04, by the Clearing Agency holding such Certificates to a nominee of such Clearing Agency, or by such Clearing Agency to a successor Clearing Agency that has been selected or approved by the Majority Certificateholders or to a nominee of such successor Clearing Agency; and
 - (vi) whenever this Trust Agreement requires or permits actions to be taken based upon instructions or directions of Certificateholders holding Certificates evidencing a specified percentage of the Fractional Undivided Interests in the Trust, the Clearing Agency shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Clearing Agency Participants owning or representing, respectively, such required percentage of the beneficial interest in Certificates and has delivered such instructions to the Trustee.
- (c) Whenever notice or other communication to the Certificateholders is required under this Trust Agreement, unless and until Definitive Certificates shall have been issued pursuant to Subsection (d) below, the Trustee shall give all such notices and communications specified herein to be given to Certificateholders to the Clearing Agency and upload such notices and communications to the Investor Website.
- (d) Except as provided below, Certificateholders shall not be entitled to receive Definitive Certificates. Global Certificates shall be exchangeable for Definitive Certificates only in the following circumstances:
- (i) DTC notifies the Trust that it is unwilling or unable to continue as depository for such Global Certificates or DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934 (as amended), at a time when DTC is required

to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Trust within ninety (90) days of such notice; or

(ii) there has been a failure to make a distribution which has continued for more than thirty (30) days and a Certificateholder holding Certificates evidencing Fractional Undivided Interests aggregating not less than 10% of the Trust Interests shall have requested the Trustee in writing to exchange such Certificateholder's Global Certificates for Definitive Certificates.

In connection with the exchange of an entire Global Certificate for Definitive Certificates pursuant to this Section 3.05(d), such Global Certificate shall be deemed to be surrendered to the Trustee for cancellation, and the Trust shall execute, authenticate and deliver, to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Certificates, an equal aggregate Fractional Undivided Interest of Definitive Certificates.

(e) The provisions of this Section 3.05 may be waived or amended by the Supermajority Certificateholders.

Section 3.06 Mutilated, Destroyed, Lost or Stolen Certificates.

(a) If: (i) any mutilated Certificate is surrendered to the Registrar, or the Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Certificate, and (ii) there is delivered to the Registrar and the Trustee such security, indemnity or bond as may be required by them to save each of them harmless, then, in the absence of notice to the Registrar or the Trustee that such destroyed, lost or stolen Certificate has been acquired by a protected purchaser (within the meaning of Article 8 of the UCC), and provided that the requirements of Section 8-405 of the UCC are met, the Trustee shall execute, authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate or Certificates of like Fractional Undivided Interest and bearing a number not contemporaneously outstanding.

(b) In connection with the issuance of any new Certificate under this Section 3.06, the Trustee shall require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee and the Registrar) connected therewith.

(c) Any duplicate Certificate issued pursuant to this Section 3.06 shall constitute conclusive evidence of the appropriate Fractional Undivided Interest in the Trust, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

(d) The provisions of this Section 3.06 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Certificates.

Section 3.07 Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Trustee, the Registrar and any Paying Agent shall deem and treat the

Person in whose name any Certificate is registered (as of the day of determination) on the Register as the owner of such Certificate and the Certificateholder for the purpose of receiving distributions pursuant to Section 5.05 and for all other purposes whatsoever, and none of the Trustee, the Registrar or any Paying Agent shall be affected by any notice to the contrary. All payments or distributions made to any such Person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable on any such Certificate.

Section 3.08 Cancellation. All Certificates surrendered for payment or transfer or exchange shall, if surrendered to the Trustee or any agent of the Trustee other than the Registrar, be delivered to the Registrar for cancellation and shall promptly be cancelled by it in accordance with the Trustee's customary procedures. No Certificates shall be authenticated in lieu of or in exchange for any Certificates cancelled as provided in this Section 3.08, except as expressly permitted by this Trust Agreement.

Section 3.09 Limitation of Liability for Payments.

(a) All payments and distributions made to Certificateholders in respect of the Certificates shall be made only from the Trust Assets of the Trust and only to the extent that the Trustee shall have sufficient income or proceeds from such Trust Assets to make such payments in accordance with the terms of Section 5.05 of this Trust Agreement.

(b) Each Certificateholder, by its acceptance of a Certificate, agrees that it will look solely to the income and proceeds from the Trust Assets of the Trust for any payment or distribution due to such Certificateholder pursuant to the terms of this Trust Agreement and that it will not have any recourse to the Trustee, the Registrar, the Paying Agent or the Manager except as otherwise expressly provided in this Trust Agreement or in the other Trust Transaction Documentation.

Section 3.10 CUSIP Numbers. The Certificates will include "CUSIP" numbers (if then generally in use), and if so, the Trustee may use the CUSIP numbers in notices in respect of the Certificates; provided, however, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number printed in the notice or on the Certificates, that reliance may be placed only on the other identification numbers printed on the Certificates, and any such notice shall not be affected by any defect or omission of such CUSIP numbers.

Section 3.11 Tax Forms. The Trustee is authorized to request and obtain from the Certificateholders or any other Person Internal Revenue Service Forms W-8 and/or W-9 or such other forms or information relating to the Trust's tax obligations as the Trustee may reasonably request, and the Trustee may condition any distribution to any Certificateholder or other distributee upon receipt of such forms or information.

ARTICLE IV TRANSFER OF THE CERTIFICATES

Section 4.01 Legends.

Each Global Certificate shall bear the following legend on the face thereof:

“UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE TRUSTEE OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS CERTIFICATE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE TRUST AGREEMENT REFERRED TO ON THE REVERSE HEREOF.

THIS CERTIFICATE MAY NOT BE TRANSFERRED TO ANY DISREGARDED HOLDER (AS DEFINED IN THE TRUST AGREEMENT).

THE INTERESTS IN THE TRUST REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE TRUST’S MAINTENANCE OF ITS STATUS AS A PARTNERSHIP FOR U.S. FEDERAL INCOME TAX PURPOSES BY BEING ABLE TO SATISFY THE “QUALIFYING INCOME” REQUIREMENTS OF SECTIONS 7704(c)(1) AND (2) OF THE CODE IN THE EVENT THAT THE TRUST IS RECHARACTERIZED AS A “BUSINESS ENTITY” (RATHER THAN A GRANTOR TRUST) FOR U.S. FEDERAL INCOME TAX PURPOSES. NO PERSON MAY (I) OWN FRACTIONAL UNDIVIDED INTERESTS AGGREGATING 4.9% OR MORE OF THE TRUST INTERESTS UNLESS SUCH PERSON IS AN EXCEPTED HOLDER OR (II) OWN ANY TRUST INTERESTS THAT WOULD CAUSE THE TRUST, TOGETHER WITH ANY AND ALL OF SECTION 4.05 SUBSIDIARIES, TO OWN IN THE AGGREGATE: (1) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT IS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, STOCK OF SUCH TENANT POSSESSING TEN PERCENT (10%) OR MORE OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR TEN PERCENT (10%) OR MORE OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF STOCK OF SUCH TENANT, WITHIN THE MEANING OF SECTION 856(d)(2)(B)(i) OF THE CODE; OR

(2) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT IS NOT A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, AN INTEREST OF TEN PERCENT (10%) OR MORE IN THE ASSETS OR NET PROFITS OF SUCH TENANT WITHIN THE MEANING OF SECTION 856(d)(2)(B)(ii) OF THE CODE. ANY PERSON WHO ATTEMPTS TO OWN A TRUST INTEREST THAT WOULD RESULT IN A VIOLATION OF EITHER (I) OR (II) ABOVE MUST NOTIFY THE TRUSTEE IN WRITING AS PROMPTLY AS PRACTICABLE. ANY TRANSFER IN VIOLATION OF EITHER (I) OR (II) ABOVE SHALL BE VOID *AB INITIO*.

ANY PERSON ACQUIRING OR ACCEPTING A CERTIFICATE OR AN INTEREST THEREIN WILL AND EACH SUBSEQUENT TRANSFEREE WILL, BY SUCH ACQUISITION OR ACCEPTANCE, BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT FOR SO LONG AS IT HOLDS SUCH CERTIFICATE OR INTEREST THEREIN, SUCH PERSON IS NOT, AND IS NOT ACTING ON BEHALF OF, A BENEFIT PLAN INVESTOR. EACH PERSON WHO PURCHASES AN INTEREST IN A CERTIFICATE, AND EACH SUBSEQUENT TRANSFEREE, WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT IF SUCH PERSON IS A GOVERNMENTAL, CHURCH, NON-U.S. OR OTHER PLAN, (1) IT IS NOT, AND FOR SO LONG AS IT HOLDS SUCH CERTIFICATE OR INTEREST THEREIN WILL NOT BE, SUBJECT TO ANY SIMILAR LAW THAT COULD CAUSE THE UNDERLYING ASSETS OF THE TRUST TO BE TREATED AS ASSETS OF THE INVESTOR IN ANY CERTIFICATE (OR INTEREST THEREIN) BY VIRTUE OF ITS INTEREST AND THEREBY SUBJECT THE ISSUER TO SIMILAR LAW, AND (2) ITS ACQUISITION, HOLDING AND DISPOSITION OF SUCH CERTIFICATE (OR INTEREST THEREIN) WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF ANY APPLICABLE SIMILAR LAW.

IF THE RESTRICTIONS IN THE ABOVE PARAGRAPH ARE VIOLATED, THE RELEVANT GLOBAL CERTIFICATE OR DEFINITIVE CERTIFICATE WILL BE TRANSFERRED AUTOMATICALLY AND BY OPERATION OF LAW TO A CHARITABLE TRUST AND SHALL BE DESIGNATED A DESIGNATED TRUST INTEREST. THE FOREGOING SUMMARY OF THE RESTRICTIONS ON TRANSFER DOES NOT PURPORT TO BE COMPLETE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, AND ALL TERMS IN THIS LEGEND HAVE THE MEANINGS (IF ANY) DEFINED IN, THE TRUST AGREEMENT, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH CERTIFICATEHOLDER WHO SO REQUESTS.”

Each Definitive Certificate shall bear the preceding legend (except for the first two paragraphs thereof) and the following additional legend:

“IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.”

Section 4.02 Book-Entry Provisions for Global Certificates.

(a) DTC Participants shall have no rights under this Trust Agreement with respect to any Global Certificate held on their behalf by DTC, or the Trustee as DTC’s custodian, and DTC may be treated by the Trustee and any agent of the Trustee as the absolute owner of such Global Certificate for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trustee or any agent of the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or shall impair, as between DTC and its DTC Participants, the operation of customary practices governing the exercise of the rights of a holder of any Certificate. Upon the issuance of any Global Certificate, the Registrar or its duly appointed agent shall record Cede & Co. or another nominee of DTC as the registered holder of such Global Certificate.

(b) Transfers of any Global Certificate shall be limited to transfers of such Global Certificate in whole, but not in part, to nominees of DTC, DTC’s successor or such successor’s nominees. Beneficial interests in Global Certificates may be transferred in accordance with the rules and procedures of DTC and the provisions of Article IV of this Trust Agreement. Definitive Certificates shall be delivered to all beneficial owners of beneficial interests in Global Certificates only in the limited circumstance described in Section 3.05(d).

(c) In connection with the transfer of the entire amount of a Global Certificate to the beneficial owners thereof pursuant to Section 3.05(d), such Global Certificate shall be deemed to be surrendered to the Trustee for cancellation, and the Trustee shall execute, authenticate and deliver to each beneficial owner, in exchange for the beneficial interest thereof in such Global Certificate, Definitive Certificates of a like Fractional Undivided Interest, in each case as such beneficial owner and like Fractional Undivided Interest shall have been identified and otherwise set forth (together with such other information as may be required for the registration of such Definitive Certificates) in registration instructions that shall have been delivered by or on behalf of DTC to the Trustee. None of the Registrar, the Paying Agent nor the Trustee shall be liable for any delay in delivery of such registration instructions and each such Person may conclusively rely on, and shall be protected in relying on, such registration instructions. Upon the issuance of any Definitive Certificate, the Trustee shall recognize the Person in whose name such Definitive Certificate is registered in the Register as a Certificateholder hereunder.

(d) The registered Certificateholder of a Global Certificate may grant proxies and otherwise authorize any Person, including DTC Participants and Persons that may hold interests through DTC Participants, to take any action which a Certificateholder is entitled to take under this Trust Agreement or the Certificates.

(e) Neither the Trustee, nor the Registrar, nor the Paying Agent shall have any responsibility or liability for: (i) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Global Certificates, (ii) maintaining, supervising or reviewing any records relating to such beneficial ownership interests or (iii) the performance by DTC, any DTC Participant or any Indirect Participant of their respective obligations under the rules, regulations and procedures creating and affecting DTC and its operation or any other statutory, regulatory, contractual or customary procedures governing their obligations.

Section 4.03 Special Transfer Provisions. The Registrar shall not register a transfer of any Certificate unless such transfer complies with the restrictions on transfer of such Certificate set forth in Section 4.05 of this Trust Agreement.

Section 4.04 Transfer and Exchange. The Registrar shall cause to be kept at the office or agency to be maintained by it in accordance with the provisions of Section 7.09 a register (the “Register”) of the Certificates in which, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration of such Certificates and of transfers and exchanges of such Certificates as herein provided. The Trustee shall initially be the registrar (the “Registrar”) for the purpose of registering such Certificates and transfers and exchanges of such Certificates as herein provided. Promptly upon the Trustee’s request therefor: (a) the Registrar shall provide to the Trustee a true and complete copy of the Register; and (b) the Registrar shall provide to the Trustee such information regarding the Certificates and the Certificateholders as is reasonably available to the Registrar.

All Certificates issued upon any registration of transfer or exchange of Certificates shall be valid obligations of the Trust, evidencing the same interest therein, and entitled to the same benefits under this Trust Agreement, as the Certificates surrendered upon such registration of transfer or exchange.

Upon surrender for registration of transfer of any Certificate at the Corporate Trust Office or such other office or agency designated by the Registrar with the form of transfer notice thereon duly completed and executed, and otherwise complying with the terms of this Trust Agreement, including providing evidence of compliance with any restrictions on transfer, in form satisfactory to the Trustee and the Registrar, the Trustee shall execute, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Certificates, of a like aggregate Fractional Undivided Interest. Whenever any Certificates are surrendered for exchange, the Trustee shall execute, authenticate and deliver the Certificates that the Certificateholder making the exchange is entitled to receive. Every Certificate presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Registrar duly executed by the Certificateholder thereof or its attorney duly authorized in writing. The Registrar and/or the Trustee may request and shall be entitled to receive as a prerequisite to the registration of transfer of any Certificate signature guarantees or corporate signing authorities and incumbency certificates, each authenticated by an appropriate officer of the transferor satisfactory to it in its reasonable discretion.

The Registrar shall not register the transfer or exchange of any Certificate in the name of any Person unless and until evidence satisfactory to the Trustee that the conditions to any such

transfer or exchange set forth in this Article IV shall have been satisfied is submitted to the Trustee and the Trustee (on its own determination or upon confirmation of information received by the Manager under Section 4.05(a)) has notified the Registrar in writing of such satisfaction. The Registrar and the Trustee shall not be liable to any Person for registering any transfer or exchange, or for executing, authenticating or delivering any Certificate based on such evidence. The Registrar and the Trustee may treat the Person in whose name any Certificate is registered as the sole owner of the beneficial interest in the Trust evidenced by such Certificate.

To permit registrations of transfers and exchanges in accordance with the terms, conditions and restrictions hereof, the Trustee shall execute and authenticate Certificates at the Registrar's request. No service charge shall be made to a Certificateholder for any registration of transfer or exchange of Certificates, but the Trustee and the Registrar shall require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates. All Certificates surrendered for registration of transfer or exchange shall be canceled and subsequently destroyed by the Trustee in accordance with the Trustee's customary procedures. Notwithstanding anything contained herein or elsewhere to the contrary, neither the Registrar nor the Trustee shall have any duty or obligation with respect to any transfer, exchange or other disposition of an economic interest in a Certificate (other than a transfer of a Certificate itself) or any personal liability to any Person in connection with the same.

Section 4.05 Limitation on Transferability.

Notwithstanding anything in this Trust Agreement to the contrary:

(a) *Excepted Holder Requirements.* No Person shall Own Fractional Undivided Interests aggregating 4.9% or more of the Trust Interests, unless such Person (an "Excepted Holder") has delivered a certification to the Trustee, substantially in the form of Exhibit F, that such Person: (i) either: (A) does not Own, and will not Own (so long as such Person Owns Fractional Undivided Interests aggregating 4.9% or more of the Trust Interests), a Relevant Equity Interest in any Tenant listed on Schedule III as of the date of such certification; or (B) does not Own, and will not Own (so long as such Person Owns Fractional Undivided Interests aggregating 4.9% or more of the Trust Interests), a Relevant Equity Interest in any Tenant listed on Schedule III as of the date of such certification in excess of the specified percentage of the aggregate outstanding Relevant Equity Interests in such Tenant to which the Trustee has consented in writing; and (ii) agrees to provide in a timely manner such information as the Trustee or the Manager may reasonably request in order to determine the accuracy of such certification or the effect, if any, that such Person's Ownership of Trust Interests would have on the Trust's status as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a "business entity" (rather than a grantor trust) for U.S. federal income tax purposes.

(b) *Restrictions on Transfers.* Except as provided in Section 4.05(f), any Section 4.05 Transfer of a Trust Interest or Ownership interest therein, as applicable, that, if effective, would cause any Person to be a Prohibited Owner shall be void *ab initio* and the intended and purported transferee of such Trust Interest or Ownership interest therein, as applicable, shall acquire no rights in such Trust Interest or Ownership interest therein, as

applicable. Notwithstanding any other provision to the contrary, the Trustee may disregard any purported transfer of Certificates to any Disregarded Holder.

(c) *Transfers to Charitable Trust.* If, notwithstanding the other provisions contained in this Section 4.05, there is a purported Section 4.05 Transfer or Section 4.05 Non-Transfer Event that, if effective, would cause any Person to be a Prohibited Owner, then (A) the purported transferee shall not acquire any right or interest (or, in the case of a Section 4.05 Non-Transfer Event, the Person that Owns the Trust Interest with respect to which such Section 4.05 Non-Transfer Event occurred shall cease to Own any right or interest) in such Trust Interest, and (B) the relevant Trust Interest shall be designated a Designated Trust Interest and, in accordance with the provisions of Section 4.05(g), transmitted automatically and by operation of law to the Charitable Trust to be held in accordance with Section 4.05(g). Such transfer to a Charitable Trust and the designation of the relevant Trust Interest as a Designated Trust Interest shall be effective as of the close of business on the Business Day prior to the date of the Section 4.05 Transfer or Section 4.05 Non-Transfer Event, as the case may be.

(d) *Provision of Information and Remedies for Breach.* By accepting its interest in any Certificate, each Certificateholder and Owner agrees to provide to the Trustee all information or confirmations reasonably requested by the Trustee in connection with the performance of the Trustee's duties and obligations under this Trust Agreement, including any information or confirmations the Trustee deems reasonably necessary to determine whether or not a Certificateholder or Owner is a Prohibited Owner (or, if it is already an Excepted Holder, whether it would be a Prohibited Owner if it were acquiring its interest in such Certificate as of any relevant date of determination). If the Trustee shall at any time determine, after requesting such information or confirmations as the Trustee determines is relevant, that a Section 4.05 Transfer in violation of Sections 4.05(b) and/or 4.05(c) or a Section 4.05 Non-Transfer Event has taken place, or that a Person intends to acquire or has attempted to acquire Ownership of any Trust Interest in violation of Section 4.05(b), the Trustee shall take such action as it deems advisable to refuse to give effect to or to prevent such Section 4.05 Transfer, Section 4.05 Non-Transfer Event or acquisition, including, but not limited to, instituting proceedings to enjoin such Section 4.05 Transfer, Section 4.05 Non-Transfer Event or acquisition.

(e) *Notice of Restricted Transfer.* Any Person who acquires or attempts to acquire an Ownership interest in a Certificate in violation of Sections 4.05(b) and/or 4.05(c), or any Person who Owned a Trust Interest that was transferred to the Charitable Trust pursuant to the provisions of Section 4.05(c), shall as promptly as practicable give written notice to the Trustee of such event or, in the case of such a proposed or attempted transaction, give at least fifteen (15) days prior written notice, and shall provide to the Trustee such other information as the Trustee may request in order to determine the effect, if any, that such Section 4.05 Transfer or Section 4.05 Non-Transfer Event, as the case may be, would have on the Trust's status as a partnership for U.S. federal income tax purposes and Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a "business entity" (rather than a grantor trust) for U.S. federal income tax purposes.

(f) *Exception.* The Trustee may except a Person from the restrictions described in Sections 4.05(a), 4.05(b) and 4.05(c) if the Trustee determines that such Person's Ownership of a Trust Interest that would otherwise make such Person a Prohibited Owner would

not result in the Trust failing to have at least ninety-five percent (95%) of its gross income for the tax year of the Section 4.05 Transfer or Section 4.05 Non-Transfer Event characterized as “qualifying income” (within the meaning, and for purposes of, Section 7704(d) of the Code) (such failure a “Qualifying Income Threshold Violation”), and the Trustee obtains such representations and undertakings from such Person as are necessary to ascertain this fact, and such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this Section 4.05) will result in a Trust Interest that would otherwise make such a Person a Prohibited Owner or, otherwise, that would cause a Qualifying Income Threshold Violation, as applicable, being designated as a Designated Trust Interest in accordance with the provisions of Section 4.05(c). In exercising its discretion under this Section 4.05(f), the Trustee may, but is not required to, obtain a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to the Trustee, as it may deem necessary or desirable in order to ensure that the Trust would be treated as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a “business entity” (rather than a grantor trust) for U.S. federal income tax purposes, and, in addition, may obtain such representations and undertakings from an Owner that it may deem necessary or desirable under the circumstances.

(g) *Designated Trust Interests.*

(i) *Designated Trust Interest.* Any Trust Interest transferred to a Charitable Trust and designated a Designated Trust Interest pursuant to Section 4.05(c) shall be held for the exclusive benefit of the Charitable Beneficiary. The Trustee shall name a Charitable Beneficiary (or Beneficiaries) for each Charitable Trust as soon as practicable after the date on which the Trustee is made aware of the existence of the Charitable Trust. Any transfer to a Charitable Trust, and subsequent designation of a Trust Interest as a Designated Trust Interest, pursuant to Section 4.05(c) shall be effective as of the close of business on the Business Day prior to the date of the Section 4.05 Transfer or Section 4.05 Non-Transfer Event that results in the transfer to the Charitable Trust. When transferred to a Permitted Transferee in accordance with the provisions of Section 4.05(g)(iv), such Designated Trust Interest shall cease to be designated as a Designated Trust Interest.

(ii) *Distribution Rights; Allocations of Trust Income, Etc.* The Charitable Trustee, as holder of a Designated Trust Interest, shall be entitled to receive all distributions with respect to such Trust Interest, and shall be allocated all Trust income, gain, loss, deductions and credits in respect of such Trust Interest, and shall hold such distributions in trust for the benefit of the Charitable Beneficiary. Unless and to the extent not permitted to do so under applicable law and subject to any fiduciary duties that that the Charitable Trustee may have, the Charitable Trustee shall remit such distributions that it receives to the Charitable Beneficiary(ies) as promptly as reasonably possible. The Prohibited Owner with respect to a Designated Trust Interest shall repay to the Charitable Trust the amount of any distributions received by the Prohibited Owner that are attributable to any Trust Interest designated as a Designated Trust Interest as of the record date which was on or after the date that such Trust Interest became a Designated Trust Interest. In addition, the Trustee and/or the Charitable Trustee shall also have the right, in

its and/or their sole discretion, to withhold any amounts that may otherwise be payable or distributable to the Prohibited Owner pursuant to any other provision of this Trust Agreement and apply withheld amounts against any of the outstanding obligations of the Prohibited Owner under this Section 4.05(g)(ii) or any other provisions of this Section 4.05.

(iii) *Voting Rights.* The Charitable Trustee shall be entitled to vote all Designated Trust Interests to the extent of voting rights otherwise exercisable in respect of such Trust Interests that have been so designated. Any vote by a Prohibited Owner as a holder of such a Trust Interest prior to the discovery by the Trustee that the Trust Interest is a Designated Trust Interest shall, subject to applicable law, be rescinded and be void *ab initio* with respect to such Designated Trust Interest and be recast by the Charitable Trustee; provided, however, if the Trustee has already taken any action that is either irreversible or that the Trustee reasonably determines could not be reversed, modified or rescinded without materially and adversely affecting the interests of the Certificateholders, then the Charitable Trustee shall not have the authority to rescind and recast such vote. The Prohibited Owner shall be deemed to have given, as of the close of business on the Business Day prior to the date of the purported Section 4.05 Transfer or Section 4.05 Non-Transfer Event that results in the transfer to the Charitable Trust of Trust Interests under Section 4.05(c), an irrevocable proxy to the Charitable Trustee to vote the Designated Trust Interest in accordance with this Section 4.05(g)(iii).

(iv) *Designation of Permitted Transferee.* The Charitable Trustee shall have the exclusive and absolute right to sell to a Permitted Transferee any and all of a Designated Trust Interest in an orderly fashion so as not to materially adversely affect the Section 4.05 Market Price of its Designated Trust Interests. The Charitable Trustee shall designate any Person as a Permitted Transferee, provided, however, that: (A) the Permitted Transferee so designated shall purchase for valuable consideration (whether in a public or private sale) the Designated Trust Interest; and (B) the Permitted Transferee shall not be a Person whose purchase of the Trust Interests would result in a transfer to a Charitable Trust and the re-designation of such Trust Interest so purchased as a Designated Trust Interest under Section 4.05(c). Upon the purchase by a Permitted Transferee in accordance with the provisions of this Section 4.05(g)(iv), the Charitable Trustee shall: (x) cause to be transferred to the Permitted Transferee that Designated Trust Interest acquired by the Permitted Transferee; and (y) distribute to the Charitable Beneficiary any and all amounts held with respect to the Designated Trust Interest after making the payment to the Prohibited Owner pursuant to Section 4.05(g)(v).

(v) *Compensation to Prohibited Owner of a Trust Interest that Becomes a Designated Trust Interest.* Any Prohibited Owner shall be entitled (following discovery of the Designated Trust Interest and subsequent designations of the Permitted Transferee in accordance with Section 4.05(g)(iv) or following the acceptance of the offer to purchase such Trust Interest in accordance with Section 4.05(g)(vi)) to receive from the Charitable Trustee following the sale or other disposition of such Designated Trust Interest the lesser of: (A) in the case of (I) a purported Section 4.05 Transfer in which the Prohibited Owner gave value for the Trust Interest and which Section 4.05 Transfer resulted in the transfer of the Trust Interest to the Charitable Trust, the amount

that such Prohibited Owner paid for such Trust Interest; or (II) a Section 4.05 Non-Transfer Event or Section 4.05 Transfer in which the Prohibited Owner did not give value for such Trust Interest (e.g., if the Trust Interest was received by gift or devise) and which Section 4.05 Non-Transfer Event or Section 4.05 Transfer, as the case may be, resulted in the transfer of the Trust Interest to the Charitable Trust, the Market Price of such Trust Interest on the date of such Section 4.05 Non-Transfer Event or Section 4.05 Transfer; and (B) the amount received by the Charitable Trustee from the sale or other disposition of such Designated Trust Interest. Any amounts received by the Charitable Trustee in respect of such Designated Trust Interest and in excess of such amounts to be paid to the Prohibited Owner pursuant to this Section 4.05(g)(v) shall be distributed to the Charitable Beneficiary. Each Charitable Beneficiary and Prohibited Owner waives any and all claims that it may have against the Charitable Trustee and the Trustee arising out of the disposition of the Designated Trust Interest, except for claims arising out of the gross negligence, bad faith or willful misconduct of, or any failure to make payments in accordance with this Section 4.05(g)(v) by, such Charitable Trustee or the Trustee.

(vi) *Purchase Right in a Designated Trust Interest.* A Designated Trust Interest shall be deemed to have been offered for sale to the Trust, or its designee, at a price equal to the lesser of: (A) the price paid for such Designated Trust Interest in the Section 4.05 Transfer or other transaction that created such Designated Trust Interest (or, in the case of devise, gift or Section 4.05 Non-Transfer Event, the Section 4.05 Market Price at the time of such devise, gift or Section 4.05 Non-Transfer Event); and (B) the Section 4.05 Market Price on the date the Trust, or its designee, accepts such offer. Subject to Section 4.05(g)(v), the Trustee shall have the right to accept such offer for a period of ninety (90) days after the later of: (x) the date of the Section 4.05 Non-Transfer Event or purported Section 4.05 Transfer which resulted in such Designated Trust Interest; and (y) the date the Trustee determines in good faith that a Section 4.05 Transfer or Section 4.05 Non-Transfer Event resulting in the Designated Trust Interest has occurred, if the Trustee does not receive a notice of such Section 4.05 Transfer or Section 4.05 Non-Transfer Event pursuant to Section 4.05(e).

(vii) *Remedies Not Limited.* Nothing contained in this Section 4.05 shall limit the authority of the Trustee to take such other action as it deems necessary or advisable: (A) to ensure that the Trust would be treated as a partnership for U.S. federal income tax purposes if it were recharacterized as a “business entity” (rather than a grantor trust) for U.S. federal income tax purposes; and (B) to ensure compliance with the provisions of this Section 4.05.

(viii) *Ambiguity.* In the case of an ambiguity in the application of any of the provisions of this Section 4.05, including any defined term contained herein, the Trustee shall have the power to determine the application of the provisions of this Section 4.05 with respect to any situation based on the facts known to it. In the event that this Section 4.05 requires an action by the Trustee and this Trust Agreement fails to provide specific guidance with respect to such action, the Trustee shall have the power to determine the action to be taken so long as such action is in furtherance of the provisions of this Section 4.05.

(ix) *Severability.* If any provision of this Section 4.05 or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the matter or issue, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

ARTICLE V

ACCOUNTS; PRIORITY OF PAYMENTS AND DISTRIBUTION; STATEMENTS

Section 5.01 Establishment of Accounts.

(a) The Trustee shall direct the Agreed Bank in writing to establish and maintain on its books and records for the benefit of the Trustee (on behalf of the Certificateholders) all of the following non-interest bearing accounts:

(i) a collections account for receipt of Collections (the “Collections Account–Rental Proceeds”),

(ii) a collections account for receipt of Sales Proceeds (the “Collections Account–Sales Proceeds”),

(iii) a distributions account for distributions of Collections (the “Distributions Account–Rental Proceeds”),

(iv) a distributions account for distributions of Sales Proceeds (the “Distributions Account–Sales Proceeds”),

(v) a distributions account for distributions of proceeds of Permitted Indebtedness (the “Distributions Account—Indebtedness Proceeds”)

(vi) the Trustee’s Reserve Account to pay for certain bona fide administrative expenses of the Trustee in respect of its role as such,

(vii) the Manager’s Reserve Account to pay for bona fide expenses of the Trust, its subsidiaries and/or relating to the Properties,

(viii) a reserve account in which to maintain the Post-Closing Reserves (the “Post-Closing Reserve Account”), and

(ix) a payment account to pay for amounts due and payable in respect of Permitted Indebtedness (the “Indebtedness Payment Account”),

in each case in accordance with this Section 5.01 and Section 5.02.

From time to time thereafter, the Trustee will establish such other Accounts as may be authorized or required by this Trust Agreement and the other Trust Transaction Documentation.

(b) If, at any time, any Account ceases to be an Eligible Account, the Trustee shall, on a best efforts basis and subject to the Agreed Bank's account opening procedures, within ten (10) Business Days to the extent practicable, establish a new account meeting the conditions set forth in this Section 5.01 in respect of such Account and transfer any cash in the existing Account to such new account; and from the date such new account is established, it shall have the same designation as the existing Account. If the Agreed Bank should change at any time, then the Trustee shall thereupon promptly establish replacement accounts as necessary at the successor Agreed Bank and transfer the Balance of funds in each Account then maintained at the former Agreed Bank to such successor Agreed Bank.

Section 5.02 Management of Accounts. Each of the Accounts will be managed and maintained as provided in this Section 5.02.

(a) *Collections Account–Rental Proceeds.* The Trustee shall direct the Manager, pursuant to the Management Agreement: (i) to direct each Retail Tenant to remit directly to the Collections Account–Rental Proceeds all Lease Payments owing, from time to time, pursuant to the terms of the Retail Master Lease; (ii) to direct each DC Tenant to remit directly to the Collections Account–Rental Proceeds all Lease Payments owing, from time to time, pursuant to the terms of the DC Master Lease; and (iii) to cause all other Collections to be deposited into the Collections Account–Rental Proceeds. The Trustee shall make, or direct the Agreed Bank in writing to make, transfers from the Collections Account–Rental Proceeds in accordance with Section 5.03(a) and with the Distribution Date Schedule as set forth in Section 5.05(a) below.

(b) *Collections Account–Sales Proceeds.* The Trustee shall direct the Manager, pursuant to the Management Agreement, to direct all purchasers of Trust Assets to remit directly or indirectly through the applicable escrow agent to the Collections Account–Sales Proceeds all Sales Proceeds. The Trustee shall make, or direct the Agreed Bank in writing to make, transfers from the Collections Account–Sales Proceeds in accordance with Section 5.03(b) and with the Distribution Date Schedule as set forth in Section 5.05(a) below.

(c) *Distributions Account–Rental Proceeds.* The Trustee shall make, or direct the Agreed Bank in writing to make, distributions from the Distributions Account–Rental Proceeds in accordance with the Distribution Date Schedule in the order of priority set forth in Section 5.05(b) below.

(d) *Distributions Account–Sales Proceeds.* The Trustee shall make, or direct the Agreed Bank in writing to make, distributions from the Distributions Account–Sales Proceeds in accordance with the Distribution Date Schedule in the order of priority set forth in Section 5.05(c) below.

(e) *Distributions Account–Indebtedness Proceeds.* The Trustee shall cause all proceeds (net of offering expenses, offering discount and other closing date expenses, discounts or commissions) of any Permitted Indebtedness to be deposited into the Distributions Account–Indebtedness Proceeds. The Trustee shall make, or direct the Agreed Bank in writing to make, distributions from the Distributions Account–Indebtedness Proceeds as set forth in Section 5.05(d).

(f) *Trustee's Reserve Account.* The Trustee shall withdraw, or direct the Agreed Bank to withdraw, such amounts from the Trustee's Reserve Account, and apply such amounts for payment of administrative expenses of the Trustee relating to its role as such (including any indemnification obligations of the Trust under the Management Agreement, and reasonable and necessary expenses of the Trustee in connection with the performance of its duties under this Trust Agreement and the Management Agreement, including the reasonable fees and expenses of professionals retained by the Trustee and/or the Manager) as they become due and payable. In addition, the Trustee shall withdraw, or direct the Agreed Bank to withdraw, amounts from the Trustee's Reserve Account to pay the reasonable and documented out-of-pocket fees and expenses of one counsel to the Certificateholders, including any fees and expenses of legal counsel and/or any other professional advisors to the Certificateholders incurred in connection with the filing or amendment of any registration statement, prospectus or free writing prospectus under the registration rights and resale cooperation agreement for the Certificates or any underwritten offering of Certificates. The Trustee shall maintain a Balance equal to \$10.0 million in the Trustee's Reserve Account for the period commencing on the date the last Property is sold, whether in an Agreed Sale or a Strategic Disposition Transaction, and continuing until the later of: (i) twelve (12) months after such date; and (ii) the date upon which any bona fide claim that was made by any Person against the Manager, Manager Parties or the Trustee has been resolved or otherwise adjudicated; provided that the Trustee receives written notice of any such claim before the last day of the seventh (7th) month following the closing date of such last Property sale. On the Business Day after such period has expired, the Trustee shall transfer any remaining Balance in the Trustee's Reserve Account in excess of that portion of the then-current Projected Winddown Amount allocable to the Trustee's Reserve Account to the Collections Account—Rental Proceeds for distribution in accordance with Section 5.05(b).

(g) *Manager's Reserve Account.* The Trustee shall withdraw, or direct the Agreed Bank to withdraw, such amounts from the Manager's Reserve Account, and apply such amounts for payment of specified expenses of the Trust, its subsidiaries, relating to the Properties (including the management thereof) and/or the Manager relating to its role as such (including reimbursement of expenses of the Manager (pursuant to the Management Agreement), as directed in writing by the Manager pursuant to the Management Agreement or as they become due and payable (in each case as evidenced by invoices or other documentary evidence delivered and reasonably satisfactory to the Trustee); provided that the Trustee shall refuse to make or permit any such withdrawal for payments to be made to the Manager or its Affiliates unless such payments are to be made pursuant to or in accordance with the Management Agreement. Notwithstanding the foregoing, the Trustee shall cease to take instructions from the Manager with respect to the Manager's Reserve Account if the Manager is terminated, resigns or otherwise ceases to act in such capacity (pursuant to the terms of the Management Agreement), whereafter the Trustee shall only take such instructions from a duly appointed replacement Manager.

(h) *Post-Closing Reserve Account.*

(i) The Trustee shall cause any proceeds received from an Agreed Sale that constitute Post-Closing Reserves to be deposited into the Post-Closing Reserve Account.

(ii) As to any amount in the Post-Closing Reserve Account, the Trustee shall use all or any portion of such amount for payment of the applicable Post-Closing Liabilities as directed by the Manager (pursuant to the Management Agreement and as evidenced by documentary evidence or advice from tax or other professional advisors). If any such Post-Closing Liabilities have otherwise been extinguished or settled, the Post-Closing Reserve in respect thereof shall be transferred to the Collections Account—Sales Proceeds prior to the next Distribution Date for distribution in accordance with Section 5.05(c).

(i) *Indebtedness Payment Account.* To the extent the proceeds of any sale of Trust Assets are required to be applied towards any mandatory prepayment of or other required payment under Permitted Indebtedness, the Trustee shall direct the Manager (pursuant to the Management Agreement) to direct the purchasers of such Trust Assets to pay such sales proceeds directly to the security trustee, collateral agent, or similar secured party of such Permitted Indebtedness or otherwise into the Indebtedness Payment Account. The Trustee shall transfer, or direct the Agreed Bank to transfer, from the Indebtedness Payment Account to the Collections Account—Sales Proceeds, any Sales Proceeds in excess of the amount required to be paid under any Permitted Indebtedness as the result of any sale of the related Trust Assets, in each case no later than two (2) Business Days after receipt of such excess Sales Proceeds. The Trustee shall withdraw, or direct the Agreed Bank to withdraw, such amounts from the Indebtedness Payment Account, and apply such amounts for payment of any amounts due and payable in respect of Permitted Indebtedness, as directed in writing by the Manager pursuant to the Management Agreement (documented to the reasonable satisfaction of the Trustee), including any mandatory prepayment or other required payment in connection with any Agreed Sale of one or more Properties or any Strategic Disposition Transaction. Notwithstanding the foregoing, the Trustee may cease to take instructions from the Manager with respect to the Indebtedness Payment Account if the Manager is terminated, resigns or otherwise ceases to act in such capacity (pursuant to the terms of the Management Agreement), whereafter the Trustee shall only take such instructions from a duly appointed replacement Manager.

Section 5.03 Interim Expenses, Transfers and Withdrawals.

On any Business Day occurring at least one day before a Determination Date, the Trustee shall make, or direct the Agreed Bank in writing to make, without duplication, the following deposits, transfers and withdrawals for the following purposes to the extent any cash is on deposit in the relevant Accounts:

(a) in no priority *inter se*, transfer from the Collections Account—Rental Proceeds such funds (to the extent of funds on deposit therein) from time to time (but in no event on less than two (2) Business Days' prior written notice to the Trustee by the Manager (unless such two (2) Business Days' notice requirement is waived by the Trustee)): (i) to the Manager's Reserve Account, only to the extent that such funds are to be applied to pay documented expenses of the Trust, its subsidiaries, relating to the Properties (including the management thereof) and/or the Manager relating to its role as such (including reimbursement of expenses of the Manager pursuant to the Management Agreement) (but subject to the proviso in Section 5.02(g)) that become due and payable before the related Distribution Date and for the payment of which there are insufficient funds in the Manager's Reserve Account; (ii) to the Trustee's

Reserve Account, only to the extent that such funds are to be applied to pay documented administrative expenses of the Trustee relating to its role as such that become due and payable before such Distribution Date and for the payment of which there are insufficient funds in the Trustee's Reserve Account; provided that the aggregate Balance of the Manager's Reserve Account and the Trustee's Reserve Account shall not exceed the Reserve Amount without prior approval of the Majority Certificateholders; and (iii) to the Indebtedness Payment Account, only to the extent that such funds are to be applied to pay documented due and payable amounts in respect of Permitted Indebtedness before such Distribution Date and for the payment of which there are insufficient funds in the Indebtedness Payment Account;

(b) transfer from the Collections Account—Sales Proceeds such funds (to the extent of funds on deposit therein) from time to time (but in no event on less than two (2) Business Days' prior written notice to the Trustee (unless such two (2) Business Days' notice requirement is waived by the Trustee)) to the Post-Closing Reserve Account, in each case only to the extent that such funds are to be applied to discharge Post-Closing Liabilities that become due and payable before the related Distribution Date and for the payment of which there are insufficient funds in the Post-Closing Reserve Account;

(c) if all Properties have been sold, in Agreed Sales and/or Strategic Disposition Transactions, withdraw from the Manager's Reserve Account the Balance therein to the extent it exceeds the portion of the Projected Winddown Amount allocated to such Account in the related Distribution Date Schedule, which excess amount shall be transferred to the Collections Account—Rental Proceeds;

(d) if all Properties have been sold, in Agreed Sales and/or Strategic Disposition Transactions, and subject to the last two sentences of Section 5.02(f), withdraw from the Trustee's Reserve Account the Balance therein to the extent it exceeds the portion of the Projected Winddown Amount allocated to such Account in the related Distribution Date Schedule, which excess amount shall be transferred to the Collections Account—Rental Proceeds; and

(e) withdraw funds from the Post-Closing Reserve Account for payment of applicable Post-Closing Liabilities.

Section 5.04 Calculations.

(a) As soon as reasonably practicable after each Determination Date, but in no event later than 12:00 p.m. (New York time) on the third (3rd) Business Day prior to the immediately succeeding Distribution Date, the Trustee shall, based on information known to it or provided to it by the Manager or any other relevant party, calculate, in consultation with the Manager: (x) the amount of Collections received during the Collection Period ending on such Determination Date; (y) the amount of Sales Proceeds received during the Collection Period ending on such Determination Date; and (z) the following amounts (taking into account any transfers or withdrawals made pursuant to Section 5.03):

(i) the Balances in the Accounts on such Determination Date;

(ii) the Post-Closing Reserve amount and any amounts to be transferred to the Post-Closing Reserve Account on such Distribution Date pursuant to Section 5.05(c)(iii);

(iii) the amounts to be transferred on such Distribution Date pursuant to Section 5.05(a) and the amounts to be distributed to Certificateholders on such Distribution Date pursuant to Section 5.05(b)(vii) and Section 5.05(c)(iv);

(iv) all other amounts required to be reported in the Monthly / Quarterly Report and not included on the Distribution Date Schedule to be provided pursuant to Section 5.04(b) for such Collection Period;

(v) any other information, determinations and calculations reasonably required in order to give effect to the terms of this Agreement and the other Trust Transaction Documentation, including the preparation of the Monthly / Quarterly Report; and

(vi) if all Properties have been sold, in Agreed Sales and/or Strategic Disposition Transactions, the Projected Winddown Amount.

(b) *Application of the Amounts.* Not later than 12:00 p.m. (New York time) two (2) Business Days prior to each Distribution Date, the Trustee shall prepare a schedule, in consultation with the Manager (the “Distribution Date Schedule”) setting forth the payments, transfers, deposits and distributions to be made pursuant to Sections 5.05(a), (b), (c) or (d), as applicable, setting forth the amount to be applied to such distributions on such Distribution Date, if any, with respect to the Certificates in the aggregate, all in accordance with Sections 5.05(b) or (c), as applicable. If the Trustee shall not have received any information required to prepare the Distribution Date Schedule by the second Business Day preceding any Distribution Date, such Distribution Date shall be deferred until the third Business Day after such information is received by the Trustee.

(c) Notwithstanding anything contained in this Trust Agreement or in any Trust Transaction Documentation to the contrary, the Trustee: (i) shall not have any liability in respect of any losses, damages, penalties or tax obligations incurred in connection with any Account to the extent the same is based upon the Trustee’s failure to timely receive information or its receipt of incorrect information and the Trustee did not have actual knowledge that such information was incorrect; and (ii) shall not have any responsibility or obligation to adjust, amend or modify any tax reporting to the extent already produced (or to the extent based upon tax reporting already produced) if such tax reporting was based upon information possessed by the Trustee at the time such tax reporting was prepared.

Section 5.05 Distribution Date Distributions.

(a) *Deposits, Transfer and Withdrawals.* On each Distribution Date, before making the distributions described in clauses (b) and (c) below, the Trustee shall direct the Agreed Bank to, in accordance with the Distribution Date Schedule: (i) *first*, transfer from the Post-Closing Reserve Account to the Collections Account–Sales Proceeds the amount pursuant to Section 5.02(h)(ii) (reflecting any remaining Post-Closing Reserves in respect of Post-Closing

Liabilities that have otherwise been extinguished or settled); (ii) *second*, transfer from the Collections Account—Rental Proceeds to the Distribution Account—Rental Proceeds the Collections for the related Collection Period; and (iii) *third*, transfer from the Collections Account—Sales Proceeds to the Distribution Account—Sales Proceeds the Sales Proceeds for the related Collection Period.

(b) *Rental Proceeds Distributions.* On each Distribution Date, after the withdrawals and transfers provided for in clause (a) have been made, the Trustee shall distribute from the Distribution Account—Rental Proceeds, or direct the Agreed Bank in writing to do the same, in each case in accordance with the Distribution Date Schedule, the Collections for the related Collection Period in the order of priority set forth below but, in each case, only to the extent that all amounts then required to be paid ranking prior thereto have been paid in full. All payments of Collections to be made to or for the account of Certificateholders pursuant to this Section 5.05(b) shall be made through a direct transfer of funds from the Distributions Account—Rental Proceeds:

(i) taxes and filing fees (including any registered office and government fees) owed by the Trust as determined by, or after consultation with, an independent accountant, the Manager or another duly appointed agent of the Trust or Trustee;

(ii) Trustee's fees and administrative expenses (presently due and unpaid);

(iii) any and all accrued and unpaid fees of the Manager;

(iv) in no order of priority *inter se*, but *pro rata*, any and all accrued and unpaid and documented expenses of the Manager under the Management Agreement and all accrued and unpaid and documented fees and expenses (all such invoices to be delivered to the Trustee with a copy to the Manager) of any Financial Advisor, the Auditor, the Real Estate Brokers, legal counsel, or any other third party engaged by the Trustee and/or the Manager (pursuant to the Management Agreement), as applicable, in each case in accordance with the applicable engagement letter or schedule of fees and as approved by the Trustee and/or the Manager, as applicable;

(v) to the Indebtedness Payment Account, any and all interest, principal, premium and other amounts then due and payable or that will be expected to become due and payable before the next Distributions Date in respect of Permitted Indebtedness (other than any repayments in connection with any Agreed Sale of one or more Properties or any Strategic Disposition Transaction);

(vi) in no order of priority *inter se*: (A) to the Manager's Reserve Account an amount such that the Balance on deposit therein equals: (1) so long as the Trust directly or indirectly owns any Properties, \$10.0 million; or (2) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, (subject to Section 6.09(a)) that portion of the Projected Winddown Amount attributable to expenses of the Trust, its subsidiaries, the Properties and the management thereof; and (B) to the

Trustee's Reserve Account an amount such that the Balance on deposit therein equals: (1) so long as the Trust directly or indirectly owns any Properties, \$15.0 million; or (2) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, that portion of the Projected Winddown Amount attributable to administrative expenses of the Trustee relating to its role as such or such greater amount as required by the last two sentences of Section 5.02(f); provided that no such amounts shall be transferred to the Manager's Reserve Account or the Trustee's Reserve Account to the extent that the aggregate balance therein would exceed the Reserve Amount; and

(vii) *pro rata*, a distribution shall be made equal to all remaining amounts of the Collections, until the Trust has been dissolved and the Final Distribution has been made, to the Certificateholders as of the Record Date immediately preceding the applicable Distribution Date.

(c) *Sales Proceeds Distributions.* On each Distribution Date, after the withdrawals and transfers provided for in clause (a) have been made, the Trustee shall distribute from the Distribution Account–Sales Proceeds, or direct the Agreed Bank in writing to do the same, in each case in accordance with the Distribution Date Schedule, the Sales Proceeds for the related Collection Period in the order of priority set forth below but, in each case, only to the extent that all amounts then required to be paid ranking prior thereto have been paid in full. All payments of the Sales Proceeds to be made to or for the account of Certificateholders pursuant to this Section 5.05(c) shall be made through a direct transfer of funds to the Distributions Account–Sales Proceeds:

(i) to the Manager, any fees (including brokers fees), commissions or other amounts then due and payable under the Management Agreement in connection with an Agreed Sale or Strategic Disposition Transaction;

(ii) to the extent not otherwise paid in full pursuant to clause (i) above or as a result of the distribution of amounts in the Distributions Account–Rental Proceeds, as provided for in the foregoing Section 5.05(b), to:

(A) taxes and filing fees (including any registered office and government fees) owed by the Trust as determined by, or after consultation with, an independent accountant, the Manager or another duly appointed agent of the Trust or Trustee;

(B) Trustee's fees and administrative expenses (presently due and unpaid);

(C) any and all accrued and unpaid fees of the Manager;

(D) in no order of priority *inter se*, but *pro rata*, any and all accrued and unpaid and documented expenses of the Manager under the Management Agreement and all accrued and unpaid and documented fees and expenses (all such invoices to be delivered to the Trustee with a copy to the Manager) of any Financial Advisor, the Auditor, the Real Estate Brokers, legal counsel, or any other third party engaged by the Trustee

and/or the Manager (pursuant to the Management Agreement), as applicable, in each case in accordance with the applicable engagement letter or schedule of fees and as approved by the Trustee and/or the Manager, as applicable;

(E) to the Indebtedness Payment Account, any and all interest, principal, premium and other amounts then due and payable or that will become due and payable before the next Distributions Date in respect of Permitted Indebtedness;

(F) in no order of priority *inter se*: (I) to the Manager's Reserve Account an amount such that the Balance on deposit therein equals (subject to Section 6.09(a)): (aa) so long as the Trust directly or indirectly owns any Properties, \$10.0 million; or (bb) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, that portion of the Projected Winddown Amount attributable to expenses of the Trust, its subsidiaries and/or the Properties; and (II) to the Trustee's Reserve Account an amount such that the Balance on deposit therein equals: (aa) so long as the Trust directly or indirectly owns any Properties, \$15.0 million; or (bb) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, that portion of the Projected Winddown Amount attributable to administrative expenses of the Trustee relating to its role as such or such greater amount as required by the last two sentences of Section 5.02(f); provided that no such amounts shall be transferred to the Manager's Reserve Account or the Trustee's Reserve Account to the extent that the aggregate balance therein would exceed the Reserve Amount; and

(iii) to the Post-Closing Reserve Account the amount, if any, by which the Post-Closing Liabilities projected to become due and payable before the next Distribution Date exceed the amount on deposit in the Post-Closing Reserve Account; and

(iv) *pro rata*, a distribution equal to all remaining amounts of the Sales Proceeds, until the Trust has been dissolved and the Final Distribution has been made, to the Certificateholders as of the Record Date immediately preceding the applicable Distribution Date.

(d) *Indebtedness Proceeds Distributions*. On each Distribution Date, the Trustee shall distribute *pro rata* to the Certificateholders from the Distribution Account—Indebtedness Proceeds, or direct the Agreed Bank in writing to distribute, the net proceeds of Permitted Indebtedness, if any, received and deposited into the Distribution Account—Indebtedness Proceeds during the related Collection Period.

Section 5.06 Final Distribution. If the Final Distribution has not been made on the date on which the Trust is dissolved pursuant to Section 10.02, then the Trustee shall make the Final Distribution on such date immediately before such dissolution.

ARTICLE VI COVENANTS

Section 6.01 Business Activities. The Trustee, on behalf of the Trust, shall not engage in any business or activity other than: (w) facilitating Agreed Sales of the Properties and Strategic Disposition Transactions; (x) incurring Permitted Indebtedness in the ordinary course of business of the Trust (or its subsidiaries) and in an aggregate principal amount of up to \$5,000,000, or as otherwise approved by the Majority Certificateholders; (y) complying with the requirements of this Trust Agreement and the Management Agreement; and (z) entering into all contracts and engaging in all related activities incidental, complementary or ancillary thereto. Except to the extent otherwise set forth in this Trust Agreement, the Trustee shall have all powers necessary to conduct the following business and activities, whether directly or through the Manager or another agent:

- (a) exercise its reasonable business judgment to direct and control the sale of the Trust Assets in accordance with this Trust Agreement and with applicable law as necessary to maximize distributions to Certificateholders;
- (b) retain professionals to assist in performing duties under this Trust Agreement;
- (c) maintain the books and records and accounts of the Trust;
- (d) incur and pay necessary expenses in connection with the performance of duties under this Trust Agreement and the Management Agreement, including the reasonable fees and expenses of professionals retained by the Trustee and/or the Manager on behalf of the Trust;
- (e) (i) administer the Trust's tax obligations, including filing tax returns and paying tax obligations; (ii) monitor the U.S. federal income tax treatment of all or any portion of Collections and evaluate the potential consequences of such treatment for the Trust's U.S. federal income tax classification; and (iii) take any lawful action (including, without limitation, causing the Trust to engage in a Permitted Intercompany Transaction) to avoid or mitigate tax consequences that might have an adverse effect on the U.S. federal income tax classification of the Trust or reduce the amount of distributions to Certificateholders;
- (f) comply with and enforce the terms of the Retail Master Lease and the DC Master Lease; and
- (g) perform other duties and functions that are consistent with the implementation of this Trust Agreement and the Management Agreement.

Section 6.02 Registration Rights and Resale Cooperation Agreement. The Trust shall enter into a registration rights and resale cooperation agreement with BidCo for the benefit of the Certificateholders in the form attached hereto as Exhibit E. The Trust shall do or cause to be done all things necessary to comply with its obligations under the registration rights and resale cooperation agreement.

Section 6.03 Existence. The Trust shall do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence.

Section 6.04 Maintenance of Office or Agency. The Trust shall maintain each office or agency required hereunder where Certificates may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Trust in respect of the Certificates and this Trust Agreement may be served. The Trust shall give prompt written notice to the Certificateholders of the location, and any change in the location, of any such office or agency. If at any time the Trust shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and in accordance with Section 7.09, the Trust hereby designates the Corporate Trust Office of the Trustee as one such office or agency.

Section 6.05 Payment of Taxes. The Trust shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, all taxes levied or imposed upon the Trust or for which it is otherwise liable, or upon the income, profits or property of the Trust; provided, however, that the Trust shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment or charge whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of the Trustee), are being maintained in accordance with GAAP or where the failure to effect such payment shall not be adverse in any material respect to the Certificateholders.

Section 6.06 Statements to Certificateholders; Reports.

(a) Distribution Date Schedule. Promptly after preparing the most recent Distribution Date Schedule (but in any case no later than on the second (2nd) Business Day after preparation thereof), the Trustee shall cause such document to be posted on the Investor Website for access by the Certificateholders.

(b) Monthly / Quarterly Reports. From and after the effectiveness of a registration statement filed by the Trust on Form 10-Q with the U.S. Securities and Exchange Commission (the “Commission”), the Trustee, on behalf of the Trust, shall furnish to the Certificateholders through the Investor Website and DTC, not less often than monthly, the Monthly / Quarterly Report prepared by the Manager.

(c) SEC Reports.

(i) Whether or not required by the Commission’s rules and regulations, so long as any Certificates are outstanding, the Trustee will file or cause to be filed with the Commission (via the EDGAR system), within the time periods (including any extensions thereof) specified in the Commission’s rules and regulations:

(A) all quarterly and annual reports that would be required to be filed with the Commission on Forms 10-Q and 10-K if the Trust were required to file such reports; and

(B) all current reports that would be required to be filed with the Commission on Form 8-K if the Trust were required to file such reports.

(ii) All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on the Trust's consolidated financial statements by the Trust's independent registered public accounting firm.

(iii) The Trust will continue filing the reports specified in the preceding paragraph with the Commission within the time periods specified above unless the Commission will not accept such a filing. The Trust agrees that it will not take any action for the purpose of causing the Commission not to accept any such filings. If, notwithstanding the foregoing, the Commission will not accept the Trust's filings for any reason, the Trust will cause the reports referred to in the preceding paragraph to be posted on the Trust's behalf on the Investor Website, for access by the Certificateholders within the time periods that would apply if the Trust were required to file those reports with the Commission.

(d) Earnings Report; Conference Call. No later than forty-five (45) days following the end of each fiscal quarter (or no later than seventy-five (75) days following the end of each fiscal year) of the Trust, the Trust shall hold a conference call for Certificateholders, to discuss such reports (including a customary Q&A session). No later than one (1) Business Day prior to such conference call, the Trust shall issue a customary press release announcing the Trust's financial and operating results for the relevant period and announcing the time and date and either including information necessary to access the conference call or directing Certificateholders, prospective investors, broker-dealers and securities analysts to contact the appropriate person at the Trust to obtain such information.

(e) Additional Reports. Within sixty (60) days after the end of each calendar year, the Trustee shall furnish to the Certificateholders, through the Investor Website and DTC, a statement prepared by the Trustee containing the sum of the distributions (as applicable) described in the Distribution Date Schedules, the Monthly / Quarterly Reports with respect to the Certificates for such calendar year and such other items requested by a Certificateholder as are reasonably available to the Trustee (in consultation with the Manager to the extent necessary).

(f) Schedule III. Promptly upon receipt thereof (but in any case no later than on the second (2nd) Business Day after receipt), the Trustee shall cause the most up-to-date Schedule III to be posted on the Investor Website.

(g) Compliance Certificate. The Trustee, on behalf of the Trust, shall furnish to the Certificateholders through the Investor Website and DTC, not less often than annually, a certificate from a Responsible Officer of the Trustee as to his or her knowledge of the Trust's compliance with all conditions and covenants of the Trustee under this Trust Agreement (it being understood that for purposes of this paragraph (g), such compliance shall be determined without regard to any grace period or requirement of notice provided under this Trust Agreement).

(h) Annual Budget. Promptly upon receipt of the most recent Annual Budget or any update thereto (but in any case no later than on the second (2nd) Business Day after receipt thereof), the Trustee shall cause the aggregate budgeted total expense amount stated in such Annual Budget to be disclosed in a filing with the Commission on Form 8-K.

(i) Investor Relations Website. The Trust shall maintain a public investor relations website (the “Investor Website”) and shall make each of the items described in the foregoing clauses (a) through (h) available thereon as well as any other data or information the Trustee is directed to make available (pursuant to the Management Agreement) including, without limitation, information that will assist prospective transferees in valuing the Certificates.

(j) Information Policy. The Trustee acknowledges, and agrees to notify the Manager, that the United States securities laws: (A) restrict the Trust, the Trustee and the Manager from communicating any material non-public information about the Trust, its subsidiaries and the Properties (“MNPI”) to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell Trust Interests or interests therein; (ii) prohibit selective disclosure of any MNPI, including, but not limited, to holders of Trust Interests; and (iii) restrict any Certificateholders who have received MNPI from purchasing or selling Trust Interests or interests therein. The Trustee shall comply, and direct the Manager to comply, with the United States securities laws in connection with all information about the Trust, its subsidiaries and the Properties. The Trustee shall not, and shall direct the Manager not to, disclose any MNPI to any Certificateholder or its Affiliate.

Section 6.07 DTC Letter of Representations. The Trust shall enter into the DTC Letter of Representations and fulfill its responsibilities thereunder.

Section 6.08 Further Instruments and Acts. The Trustee shall execute and deliver such further instruments and do such further acts as may be required by applicable law or may be reasonably necessary or proper or as the Majority Certificateholders may reasonably request to carry out more effectively the purpose of this Trust Agreement.

Section 6.09 Covenants of the Trustee.

(a) *Reserve Amounts.* The Trustee, on behalf of the Trust, hereby covenants and agrees that, without approval of the Majority Certificateholders: (i) the Balances held in the Manager’s Reserve Account and the Trustee’s Reserve Account shall not, in the aggregate, exceed the Reserve Amount; and (ii) the Balance held in the Manager’s Reserve Account shall not exceed \$10,000,000.

(b) *Sales Cooperation with Manager; Limitations on Sales.* The Trustee shall, unless contrary to the express provisions of this Trust Agreement: (i) cooperate with the Manager with respect to the marketing and sale of any Trust Asset; (ii) cause the Trust to enter into any PSA pursuant to which one or more Retail Properties and/or DC Properties are to be sold; (iii) cooperate with the Manager to undertake, and undertake, all actions reasonably directed by the Manager to consummate any Agreed Sale pursuant to which one or more Retail Properties and/or DC Properties are to be sold, including, without limitation, causing the Trust to enter into Severed Leases; (iv) cooperate with the Manager to undertake, and undertake, all actions

reasonably directed by the Manager to consummate any Strategic Disposition Transaction; and (v) cause the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith. The Trustee shall not sell any one or more Properties (directly or indirectly, including as part of a merger, acquisition, amalgamation, consolidation or similar transaction involving the Trust or one or more of its subsidiaries): (w) unless such sale constitutes: (A) an Agreed Sale; or (B) a Strategic Disposition Transaction that is approved by at least three (3) Certificateholders who are not Affiliates of one another and who constitute: (1) the Majority Certificateholders, if the consideration is equal to or more than the Threshold Purchase Price; or (2) Supermajority Certificateholders, if the consideration is less than the Threshold Purchase Price; (x) for consideration other than cash, unless approved by the Majority Certificateholders; (y) at a purchase price that is less than the Threshold Purchase Price, unless approved by the Supermajority Certificateholders; and (z) after the Targeted Disposal Period, unless approved by the Majority Certificateholders. Any non-cash consideration paid to the Trust or the Certificateholders in connection with a Strategic Disposition Transaction shall consist of Stock, which shall be valued, for purposes of clauses (w) and (y) above, using the average VWAP for the twenty (20) Trading Days immediately preceding the date on which the merger agreement, purchase or sale agreement or similar document is entered into.

(c) *Lease Cooperation with Manager.* The Trustee shall use commercially reasonable efforts to assist the Manager (pursuant to the Management Agreement) in causing: (i) the Retail Tenant to comply with its obligations under the Retail Master Lease; and (ii) the DC Tenant to comply with its obligations under the DC Master Lease.

(d) *Broker Opinion of Value.* The Trustee shall use commercially reasonable efforts to assist the Manager (pursuant to the Management Agreement) in obtaining, on a quarterly basis, a broker's opinion of value in customary form ("BOV") for each Property that is a Trust Asset; provided, further, that if a Property is then subject to a PSA that has not been terminated by its terms at the time such new BOV is obtained, such Property shall not require a BOV until such time, if at all, that such PSA has been terminated and the applicable Property is still owned by the Trust.

(e) *Communications.* The Trustee shall communicate (through filings with the Commission, DTC and the Investor Website) with the Certificateholders as required to satisfy the reporting and other requirements of any governmental bodies or agencies or trading markets.

(f) *Internal Controls.* The Trustee shall cause the Trust to retain any Financial Advisor, the Property Manager, the Real Estate Brokers, the Leasing Agent, Auditors, accountants, IT support and legal counsel, as applicable.

(g) *Management Agreement.* The Trustee shall cause the Trust to enter into the Management Agreement and to retain any legal counsel or other professional advisors, as requested by the Manager (pursuant to the Management Agreement) or required pursuant to the terms hereof.

(h) *Permitted Indebtedness Cooperation with Manager.* The Trustee shall: (i) cooperate with the Manager with respect to the negotiation, execution, consummation and incurrence of any Permitted Indebtedness and any agreements related thereto (including any

engagement letters for any structuring agent, arranger, underwriter, initial purchaser or similar agent); (ii) cooperate with the Manager and/or any structuring agent, arranger, underwriter, initial purchaser or similar agent of any Permitted Indebtedness or order to obtain a rating of such Permitted Indebtedness; (iii) cooperate with the Manager and/or any such structuring agent, arranger, underwriter, initial purchaser or similar agent in preparing any offering memorandum, private placement memorandum, confidential information memorandum, investor presentations, lender presentations on similar materials, including by providing any information available to the Trustee regarding the Trust and/or the Trust Assets and reasonably requested by the Manager or such structuring agent, arranger, underwriter, initial purchaser or similar agent; and (iv) enter into such documents and take such other actions reasonably directed by the Manager in connection with the foregoing. No payments under such Permitted Indebtedness shall be made except in accordance with Section 5.05(b), and any and all proceeds of such Permitted Indebtedness shall be paid into the Distributions Account—Indebtedness Proceeds.

(i) *Trust Counsel.* The Trustee shall cause the Trust to initially retain Milbank LLP as primary counsel to the Trust and, thereafter, any replacement and any other legal counsel, in each case as directed by the Majority Certificateholders.

(j) *Tenants and Sub-Tenants.* The Trustee shall, and shall direct the Manager (pursuant to the Management Agreement) to: (i) solicit and maintain information that may be relevant in connection with Section 4.05, including by keeping an up-to-date (to the extent of its actual knowledge) list of all Tenants (including sub-tenants) on Schedule III and the Collections derived from each Tenant (including each sub-tenant); and (ii) take any action it reasonably deems necessary (which determinations may be based on the advice of accountants or other outside advisors to the Trust) to mitigate any adverse tax consequences to the Trust, the intended classification of the Trust for U.S. federal income tax purposes or the Trust Assets from any change in Tenant (including any sub-tenant). The Trustee shall direct the Manager (pursuant to the Management Agreement) (which may for this purpose rely on accountants or other outside advisors) to monitor and determine on a monthly basis the applicable Assignee/Subtenant Attributable Rent Percentage. If at any time the Assignee/Subtenant Attributable Rent Percentage for the preceding month is, or the Manager reasonably should expect that such percentage for the following month will be, greater than 3.5%, then, so long as the Assignee/Subtenant Attributable Rent Percentage is, or is expected to be, greater than 3.5%, the Trustee shall, or shall direct the Manager (pursuant to the Management Agreement) or another agent of the Trustee to, periodically, at reasonable intervals based on the overall facts, determine (which determination may be based on information and/or confirmations received from the Excepted Holders from time to time) whether any Excepted Holder Owns Relevant Equity Interests in any Tenant (including any subtenant) and, in such case, whether the Trust would be related to any such Tenant for purposes of Code section 856(d)(2)(B) such that rental income received by the Trust attributable to such Tenant would not be qualifying real property rents under Code section 7704(d)(3) and to determine the amount thereof. “Assignee/Subtenant Attributable Rent Percentage” means, with respect to any period, a percentage (1) the numerator of which is the aggregate of all rents payable to the Trust that is attributable to (A) any Tenant (other than a sub-tenant) that is not a Tenant as of the date hereof or (B) without duplication of any amounts covered in clause (A) above, any sub-tenant with respect to a sublease of any portion of any Property for such period, excluding, in either case, any Tenant that is a direct or

indirect wholly-owned subsidiary of Copper Retail JV LLC and (2) the denominator of which is the aggregate rent payable by Tenants to the Trust for such period.

(k) *Bloomberg*. The Trustee shall use its reasonable best efforts to, directly or through the Manager (pursuant to the Management Agreement) or another agent (i) make a copy of this Trust Agreement available via Bloomberg and (ii) assist in having the CUSIP numbers posted to Bloomberg.

(l) *OTC Quotation*. Trustee shall use its reasonable best efforts to, directly or indirectly through the Manager (pursuant to the Management Agreement) or another agent, cause the Certificates to be quoted on an OTC market and shall thereafter use commercially reasonable efforts to maintain such quotation.

Section 6.10 Compliance with Laws. Any and all distributions by the Trust pursuant to this Trust Agreement shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

Section 6.11 Insurance. The Trustee shall direct the Manager, pursuant to the Management Agreement: (a) to maintain customary insurance coverage for the protection of the Trustee and any officers of the Trust (including officers of the Trust provided by the Manager pursuant to the Management Agreement) from and after the date hereof; and (b) to obtain insurance coverage with respect to the Trust Assets; in each case as is customary for similar property and recommended by its insurance consultants in light of the assets to be insured, the operations of the Trust and the role of the Trust, the Manager and the Trustee.

ARTICLE VII THE TRUSTEE

Section 7.01 Certain Duties and Responsibilities; Delivery of Documents.

(a) (i) The Trustee undertakes to perform only such duties in respect of the Trust as are specifically set forth in this Trust Agreement or the Management Agreement; and (ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement. Notwithstanding anything else to the contrary in this Trust Agreement, whenever reference is made in this Trust Agreement to any discretionary action by, any consent, designation, determination, specification, requirement or approval of or satisfaction with, or other direction given or action to be undertaken by the Trustee, such provision shall refer to the Trustee exercising each of the foregoing at the direction of the Manager (pursuant to the Management Agreement) or the Certificateholders holding the requisite percentage of Trust Interests in respect of such action; provided that the foregoing shall not apply to the following: (i) whether any item or sum of money has been delivered to or received by the Trustee, any calculations related thereto (including any Distribution Date Schedules); (ii) the appointment of any sub-agent or attorney-

in-fact by the Trustee; (iii) any matter pertaining to compliance by the Trustee with its internal policies, any law applicable to it, including without limitation, the PATRIOT Act or any matter relating to the reimbursement of fees or expenses of or indemnification of the Trustee and the Manager; (iv) the maintenance of the Register; and (v) any matter with respect to any fees payable to the Trustee for its own account or distributions to the accounts of Certificateholders; provided, further, that in each case, the Trustee may in its sole discretion elect to seek instructions of the Manager or the Majority Certificateholders for any discretionary act for which direction is not already provided for and the Trustee shall be fully justified in failing or refusing to take any such action if it shall not have received written (including in electronic form) instruction, advice or concurrence from the Manager or Certificateholders holding the requisite percentage of Trust Interests in respect of such action. The Trustee, to the extent not prohibited in this Trust Agreement or the Management Agreement, or in the absence of actual knowledge of bad faith, gross negligence, or willful misconduct on the part of the Manager, shall consent, designate, specify, approve or take any such other action as directed or requested to be undertaken by the Trustee upon the written instruction of the Manager (pursuant to the Management Agreement). The Trustee shall have no liability for following the written instruction of the Manager or the Certificateholders holding the requisite percentage of Trust Interests, unless doing so would amount to gross negligence, bad faith or willful misconduct by the Trustee.

(b) No provision of this Trust Agreement shall be construed to relieve the Trustee from liability for its own gross negligence, bad faith or willful misconduct, except that:

(i) this Subsection (b) shall not be construed to limit the effect of Subsection (a) of this Section 7.01; and

(ii) neither the Trustee nor any Responsible Officer shall be liable for any error of judgment made in good faith by such Person, unless it shall be proved that such Person was negligent in ascertaining the pertinent facts.

(c) Whether or not herein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

(d) The Trustee is hereby authorized and directed:

(i) to execute and deliver the Management Agreement on behalf of the Trust on or prior to the date of the initial issuance of the Certificates, in the form delivered to the Trustee and acceptable to the Trustee;

(ii) subject to the terms thereof, to perform its obligations thereunder (including with respect to any indemnification obligations of the Trust thereunder);

(iii) to authenticate and deliver the initial Certificates as set forth in Section 3.02(a). Except as expressly provided in this Trust Agreement, the Trustee shall not execute, authenticate or deliver additional Certificates;

(iv) to cause the Trust to engage UMB Bank National Association (“UMB”) to act as settlement agent for the Trust in connection with the issuance of Certificates hereunder; and

(v) to obtain a taxpayer identification number for the Trust and to prepare, execute and deliver on behalf of the Trust such documents as may be reasonably requested by UMB in order for UMB to comply with applicable know your customer laws, including an IRS Form W-9 for the Trust.

The Trust shall indemnify the Manager to the fullest extent required pursuant to the terms of the Management Agreement.

Section 7.02 Certain Rights of Trustee.

(a) The Trustee may rely and shall be protected in acting or refraining from acting in reliance upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request or direction of the Manager mentioned herein shall be sufficiently evidenced by a written request.

(c) Whenever in the administration of this Trust Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a written request or direction by the Manager.

(d) The Trustee may, at the expense of the Trust (subject to the limitations set forth in Section 7.13(a)), consult with counsel, accountants and other experts selected with reasonable care, and the advice or opinion of any such counsel, accountants or other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon, and the Trustee shall not 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 experts, unless such act or omission would constitute willful misconduct, bad faith or gross negligence by the Trustee.

(e) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the Direction of any of the Certificateholders pursuant to this Trust Agreement, unless such Certificateholders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the cost, expenses and liabilities which might be incurred by it in compliance with such Direction.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document.

(g) The Trustee may execute any of the trusts or powers under this Trust Agreement or perform any duties under this Trust Agreement either directly or by or through

agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it under this Trust Agreement.

(h) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the Direction of the Majority Certificateholders relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement.

(i) The Trustee shall not be required to expend or risk its own funds on behalf of the Trust, in the performance of any of its duties under this Trust Agreement, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(j) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(l) The Trustee accepts the trusts hereby created and agrees to perform its duties hereunder with respect to the same but only upon the terms of this Trust Agreement. The Trustee shall not be personally liable under any circumstances and shall not be required to take any action if the Trustee shall determine, or shall be advised by counsel, that such action is likely to result in personal liability or is contrary to applicable law, except, in each case, for its own willful misconduct, bad faith or gross negligence.

(m) All funds deposited with the Trustee hereunder shall be held in non-interest bearing deposit accounts (including the Accounts) and shall not be invested.

(n) As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate, signed by the Certificateholders holding the requisite percentage of Trust Interests in respect of such action, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(o) Except as expressly provided in this Section 7.02, in accepting and performing the trusts hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Agreement.

Section 7.03 Not Responsible for Recitals or Issuance of Certificates.

(a) Subject to Section 7.04 of this Trust Agreement, the Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Trust Agreement or the due execution hereof by the other parties hereto (other than the Trustee), or for or in respect of the recitals and statements contained herein, all of which recitals and statements are made solely by such other parties (other than the Trustee), except that the Trustee hereby represents and warrants that each of this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is a party has been, or will be, executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf.

(b) The Trustee shall at all times be a trust company or financial institution, organized and doing business under the laws of the United States or any state thereof, a substantial part of the business of which consists of exercising fiduciary powers similar to those permitted to national banks by the comptroller of the currency, and which is subject to supervision and examination by state or federal authority having supervision over banking institutions.

Section 7.04 Representations and Warranties of the Trustee. The Trustee hereby represents and warrants that:

(a) the Trustee is a limited liability company organized and existing and in good standing under the laws of the State of New Hampshire;

(b) the Trustee has full power, authority and legal right to execute and deliver this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party, to perform its obligations thereunder and has taken all necessary action to authorize the execution and delivery by it of this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party and to perform its obligations thereunder;

(c) the execution and delivery by the Trustee of this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party and the performance of its obligations hereunder and thereunder: (i) will not violate any provision of any U.S. federal law or the law of the state of the United States where it is located governing the banking and trust powers of the Trustee or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Trustee or any of its assets; (ii) will not violate any provision of the articles of incorporation or by-laws of the Trustee; and (iii) will not violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any lien on any properties included in the Trust Assets pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which it is a party, which violation, default or lien could reasonably be expected to have an adverse effect on the Trustee's performance or ability to perform its duties hereunder or thereunder or on the transactions contemplated herein or therein;

(d) the execution and delivery by the Trustee of this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party and the performance of its obligations thereunder will not require the authorization, consent, or approval of, the giving of notice to, the filing or registration with, or the taking of any other

action in respect of, any governmental authority or agency of the United States or the state of the United States where it is located regulating the banking and corporate trust activities of the Trustee; and

(e) this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party have been, or will be, as applicable, duly executed and delivered by the Trustee and constitute, or will constitute, as applicable, the legal, valid and binding agreements of the Trustee, enforceable against it in accordance with their respective terms; provided, however, that enforceability may be limited by: (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally; and (ii) general principles of equity.

Section 7.05 Limitations on Trustee. The Trustee shall not be authorized at any time on behalf of the Trust or the Certificateholders (and shall not permit the Property Owners) to: (i) enter into or engage in any trade or business (other than the monitoring, management, and disposition of the Trust Assets, including as expressly set forth in the Management Agreement), and no part of the Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business (other than as related to the foregoing); (ii) reinvest any Trust Assets; or (iii) take any action, in each case, that would preclude treating the Trust as a “grantor trust” for U.S. federal income tax purposes or would cause the Trust to be treated as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes. Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall not be liable for taking any action that is deemed or determined to have been not authorized by Section 7.05(iii) unless the taking of such action would constitute gross negligence, bad faith or willful misconduct.

Section 7.06 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee of the Trust pursuant to this Article VII shall become effective until the acceptance of appointment by the successor Trustee under Section 7.07.

(b) The Trustee may resign at any time as Trustee of the Trust by giving prior written notice thereof to the Certificateholders and the Manager. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Certificateholders and the Manager and the resigning Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time and for any reason as Trustee of the Trust by Direction of the Majority Certificateholders delivered to the Trustee and to the Manager.

(d) Any Person into which the Trustee may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Trustee shall be a party, or any Person which succeeds to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Trust Agreement without the

execution, delivery or filing of any paper or instrument or further act to be done on the part of the parties hereto, except as may be required by applicable law.

(e) The Agreed Bank, the Auditor, any Financial Advisor, the Real Estate Brokers, the Property Manager, the Leasing Agents, accountants, IT support and legal counsel shall be removed by the Trustee at any time and for any reason by Direction of the Majority Certificateholders delivered to the Trustee and to the Manager, provided that the Trustee shall, within thirty (30) days after receipt of such Direction, appoint a replacement Auditor, Financial Advisor, Real Estate Brokers, Property Manager, Leasing Agent, accountants, IT support and/or legal counsel, as applicable, specified by the Majority Certificateholders in such Direction or, if no such replacement is specified in such Direction, use its reasonable best efforts to identify, together with the Manager, a suitable replacement and (in the case of the Agreed Bank, the Auditor, the Financial Advisor, the Leasing Agent and the Property Manager) propose such replacement to the Certificateholders for approval. The Trustee shall not agree to or approve payment of any additional consideration or reimbursement of expenses to an Affiliate of the Manager (including for any Services to be performed by such Affiliate pursuant to the Management Agreement), unless the Majority Certificateholders have approved such consideration and expenses to be paid to such Affiliate. The Trustee shall not terminate the Management Agreement without the approval of the Majority Certificateholders if such termination would trigger an obligation of the Trust to pay a termination fee to the Manager.

(f) If at any time in respect of the Trust:

(i) the Trustee shall cease to be eligible under Section 7.14 and shall fail to resign after written request therefor by any Certificateholder; or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, any Certificateholder who has been a bona fide Certificateholder for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee of the Trust.

(g) If a Responsible Officer of the Trustee shall obtain actual knowledge of an Avoidable Tax in respect of the Trust which has been or is likely to be asserted, the Trustee shall promptly notify the Certificateholders and the Manager and shall, within thirty (30) days of such notification, either relocate the administration of the Trust to another jurisdiction as described in the definition of “Avoidable Tax” or resign as Trustee of the Trust. Provided that there is a corporation in a jurisdiction where there are no Avoidable Taxes that is willing to act as Trustee and is eligible under Section 7.14, the existing Trustee shall promptly resign and appoint a temporary successor Trustee of the Trust in a jurisdiction where there are no Avoidable Taxes; provided that if no such successor shall be appointed, the Majority Certificateholders shall appoint a temporary successor Trustee. If, within one hundred eighty (180) days after such temporary appointment, the Majority Certificateholders have not appointed an alternative Trustee, such temporary successor Trustee shall become the permanent successor Trustee. As

used herein, an “Avoidable Tax” in respect of the Trust means a state or local tax: (i) upon: (A) the Trust; (B) the Trust Assets of the Trust; (C) Certificateholders of the Trust; or (D) the Trustee for which the Trustee is entitled to seek reimbursement from the Trust Assets of the Trust; and (ii) which would be avoided if the Trust were administered in a different jurisdiction in the United States or if the Trustee were located in another state, or jurisdiction within a state, within the United States. If no successor Trustee shall have been so appointed as provided above and accepted appointment in the manner hereinafter provided, the resigning Trustee or any Certificateholder who has been a bona fide Certificateholder for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(h) If the Trustee shall resign, be removed or become incapable of acting as Trustee of the Trust or if a vacancy shall occur in the office of the Trustee of the Trust for any cause, the existing Trustee shall promptly appoint a temporary successor Trustee; provided that if no such successor shall be appointed, the Majority Certificateholders shall appoint a temporary successor Trustee. If, within one hundred eighty (180) days after such resignation, removal or incapability, or other occurrence of such vacancy, the Majority Certificateholders have not appointed an alternative Trustee, such temporary successor Trustee shall become the permanent successor Trustee. If no successor Trustee shall have been so appointed as provided above and accepted appointment in the manner hereinafter provided, the resigning Trustee or any Certificateholder who has been a bona fide Certificateholder for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(i) The successor Trustee shall give notice of the resignation and removal of the Trustee and appointment of the successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Certificateholders as their names and addresses appear in the Register. Each notice shall include the name of such successor Trustee and the address of its Corporate Trust Office.

Section 7.07 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute and deliver to the Manager, the Certificateholders and to the retiring Trustee with respect to the Trust an instrument evidencing and accepting such appointment, and thereupon the resignation or removal of the retiring Trustee with respect to the Trust shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, obligations and duties of the retiring Trustee with respect to the Trust; but, upon the request of the successor Trustee, such retiring Trustee shall execute and deliver an instrument transferring to such successor Trustee all such rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all Trust Assets held by such retiring Trustee in respect of the Trust (subject nevertheless to its lien, if any, provided for in Section 7.13) and all books and records, or true, correct and complete copies thereof, held by such retiring Trustee in respect of the Trust. Upon request of any such successor Trustee, the retiring Trustee and such successor Trustee shall execute and deliver any and all instruments containing such provisions as shall be necessary or desirable to transfer and confirm to, and for more fully and certainly vesting in, such successor Trustee all such rights, powers and trusts.

If a successor Trustee is appointed with respect to the Trust, each of the predecessor Trustee and the successor Trustee shall execute and deliver a supplemental agreement hereto which shall add to or change any of the provisions of this Trust Agreement as shall be necessary to provide for or facilitate the administration of the Trust hereunder by such successor Trustee.

No institution shall accept its appointment as a successor Trustee hereunder unless at the time of such acceptance such institution shall be qualified and eligible under this Article VII.

Section 7.08 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be otherwise qualified and eligible under this Article VII, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been executed or authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such execution or authentication and deliver the Certificates so executed or authenticated with the same effect as if such successor Trustee had itself executed or authenticated such Certificates.

Section 7.09 Maintenance of Agencies.

(a) With respect to the Certificates, there shall at all times be maintained an office or agency in the location set forth in Section 10.05 or at such other location as may be specified where Certificates may be presented or surrendered for registration of transfer or for exchange, and for payment thereof, and where notices and demands to or upon the Trustee in respect of such Certificates or this Trust Agreement may be served; provided that, if it shall be necessary that the Trustee maintain an office or agency in another location with respect to the Certificates (e.g., the Certificates shall be represented by Definitive Certificates and shall be listed on a national securities exchange), the Trustee will make all reasonable efforts to establish such an office or agency. Written notice of the location of each such other office or agency and of any change of location thereof shall be given by the Trustee to the Manager and the Certificateholders. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Trustee.

(b) There shall at all times be a Registrar and a Paying Agent hereunder with respect to the Certificates. Each such Authorized Agent shall be a bank, trust company or other financial institution organized and doing business under the laws of the United States or any state thereof, with a combined capital and surplus of at least the minimum amount that would be required by the Trust Indenture Act if the Trust Indenture Act were applicable, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by federal or state authorities. The Trustee shall initially be the Paying Agent and, as provided in Section 4.04, Registrar hereunder with respect to the Certificates. Each Registrar other than the Trustee shall furnish to the Trustee, at stated intervals of not more than six months, and at such other times as the Trustee may request in writing, a copy of the Register maintained by such Registrar.

(c) Any corporation, bank or trust company into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation, bank or trust company resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any corporation, bank or trust company succeeding to the corporate trust business of any Authorized Agent, shall be the successor of such Authorized Agent, if such successor is otherwise eligible under this Section 7.09, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor.

(d) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee and the Certificateholders. The Trustee may at any time terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent, subject to the terms of any agreement with such Authorized Agent. Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section 7.09 (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Trustee shall, on behalf of the Trust, promptly appoint one or more qualified successor Authorized Agents to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section 7.09. The Trustee shall give or cause to be given written notice of any such appointment to all Certificateholders as their names and addresses appear on the Register and post such notice to the Investor Website.

(e) The Trust agrees to pay, or cause to be paid, in accordance with Section 5.05 from time to time to each Authorized Agent such compensation for its services as the Trustee, on behalf of the Trust, may agree in writing from time to time and to reimburse it for its reasonable expenses.

Section 7.10 Certain Estimates as to the Trust Assets. As soon as reasonably practicable after the Trust Assets are transferred to the Trust, the Manager shall make a good faith aggregate valuation of the Trust Assets as of the date of such transfer, and the Trustee, on behalf of the Trust, shall disclose such aggregate valuation in a filing with the Commission on Form 8-K. Such valuation shall be used consistently by the Trustee, the Certificateholders and the beneficial owners of the Trust Interests for all federal and applicable state, local and other income tax purposes. In connection with the preparation of such valuation and any other valuation of the Trust Assets required under this Trust Agreement, the Trustee shall be authorized, in accordance with the Management Agreement, to direct the Manager to select and retain, or cause to be selected and retained, agents, advisors or other professionals with appropriate applicable experience and qualifications, at the expense of the Trust, to assist in determining estimates as to the value of the Trust Assets.

Section 7.11 Filing Requirements. Unless otherwise required by applicable law, the Trustee shall file, or cause to be filed, tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations with the beneficial owners of the Trust Interests treated as the grantors of the Trust for U.S. federal income tax purposes in respect of their beneficial interests in the Certificates. In addition, the Trustee shall file, or cause to be filed, in a timely manner such other tax returns as are required by applicable law to be filed by the Trust (including, if any, with respect to the Property Owners)

and pay, or cause to be paid, any taxes shown as due thereon. The Trustee may withhold from amounts distributable or allocable to any Person any and all amounts, determined in the Trustee's sole, reasonable discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement. Any amounts withheld and paid to a taxing authority on behalf of or with respect to a Certificateholder shall be treated as having been distributed to such Certificateholder for all purpose of this Trust Agreement. The tax returns filed by the Trustee shall report all Trust earnings for the taxable year being reported. The Trustee shall use commercially reasonable efforts to deliver to the Certificateholders (i) no later than forty-five (45) days after the end of each taxable year, a draft statement setting forth estimates of income, deductions, gain, or loss of the Trust for such taxable year and (ii) no later than ninety (90) days after the end of each taxable year, a final statement setting forth income, deductions, gain, or loss of the Trust for such taxable year, and the beneficial owners of the Trust Interests shall file income tax returns consistent with such statements. The "taxable year" of the Trust shall be the "calendar year" as those terms are defined in Section 441 of the Code.

Section 7.12 Money Held in Trust. Money held by the Trustee or the Paying Agent in trust under this Trust Agreement need not be segregated from other funds except to the extent required herein or by law and neither the Trustee nor the Paying Agent shall have any liability for interest upon any such moneys except as provided for herein.

Section 7.13 Compensation and Reimbursement. The Trust shall, subject to Section 5.05:

(a) pay, or cause to be paid, to the Trustee (in its individual capacity), from time to time such compensation for all services rendered by it hereunder as separately set forth in one or more fee letters between the Trustee (in its individual capacity) and BidCo (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Trust shall reimburse the Trustee for all reasonable and documented expenses incurred in serving as Trustee hereunder, including the reasonable compensation, expenses and disbursements of such agents, representatives, experts and counsel as the Trustee may employ in connection with the exercise and performance of its rights and its duties hereunder; provided, however, that such amounts incurred by Trustee in its individual capacity and not on behalf of the Trust (together with any expenses or other reimbursements under Section 7.02(d)) shall not exceed \$50,000 in the aggregate during any calendar year (the "Expense Cap"); provided, however, that, notwithstanding anything to the contrary in this Trust Agreement, the Expense Cap shall not apply to: (i) any fees, expenses or disbursements of legal counsel to the Trustee incurred prior to January 1, 2021 in an amount up to \$100,000; or (ii) any fees payable to the Trustee pursuant to the fee letter referred to above;

(b) indemnify, defend and hold harmless the Trustee (solely in its individual capacity) and any of the officers, directors and employees of the Trustee (the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes (other than any tax attributable to the Trustee's compensation for serving as such) and penalties of any kind and nature whatsoever (collectively, "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons in connection with the performance of this Trust Agreement, the creation, operation or termination of the Trust

or the transactions contemplated hereby, including any Expenses of: (i) defending itself against any claim or liability in connection with the exercise or performance of any of the Trustee's powers or duties hereunder; or (ii) contesting the imposition of any such tax, except in each case for any such loss, liability, tax, cost or expense incurred by reason of the Trustee's breach of its representations and warranties set forth in Section 7.04; provided, however, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses or reimburse any reimbursements which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person as determined by a final non-appealable judgment of a court of competent jurisdiction.

(c) The Trustee shall be entitled to reimbursement from, and shall have a lien prior to the Certificates upon, all property and funds held or collected by the Trustee in its capacity as Trustee with respect to the Trust for any tax incurred without gross negligence, bad faith or willful misconduct, on its part, arising out of or in connection with the acceptance or administration of the Trust (other than any tax attributable to the Trustee's compensation for serving as such), including any reasonable and documented, out-of-pocket costs and expenses incurred in contesting the imposition of any such tax. If the Trustee reimburses itself from the Trust Assets of the Trust for any such tax, it will mail a brief report within thirty (30) days setting forth the amount of such tax and the circumstances thereof to all Certificateholders as their names and addresses appear in the Register.

(d) The obligations of the Trust under this Section 7.13 shall survive the resignation or removal of the Trustee and shall survive the termination of this Trust Agreement and/or the Trust.

Section 7.14 Corporate Trustee Required; Eligibility.

(a) The Trust shall at all times have a Trustee which shall be a bank, trust company or other financial institution organized and doing business under the laws of the United States or any state thereof, shall be eligible to act as a trustee under Section 310(a) of the Trust Indenture Act and shall have a combined capital and surplus of at least the minimum amount that would be required by the Trust Indenture Act if the Trust Indenture Act were applicable. If such bank, trust company or other financial institution or such corporation publishes reports of conditions at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 7.14 the combined capital and surplus of such bank, trust company or other financial institution or such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

(b) In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.14 to act as Trustee of the Trust, the Trustee shall resign immediately as Trustee of the Trust in the manner and with the effect specified in Section 7.06. If the Trustee has or shall acquire a conflicting interest, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, this Trust Agreement.

ARTICLE VIII CERTIFICATEHOLDERS

Section 8.01 Identification and Addresses of Certificateholders. The Trustee will maintain a list of the names and addresses of the Certificateholders for so long as the Trustee is the sole Registrar for such Certificates.

Section 8.02 Certificateholders May Not Bring Suit Except Under Certain Conditions. A Certificateholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise with respect to this Trust Agreement or the Certificates or otherwise, or for the appointment of a receiver or for the enforcement of any other remedy under this Trust Agreement or the Certificates or otherwise, unless:

(a) Certificateholders holding Certificates evidencing Fractional Undivided Interests aggregating not less than 25% of the Trust Interests shall have requested the Trustee in writing to institute such suit, action or proceeding and shall have offered to the Trustee indemnity as provided in Section 7.02(e);

(b) the Trustee shall have refused or neglected to institute any such suit, action or proceeding for thirty (30) days after receipt of such notice, request and offer of indemnity; and

(c) no Direction inconsistent with such written request shall have been given to the Trustee during such 30-day period by the Majority Certificateholders.

Except to the extent provided herein or otherwise in the Trust Transaction Documentation, it is understood and intended that no one or more of the Certificateholders shall have any right in any manner whatsoever hereunder or under the Certificates to: (i) surrender, impair, waive, affect, disturb or prejudice any property in the Trust Assets of the Trust, or the rights of the Certificateholders; (ii) obtain or seek to obtain priority over or preference with respect to any other Certificateholder; or (iii) enforce any right under this Trust Agreement or under the Certificates, except in the manner provided in this Trust Agreement and for the equal, ratable and common benefit of all the Certificateholders.

Section 8.03 Acknowledgment With Respect to the Manager. By accepting a Certificate, each Certificateholder agrees that: (i) the Manager's sole relationship with the Trust is a contractual relationship governed by the Management Agreement as an independent contractor; (ii) no Certificateholder shall be a third-party beneficiary of the Management Agreement; (iii) neither the Manager nor any of its Affiliates has any duties, obligations or responsibilities towards Certificateholders or, except for obligations expressly set forth in the Management Agreement to the Trust, and in no event shall the Manager or any Manager Parties (as defined in the Management Agreement) be a fiduciary or have any fiduciary or similar duties to any Certificateholder or the Trust; (iv) with respect to any claims or proceedings brought by a Certificateholder or the Trust against the Manager, the Manager shall be afforded all of the rights, protections (including limitations on liability), exculpations, immunities and indemnities afforded to the Manager pursuant to the terms of the Management Agreement (as attached hereto in Exhibit G and as may be amended from time to time), *mutatis mutandis*, as if such rights,

protections, exculpations, immunities and indemnities were set forth herein; and (v) neither the Manager nor any of the Manager Parties shall have any liability or obligation to any Certificateholder or holder of Trust Interests for any acts or omissions under the Management Agreement or otherwise. For purposes of this Section 8.03, references to Certificateholders shall be deemed to include holders of Trust Interests. The acknowledgements and agreements under this Section 8.03 are for the benefit of the Manager and the Manager Parties and shall survive the resignation, removal or termination of the Manager pursuant to the Management Agreement and shall survive the termination or expiration of the Management Agreement and/or this Trust Agreement and/or the termination or dissolution of the Trust.

ARTICLE IX SUPPLEMENTAL AGREEMENTS

Section 9.01 Supplemental Agreements Without Consent of Certificateholders. Without the consent of any Certificateholders, the Trustee may (but will not be required to), at any time and from time to time, enter into one or more agreements supplemental hereto or to the other Trust Transaction Documentation, for any of the following purposes:

- (a) to evidence the succession of another Person to BidCo and the assumption by any such successor of the covenants of BidCo contained in this Trust Agreement or of BidCo's obligations hereunder; or
- (b) to cure any manifest error; or
- (c) to make or modify any other ministerial provision in regard to matters or questions as BidCo may deem necessary and that will not adversely affect the interests of the any Certificateholders; or
- (d) to comply with any requirement of the Commission or of any other applicable regulatory body; or
- (e) to add to or change any of the provisions to such extent as shall be necessary to facilitate or provide for the issuance of Certificates in global form in addition to or in place of Certificates in certificated form; or
- (f) to the extent required to maintain compliance with applicable laws or regulations, to provide for the delivery of agreements supplemental hereto or the Certificates in or by means of any computerized, electronic or other medium, including without limitation by computer diskette; or to correct or supplement the description of any property constituting property of the Trust; or
- (g) to the extent required to maintain compliance with applicable laws or regulations, to comply with any requirements of DTC; or
- (h) to make any changes to or to modify any administrative provisions (including, without limitation, for example the announcement date for distributions, the record date for distributions or the date of the month on which such distribution should occur) to such

extent as shall be necessary to facilitate or provide for the listing of the Certificates on a principal U.S. national securities exchange.

Section 9.02 Supplemental Agreements with Consent of Certificateholders.

(a) With the consent of the Majority Certificateholders, this Trust Agreement or any other Trust Transaction Documentation (subject to Section 2.05) may be amended, supplemented or otherwise modified, and provisions herein may be waived, from time to time, subject to the restrictions imposed by Section 7.05 regarding preserving grantor trust status and subject to Sections 9.02(b) and (c).

(b) With respect to the Trust and the Certificates relating thereto, with the consent of the Supermajority Certificateholders, by Direction of said Certificateholders delivered to the Trustee, BidCo and the Trustee (subject to Section 9.03) shall enter into an agreement or agreements supplemental hereto for the purpose of: (i) making any change to the minimum sales price per square foot with respect to a Retail Property or DC Property (as set forth in the pricing parameters provided to the Trustee); or (ii) amending, waiving or modifying the definition of “Supermajority Certificateholders” or any provision of this Trust Agreement requiring approval of the Supermajority Certificateholders.

(c) Without the consent of the Certificateholder of each outstanding Certificate adversely affected thereby, this Trust Agreement and any other Trust Transaction Documentation (subject to Section 2.05) may not be amended, supplemented or otherwise modified to:

(i) reduce in any manner the amount of, or delay the timing of, any distributions that are required to be made herein on any Certificate, or change any date of payment on any Certificate, or change the place of payment where, or the coin or currency in which, any Certificate is payable (other than as provided for in such Certificate), or impair the right to institute suit for the enforcement of any such payment or distribution on or after the final Distribution Date applicable thereto; or

(ii) amend this Trust Agreement or any other Trust Transaction Documentation in such a manner so as to adversely and disproportionately affect any single Certificateholder (or any single Certificateholder and its Affiliates who are Certificateholders) in a material respect relative to the other Certificateholders; or

(iii) except as permitted by this Trust Agreement and the Management Agreement, deprive such Certificateholder of the benefit of the ownership of the Trust Assets in the Trust; or

(iv) modify any of the provisions of this Section 9.02 with respect to such Certificates, except to increase the specified percentage of the aggregate Fractional Undivided Interests of the Trust that is required for any supplemental agreement as set forth therein, or to provide that certain other provisions of this Trust Agreement cannot be modified or waived without the consent of the Certificateholders of Certificates affected thereby; or

(v) cause this Trust to become an association taxable as a corporation for U.S. federal income tax purposes (or to become a publicly traded partnership taxable as a corporation for such purposes).

(d) Without the consent of Majority Certificateholders, including at least three (3) Certificateholders who are not Affiliates of one another, this Trust Agreement may not be amended, supplemented or otherwise modified to reduce the requirement that an approval include at least three (3) Certificateholders (who are not Affiliates of one another) as set forth in:

- (i) the definition of “Strategic Disposition Transaction;”
- (ii) a Plan of Conversion as set forth in Section 2.02(b);
- (iii) the provisions relating to a Strategic Disposition Transaction set forth in Section 6.09(b); and
- (iv) this Section 9.02(d).

It shall not be necessary for any Direction of such Certificateholders under this Section 9.02 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such Direction shall approve the substance thereof.

Section 9.03 Documents Affecting Immunity or Indemnity. If in the opinion of the Trustee any document required to be executed by it pursuant to the terms of Section 9.01 or 9.02 affects any interest, right, duty, immunity or indemnity in favor of the Trustee under this Trust Agreement, the Trustee may in its discretion decline to execute such document.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.01 Duration. This Trust Agreement shall remain and continue in full force and effect until the Trust is terminated in accordance with the provisions of this Trust Agreement.

Section 10.02 Termination of the Trust. The Trustee and the Trust shall be discharged or terminated, as the case may be, no later than ninety (90) days after the later of (x) the final tax returns required to be filed by the Trust have been duly filed and (y) the final reports required to be filed by the Trust pursuant to Section 6.06(c) have been duly filed, in each case, after: (a) all Trust Assets have been sold pursuant to Agreed Sales and/or Strategic Disposition Transactions; and (b) all distributions required to be made by the Trustee to the Certificateholders have been made (including any reserve previously required to be maintained pursuant to Section 5.02(f)) and the Balance of each Account is \$0; but in no event shall the Trust be terminated later than five (5) years from the date hereof unless the Trustee (in consultation with the Manager) and the Majority Certificateholders determine that a fixed period extension is necessary to facilitate or complete the recovery on, and liquidation of, the Trust Assets. The Trust may not be terminated at any time by the Certificateholders. In connection with the termination of the Trust, notwithstanding other provisions hereof, any remaining Trust Assets that are of inconsequential

value or otherwise insufficient to support the cost of a distribution may be transferred by the Trustee to a non-profit charitable organization qualifying under section 501(c)(3) of the IRC.

Section 10.03 Governing Law. THIS TRUST AGREEMENT HAS BEEN DELIVERED IN THE STATE OF NEW YORK AND THIS TRUST AGREEMENT AND THE CERTIFICATES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Section 10.04 Counterparts. This Trust Agreement may be executed in any number of counterparts (and no party shall be required to execute the same counterpart). Each counterpart of this Trust Agreement, including a signature page or pages executed by each of the parties hereto, shall be an original counterpart of this Trust Agreement, but all of such counterparts together shall constitute one instrument. The parties intend that images of manually executed signatures transmitted by facsimile, email or other electronic format (including, without limitation, “pdf,” “tif” or “jpg”) and other electronic signatures (including without limitation, DocuSign and AdobeSign) shall constitute original signatures and are binding on all parties. The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The original documents shall be promptly delivered, if requested.

Section 10.05 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all notices required or permitted under the terms and provisions of this Trust Agreement shall be in English and in writing (provided that any such communication sent to the Trustee must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign (or such other digital signature provider acceptable to the Trustee)), and any such notice may be given by U.S. mail, courier service or facsimile or any other customary means of communication, and any such notice shall be effective when delivered (or, if mailed, three (3) Business Days after deposit, postage prepaid, in the first class U.S. mail and, if delivered by facsimile, upon completion of transmission and confirmation by the sender (by a telephone call to a representative of the recipient or by machine confirmation) that the transmission was received), to:

BidCo:
GLAS AMERICAS LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Fax: 212-202-6246
Attention: Client Services
Email: ClientServices.americas@glas.agency

With a copy to:

Milbank LLP
55 Hudson Yards
New York, NY 10001
Attention: Dennis Dunne
Eric Reimer
Kevin O'Shea
Casey Fleck

Email: DDunne@milbank.com
Ereimer@milbank.com
KOShea@milbank.com
CFleck@milbank.com

Trustee:
GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Fax: 212-202-6246
Email: ClientServices.Americas@glas.agency

With a copy to:

Arnold & Porter Kaye Scholer LLP
Attn: Jonathan Levine
250 West 55th Street
New York, New York 10004
Email: Jonathan.Levine@arnoldporter.com

Section 10.06 Intention of Parties to Establish a Grantor Trust.

(a) This Trust Agreement is intended to create a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust. Consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94 45, 1994-2 C.B. 684, the Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4 (d) and, accordingly, as a grantor trust pursuant to Sections 671-677 of the Code or, if it is not so treated, as a partnership other than a publicly traded partnership taxable as a corporation under Section 7704 of the Code. As such, for federal income tax purposes, the initial beneficial owners of the Trust Interests will be treated as both the initial grantors and the initial deemed owners of the Trust. The Property Owners shall be treated as "title owning companies" whose separate existence from the Trust is disregarded for U.S. federal income tax purposes.

(b) Each Certificateholder of, and each Person acquiring a beneficial interest in, a Certificate, by its acceptance of its Certificate or a beneficial interest therein, agrees to treat the Trust as a grantor trust for all U.S. federal, state and local income tax purposes.

Section 10.07 Submission to Jurisdiction. Each of the parties hereto, to the extent it may do so under applicable law, for purposes hereof and of all other Trust Transaction Documentation: (a) irrevocably submits itself to the non-exclusive jurisdiction of the courts of the State of New York sitting in the City of New York and to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Trust Agreement, the subject matter hereof or any of the transactions contemplated hereby brought by any party or parties hereto or thereto, or their successors or permitted assigns; (b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Trust Agreement or the subject matter hereof or any of the transactions contemplated hereby may not be enforced in or by such courts; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 10.05, or at such other address of which the other parties shall have been notified pursuant thereto; and (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction. THE PARTIES PARTY HERETO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT, ANY CERTIFICATE OR THE TRANSACTIONS CONTEM-PLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS TRUST AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.08 Normal Commercial Relations. Anything contained in this Trust Agreement to the contrary notwithstanding, the Trustee and any Certificateholder, or any bank or other affiliate of any such party, may conduct any banking or other financial transactions, and have banking and other commercial relationships, with any other party hereto fully to the same extent as if this Trust Agreement were not in effect, including without limitation the making of loans or other extensions of credit to such parties for any purpose whatsoever, whether related to any of the transactions contemplated hereby or otherwise.

Section 10.09 Entire Agreement; Successor and Assigns. This Trust Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties, whether written or oral (other than the separate fee letter referenced above). All covenants, agreements, representations and warranties in this Trust Agreement by the Trustee and the other parties shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether so expressed or not. Any request, notice, direction, consent, waiver or other instrument or action by any Certificateholder shall bind the successors and assigns of such Certificateholder.

Section 10.10 No Recourse against Others. No past, present or future director, officer, employee, agent, member, manager, trustee or stockholder, as such, of any party hereto shall have any liability for any obligations of such party, either directly or through such Person, the parent of such Person or any successor Person, under the Certificates, this Trust Agreement or for any claim based on, in respect of or by reason of such obligations or their creation, whether by virtue of any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise. By accepting a Certificate, each Certificateholder agrees to the provisions of this Section 10.10 and waives and releases all such liability. Such waiver and release shall be part of the consideration for the issue of the Certificates.

Section 10.11 Limitation on Rights of Certificateholders.

(a) The insolvency, death or incapacity of any Certificateholder shall not operate to terminate this Trust Agreement or the Trust, nor entitle such Certificateholder's legal representatives or heirs to claim an accounting or to take any action or commence any proceeding in any court for a partition or winding up of the Trust, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them. No Certificateholder shall be entitled to revoke the Trust.

(b) No transfer, by operation of law or otherwise, of any Certificate or other right, title and interest of any Certificateholder in and to the applicable Trust Assets or under the Trust shall operate to terminate the Trust or entitle such Certificateholder or any successor or transferee of such Certificateholder to an accounting or to the transfer to it of legal title to any part of such Trust Assets.

Section 10.12 Certificates Nonassessable and Fully Paid.

(a) Certificateholders shall not be personally liable for obligations of the Trust, the Fractional Undivided Interests represented by the Certificates shall be nonassessable for any losses or expenses of the Trust or for any reason whatsoever, and Certificates upon authentication thereof by the Trustee pursuant to Section 3.02 are and shall be deemed fully paid. No Certificateholder shall have any right (except as expressly provided herein) to vote or in any manner otherwise control the operation and management of the related Trust Assets, the Trust, or the obligations of the parties hereto, nor shall anything set forth herein, or contained in the terms of the Certificates, be construed so as to constitute the Certificateholders from time to time as partners or members of an association.

Section 10.13 Patriot Act. In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Trustee is required to obtain, verify and record information that identifies its clients, which information may include the name and address of its clients, as well as other information that will allow the Trustee to properly identify its clients. Each party to this Trust Agreement agrees for itself that it will provide the Trustee with such information relating to such party as it may reasonably request in order for the Trustee to satisfy the requirements of the USA Patriot Act.

Section 10.14 Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, pandemics, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

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

COPPER BIDCO LLC

By its sole member, GLAS AMERICAS LLC

By:



Name: Yana Kislenko
Title: Vice President

GLAS TRUST COMPANY LLC,
as Trustee

By: 
Name: Yana Kislenko
Title: Vice President

Exhibit A: Form of Certificate

[Attached]

COPPER PROPERTY CTL PASS THROUGH TRUST CERTIFICATE

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE TRUSTEE OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS CERTIFICATE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE TRUST AGREEMENT REFERRED TO ON THE REVERSE HEREOF.

THIS CERTIFICATE MAY NOT BE TRANSFERRED TO ANY DISREGARDED HOLDER (AS DEFINED IN THE TRUST AGREEMENT).

THE INTERESTS IN THE TRUST REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE TRUST’S MAINTENANCE OF ITS STATUS AS A PARTNERSHIP FOR U.S. FEDERAL INCOME TAX PURPOSES BY BEING ABLE TO SATISFY THE “QUALIFYING INCOME” REQUIREMENTS OF SECTIONS 7704(c)(1) AND (2) OF THE CODE IN THE EVENT THAT THE TRUST IS RECHARACTERIZED AS A “BUSINESS ENTITY” (RATHER THAN A GRANTOR TRUST) FOR U.S. FEDERAL INCOME TAX PURPOSES. NO PERSON MAY (I) OWN FRACTIONAL UNDIVIDED INTERESTS AGGREGATING 4.9% OR MORE OF THE TRUST INTERESTS UNLESS SUCH PERSON IS AN EXCEPTED HOLDER OR (II) OWN ANY TRUST INTERESTS THAT WOULD CAUSE THE TRUST, TOGETHER WITH ANY AND ALL OF SECTION 4.05 SUBSIDIARIES, TO OWN IN THE AGGREGATE: (1) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT IS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, STOCK OF SUCH TENANT POSSESSING TEN PERCENT (10%) OR MORE OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR TEN PERCENT (10%) OR MORE OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF STOCK OF SUCH TENANT, WITHIN THE MEANING OF SECTION 856(d)(2)(B)(i) OF THE CODE; OR (2) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT

IS NOT A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, AN INTEREST OF TEN PERCENT (10%) OR MORE IN THE ASSETS OR NET PROFITS OF SUCH TENANT WITHIN THE MEANING OF SECTION 856(d)(2)(B)(ii) OF THE CODE. ANY PERSON WHO ATTEMPTS TO OWN A TRUST INTEREST THAT WOULD RESULT IN A VIOLATION OF EITHER (I) OR (II) ABOVE MUST NOTIFY THE TRUSTEE IN WRITING AS PROMPTLY AS PRACTICABLE. ANY TRANSFER IN VIOLATION OF EITHER (I) OR (II) ABOVE SHALL BE VOID *AB INITIO*.

IF THE RESTRICTIONS IN THE ABOVE PARAGRAPH ARE VIOLATED, THE RELEVANT GLOBAL CERTIFICATE OR DEFINITIVE CERTIFICATE WILL BE TRANSFERRED AUTOMATICALLY AND BY OPERATION OF LAW TO A CHARITABLE TRUST AND SHALL BE DESIGNATED A DESIGNATED TRUST INTEREST. THE FOREGOING SUMMARY OF THE RESTRICTIONS ON TRANSFER DOES NOT PURPORT TO BE COMPLETE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, AND ALL TERMS IN THIS LEGEND HAVE THE MEANINGS (IF ANY) DEFINED IN, THE TRUST AGREEMENT, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH CERTIFICATEHOLDER WHO SO REQUESTS.

ANY PERSON ACQUIRING OR ACCEPTING A CERTIFICATE OR AN INTEREST THEREIN WILL AND EACH SUBSEQUENT TRANSFEREE, BY SUCH ACQUISITION OR ACCEPTANCE, BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT FOR SO LONG AS IT HOLDS SUCH CERTIFICATE OR INTEREST THEREIN, SUCH PERSON IS NOT, AND IS NOT ACTING ON BEHALF OF, A BENEFIT PLAN INVESTOR. EACH PERSON WHO PURCHASES AN INTEREST IN A CERTIFICATE, AND EACH SUBSEQUENT TRANSFEREE, WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT IF SUCH PERSON IS A GOVERNMENTAL, CHURCH, NON-U.S. OR OTHER PLAN, (1) IT IS NOT, AND FOR SO LONG AS IT HOLDS SUCH CERTIFICATE OR INTEREST THEREIN WILL NOT BE, SUBJECT TO ANY SIMILAR LAW THAT COULD CAUSE THE UNDERLYING ASSETS OF THE TRUST TO BE TREATED AS ASSETS OF THE INVESTOR IN ANY CERTIFICATE (OR INTEREST THEREIN) BY VIRTUE OF ITS INTEREST AND THEREBY SUBJECT THE ISSUER TO SIMILAR LAW, AND (2) ITS ACQUISITION, HOLDING AND DISPOSITION OF SUCH CERTIFICATE (OR INTEREST THEREIN) WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT VIOLATION OF ANY APPLICABLE SIMILAR LAW.

COPPER PROPERTY CTL PASS THROUGH TRUST

COPPER PROPERTY CTL PASS THROUGH TRUST CERTIFICATE

No. 1

CUSIP: 217519 107

COPPER PROPERTY CTL PASS THROUGH TRUST, a New York common law trust (the “**Issuer**”), hereby certifies that CEDE & CO., as nominee for the Depository Trust Company, or its registered assigns, is the registered owner of 75,000,000 certificates representing the aggregate total number of Trust Interests. The Issuer, for value received, hereby promises to pay to CEDE & CO. certain amounts on this Certificate (this “**Certificate**” and, together with any other Certificates, the “**Certificates**”) through the application on the Distribution Dates of the Collections and Sales Proceeds as provided in Section 5.05 of the Trust Agreement (after making payments entitled to priority under Section 5.05 of the Trust Agreement) from the date hereof, payable on each Distribution Date.

This Certificate is one of a duly authorized issue of Certificates of the Issuer issued under the Amended and Restated Pass Through Trust Agreement dated as of January 30, 2021 (as amended or supplemented from time to time, the “**Trust Agreement**”), between Copper Bidco LLC and GLAS Trust Company LLC (the “**Trustee**”), solely in its capacity as Trustee for the purpose of the Trust Agreement and for the Issuer. All capitalized terms used in this Certificate and not defined herein shall have the respective meanings assigned to such terms in the Trust Agreement. Reference is made to the Trust Agreement for a statement of the respective rights and obligations thereunder of the Issuer, the Trustee and the Certificateholders. This Certificate is subject to all of the terms of the Trust Agreement and in the event of any conflict or inconsistency between the Trust Agreement and this Certificate, the Trust Agreement shall control.

Subject to and in accordance with the terms of the Trust Agreement, upon the occurrence of each Distribution Date pursuant to Section 3.03(a) of the Trust Agreement, the Trustee shall make such distributions to the Certificateholder hereof as are required to be made pursuant to Section 5.05 of the Trust Agreement to the accounts at such financial institution in the United States designated by the Certificateholder hereof.

All amounts payable in respect of this Certificate shall be payable in U.S. dollars in immediately available funds in the manner provided in the Trust Agreement to the Certificateholder hereof.

Promptly after preparing the most recent Distribution Date Schedule (but in any case no later than on the second (2nd) Business Day after preparation thereof), the Trustee shall cause such document to be posted on the Investor Website for access by the Certificateholders.

Each distribution with respect to this Certificate shall be made on the Distribution Date without presentment or surrender of this Certificate.

The Certificateholder of this Certificate, by accepting receipt hereof, acknowledges and agrees to the transfer restrictions contained in the Trust Agreement, including, without limitation, Section 4.05 of the Trust Agreement.

Section 9.01 of the Trust Agreement permits the amendment, modification or waiver of the Trust Agreement, as specified in the Trust Agreement. Any such amendments, modifications or waivers of the Trust Agreement in compliance with the Trust Agreement shall be binding upon the Trustee, the Certificateholders and the other parties to the Trust Agreement.

The Certificateholder hereof and each beneficial owner of this Certificate, by the purchase of such Certificate or beneficial interest therein, covenants and agrees that it will treat such Certificates as equity in the Issuer for all U.S. federal income tax purposes and will not take any action contrary to such characterization, including, without limitation, filing any U.S. federal income tax returns inconsistent therewith.

THIS CERTIFICATE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

Unless the certificate of authentication hereon has been executed by the Trustee whose name appears below by manual signature, this Certificate shall not be entitled to any benefit under the Trust Agreement, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be signed manually or electronically.

Date: _____

COPPER PROPERTY CTL PASS THROUGH
TRUST

By: GLAS TRUST COMPANY LLC,
not in its individual capacity but solely as
Trustee

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Certificates designated above and referred to as a Certificate in the within-mentioned Trust Agreement.

Date: _____

GLAS TRUST COMPANY LLC, not in its
individual capacity but solely as Trustee

By: _____

Name:

Title:

ASSIGNMENT FORM

To assign this Certificate, fill in the form below:

I or we assign and transfer this Certificate to:

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax identification No.)

and irrevocably appoint _____ as agent to transfer this Certificate on the books of the Issuer. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Sign exactly as your name appears on the other side of this Certificate.

Signature Guarantee: _____ Signature of Signature Guarantee: _____

Date: _____

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Copper Property CTL Pass Through Trust
c/o GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Fax: 212-202-6246
Email: ClientServices.Americas@glas.agency

Exhibit B-1: Form of Monthly / Quarterly Report

[Attached]



GLAS Trust Company LLC
230 Park Avenue
3rd Floor
New York NY 10169

CTL Real Estate Trust Certificates

[MONTHLY][QUARTERLY] DISTRIBUTION DATE STATEMENT

For additional information, please
contact
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[1-888-xxx-xxxx]
Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

MONTHLY/QUARTERLY DISTRIBUTION STATEMENT



GLAS Trust Company LLC
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Distribution Date: []
Record Date: []
Determination Date: []

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Trustee

[Name]
[Address]
[City, State Zip]
Contact: [Name]
Phone: [(xxx) xxx-xxxx]
Email: [email.com]

Manager

[Name]
[Address]
[City, State Zip]
Contact: [Name]
Phone: [(xxx) xxx-xxxx]
Email: [email.com]

Financial Advisor

[Name]
[Address]
[City, State Zip]
Contact: [Name]
Phone: [(xxx) xxx-xxxx]
Email: [email.com]



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Distribution Date: []
Record Date: []
Determination Date: []

Forward-Looking Statements & Non-GAAP Presentation:

This distribution statement contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements include, among others, statements of expectations, beliefs, future plans and strategies, anticipated results from operations and developments and other matters that are not historical facts. The forward-looking statements are based on our beliefs as well as on a number of assumptions concerning future events. Readers of these materials are cautioned not to put undue reliance on these forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties and other factors that could cause actual events or results to differ materially from those expressed or implied by the forward-looking statements.

Certain of the financial measures presented in this distribution statement are non-GAAP financial measures, other metrics and other information. We believe that non-GAAP financial measures, other metrics and other information provide useful information to investors regarding our financial condition, result of operations and other matters. The non-GAAP financial measures, other metrics and information as presented in this distribution statement may be adjusted in management’s reasonable judgment as appropriate, taking into account a variety of circumstances, facts and conditions. These adjustments may be material and may or may not be specifically identified in footnotes or otherwise. Our measures, metrics and other information (and the methodologies used to derive them) may not be comparable to those used by other companies.

Please refer to Section III of this distribution statement, titled “Disclaimers”, for additional information.



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Distribution Date: []
Record Date: []
Determination Date: []

SECTION I



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CTL Real Estate Trust Certificates

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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Monthly Certificate Distribution Detail

CUSIP	Aggregate Certificates Outstanding	Aggregate Net Sales Proceeds Distribution	Aggregate Net Rental Income Distribution	Aggregate Total Distribution
[]	[]	\$[]	\$[]	\$[]

Per Certificate				
CUSIP		Net Sale Proceeds Distribution per Certificate	[Net Rental Income Distribution per Certificate	Total Distribution per Certificate
[]		\$[]	\$[]	\$[]



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Monthly Cash Source and Uses

Sources of Cash from Operations		Uses of Cash from Operations	
Distribution Center Master Lease Rent	\$[]	Management Fees: Operations	\$[]
Retail Master Lease Rent	\$[]	Legal	\$[]
Total Rent	\$[]	Accounting and Tax	\$[]
[Other]	\$[]	[Insurance]	\$[]
[Other]	\$[]	[Trustee]	\$[]
Total Other	\$[]	[Other]	\$[]
		Total Operating Expenses	\$[]
		Cash Provided By/(Used In) Operations	\$[]
Total Sources of Cash	\$[]	Total Uses of Cash	\$[]

Sources of Cash from Sales / Capital Activity		Uses of Cash from Sales / Capital Activity	
Distribution Center Gross Sales Proceeds	\$[]	Management Fees: Sales	\$[]
Retail Master Lease Gross Sale Proceeds	\$[]	Third-Party Expenses: Distribution Center Sales	\$[]
Total Gross Sale Proceeds	\$[]	Third-Party Expenses: Retail Sales	\$[]
[Other Financing/Capital Activity]	\$[]	[Other]	\$[]
[Other]	\$[]	Total Costs	\$[]
Total Other	\$[]	Cash Provided By/(Used In) Sales / Capital Activity	\$[]
Total Sources of Cash	\$[]	Total Uses of Cash	\$[]



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Distribution Date: []
Record Date: []
Determination Date: []

Monthly Cash Distributions

Distribution Date	Net Rental Income Distribution	Sales and Capital Activity Distribution	Total Distributions
T-1	\$[]	\$[]	\$[]
T-2	\$[]	\$[]	\$[]
T-3	\$[]	\$[]	\$[]
T-4	\$[]	\$[]	\$[]
T-5	\$[]	\$[]	\$[]
T-6	\$[]	\$[]	\$[]
T-7	\$[]	\$[]	\$[]
T-8	\$[]	\$[]	\$[]
T-9	\$[]	\$[]	\$[]
T-10	\$[]	\$[]	\$[]
T-11	\$[]	\$[]	\$[]
T-12	\$[]	\$[]	\$[]
Trailing 12 Months	\$[]	\$[]	\$[]
Inception To Date	\$[]	\$[]	\$[]



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Distribution Date: []
Record Date: []
Determination Date: []

Property Sales This Month

Sale Date / Period	Type ^A	Property ID	Square Feet	Rent for Lease Year at Closing Date	Cost Basis	Gross Sales Price	Net Sales Price	Net Sales Price per Square Foot	Rent Yield at Closing ^B	Selling Costs as Percentage of Gross Sales Price	Selling Broker
[●]	[Retail]	[9999]	[100,000]	[\$900,000]	[\$9,000,000]	[\$9,000,000]	[\$8,730,000]	[\$90]	[10.00]%	[2.00]%	[]
Distribution Period Total											
Distribution Centers (Inception To Date)											
Retail Properties (Inception to Date)											

^A Distribution center or retail property.

^B "Rent Yield at Closing" does not reflect the rental abatement of 50% through December 7, 2021.



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Distribution Date: []
Record Date: []
Determination Date: []

Retail Portfolio as of Determination Date

By Current Lease Year Rent Per Square Foot Tier				By Property Ownership Type			
Tier	Properties	Square Feet	Current Lease Year Rent	Property Ownership Type	Properties	Square Feet	Current Lease Year Rent
Tier 1 - \$9.00				Fee			
Tier 2 - \$6.00				Ground Lease			
Tier 3 - \$3.50				Total			
Tier 4 - \$2.00							
Total							

By Current Lease Year Rent per Property				By Property Retail Adjacency			
Rent per Property	Properties	Square Feet	Current Lease Year Rent	Property Retail Adjacency	Properties	Square Feet	Current Lease Year Rent
> = \$[]				Shopping Center			
> = \$[]				Freestanding			
> = \$[]				Mall			
< \$[]				Total			
Total							

By Geography			
State	Properties	Square Feet	Current Lease Year Rent
State 1			
State 2			
State 3			
State 4			
Other			
Total			



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Distribution Center Portfolio as of Determination Date

Property ID		[1]	[2]	[3]	[4]	[5]	[6]
Location		[City, State]	[City, State]	[City, State]	[City, State]	[City, State]	[City, State]
Excess Land (acres)		[]	[]	[]	[]	[]	[]
Square Feet	NewJCP	[]	[]	[]	[]	[]	[]
	Other Tenants	[]	[]	[]	[]	[]	[]
	Vacant	[]	[]	[]	[]	[]	[]
	Total	[]	[]	[]	[]	[]	[]
Current Lease Year Rent	NewJCP	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
	Other Tenants	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
	Total	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
Current Lease Year Rent per Square Foot	NewJCP	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
	Other Tenants	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]
	Total	\$[]	\$[]	\$[]	\$[]	\$[]	\$[]



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Distribution Date: []
Record Date: []
Determination Date: []

Landlord and Tenant Option Properties as of Determination Date

Property ID	Option Type	Property Name	Location	Square Feet	Current Lease Year Rent	Option Notice (Yes/No)	Option Notice Date	Option Exercise / Closing Date	Leasing Activity, Redevelopment Plans, Sales Strategy and Manager Commentary
2814	Landlord	Queens Center							
1572	Landlord	Westfield Culver City							
2102	Landlord	Westfield Annapolis							
246	Landlord	SouthBay Pavilion at Carson							
2881	Landlord	Memorial City S/C							
2795	Landlord	Stonebriar Centre							
2040	Landlord	Barton Creek Square							
1462	Landlord	Springfield Town Center							
1417	Landlord	Westfield Santa Anita							
1950	Landlord	Fashion Valley							
2763	Landlord	The Woodlands Mall							
2649	Landlord	Westminster Mall							
2297	Landlord	Newport Centre							
2247	Landlord	Pheasant Lane Mall							
1623	Landlord	Twelve Oaks Mall							
197	Landlord	Gateway Shopping Center I & II							
2477	Landlord	Freehold Raceway Mall							



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Property ID	Option Type	Property Name	Location	Square Feet	Current Lease Year Rent	Option Notice (Yes/No)	Option Notice Date	Option Exercise / Closing Date	Leasing Activity, Redevelopment Plans, Sales Strategy and Manager Commentary
1959	Landlord	The Shops at Tanforan							
1229	Landlord	The Oaks							
2757	Landlord	Park Meadows							
192	Landlord	Fair Oaks Mall							
389	Landlord	Stoneridge S/C							
2256	Landlord	Danbury Fair Mall							
2749	Tenant	Dulles Town Center							
2921	Tenant	Robertson's Creek							
2934	Tenant	University Oaks S/C							
2982	Tenant	Village at Fairview							
2865	Tenant	Tamarack Village							
2801	Tenant	Polaris Fashion Place							



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Substitution Properties This Month

Property ID	Property Name	Property Location	Substitution Type	Square Feet	Current Lease Year Rent	Notice Date	Exercise Date
[9999]			[Outgoing]	[100,000]	[\$900,000]	[6/30/2021]	[9/30/2021]
[8888]			[Incoming]	[100,000]	[\$900,000]	[6/30/2021]	[9/30/2021]



GLAS Trust Company LLC
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CTL Real Estate Trust Certificates

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[1-888-xxx-xxxx]
Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Monthly Leasing Activity: Distribution Centers

Property ID	Lease Start Date	Tenant Name	Square Feet	Current Lease Year Rent per Square Foot	Current Lease Year Rent	Real Estate Operating Expenses	Initial Term (Months)	Extension Options (Years)	Tenant Business Description	Manager Commentary
[]	[]	[]	[]	\$()	\$()	[NNN]	[120]	[4 x 5]	[]	[]

Monthly Leasing Activity: Retail Properties

Property ID	Lease Start Date	Tenant Name	Square Feet	Current Lease Year Rent per Square Foot	Current Lease Year Rent	Real Estate Operating Expenses	Initial Term (Months)	Extension Options (Years)	Tenant Business Description	Manager Commentary
[]	[]	[]	[]	\$()	\$()	[NNN]	[120]	[4 x 5]	[]	[]



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Financial Information

For copies of our most recent financial statements, including management's discussion and analysis of financial condition and results of operations, sales and capital activity, you can access our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act at [www.\[\]](http://www.glas.agency) as soon as reasonably practicable after they are filed with, or furnished to, the SEC. You can also review these SEC filings and other information by accessing the SEC's website at <http://www.sec.gov>.

The SEC file number is [].



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Distribution Date: []
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Determination Date: []

SECTION II



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CTL Real Estate Trust Certificates

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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Master Lease Retail Tenant Operating Performance for Retail Portfolio as of Determination Date^A

Fiscal Quarter Ended []							
Property Ownership	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four-Wall EBITDAR	Rent	Tenant's Four-Wall EBITDA	Tenant's Four-Wall EBITDAR/Rent
Fee							
Ground Lease							
Total				X	X	X	

Fiscal Quarter Ended []		
Rent Tier	# of Properties	Square Feet
1		
2		
3		
4		
Total		

^(A) See Section III, "Definitions", for additional information.^(A) See Section III, "Definitions", for additional information.
#4825-9289-4926



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Distribution Date: []
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Determination Date: []

Fiscal Quarter Ended []							
Tenant's Sales per Square Foot Tier	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four- Wall EBITDAR	Tenant's Four- Wall EBITDAR Margin	Tenant's Four- Wall EBITDA	Tenant's Four- Wall EBITDAR / Rent
>\$[]							
>\$[]							
>\$[]							
<=\$[]							
Total				X		X	

Fiscal Quarter Ended []							
EBITDAR / Rent Tier	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four- Wall EBITDAR	Tenant's Four- Wall EBITDAR Margin	Tenant's Four- Wall EBITDA	Tenant's Four- Wall EBITDAR / Rent
>[3.0]x							
>[2.0]x							
>[1.0]x							
<=[1.0]x							
Total				X		X	



GLAS Trust Company LLC
230 Park Avenue
3rd Floor
New York NY 10169

CTL Real Estate Trust Certificates

[MONTHLY][QUARTERLY] DISTRIBUTION DATE STATEMENT

For additional information, please
contact
GLAS customer service
[1-888-xxx-xxxx]
Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Trailing 12 Months Ended []							
Property Ownership	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four-Wall EBITDAR ^E	Rent ^(B)	Tenant's Four-Wall EBITDA ^(B)	Tenant's Four-Wall EBITDAR ^(B) / Rent
Fee							
Ground Lease							
Total				X	X	X	

Trailing 12 Months Ended []							
Rent Tier	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four-Wall EBITDAR ^(B)	Rent ^(B)	Tenant's Four-Wall EBITDA ^(B)	Tenant's Four-Wall EBITDAR ^(B) / Rent
1							
2							
3							
4							
Total				X	X	X	

^(A) See Section III, "Definitions", for additional information.

^(B) Trailing 12-month reporting to be substituted with year-to-date up until the first 12 months of operations are reported.



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Record Date: []
Determination Date: []

Trailing 12 Months Ended []							
Tenant's Sales per Square Foot Tier	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four-Wall EBITDAR ^(B)	Tenant's Four-Wall EBITDAR Margin ^(B)	Tenant's Four-Wall EBITDA ^(B)	Tenant's Four-Wall EBITDAR ^(B) / Rent
>\$[]							
>\$[]							
>\$[]							
<=\$[]							
Total				X		X	

Trailing 12 Months Ended []							
EBITDAR / Rent Tier	# of Properties	Square Feet	Tenant's Sales per Square Foot ^(A)	Tenant's Four-Wall EBITDAR ^(B)	Tenant's Four-Wall EBITDAR Margin ^(B)	Tenant's Four-Wall EBITDA ^(B)	Tenant's Four-Wall EBITDAR ^(B) / Rent
>[3.0]x							
>[2.0]x							
>[1.0]x							
<=[1.0]x							
Total				X		X	



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Master Lease Guarantor Operating Performance^F

Income Statement	Fiscal Quarter Ended []	Trailing 12 Months Ended [] ^G
Total net sales from stores		
Total revenues		
Total costs and expenses (exclusive of depreciation and amortization)		
Total rent expense		
Adjusted EBITDA (non-GAAP)		
Adjusted EBITDAR (non-GAAP)		

Balance Sheet	Fiscal Quarter Ended []
Cash and cash equivalents	
Merchandise inventory	
Intangible assets	
Total debt	
Stockholders' equity	

^F NTD: Master Lease Guarantor Operating Performance information will be provided solely on a quarterly basis and will not be provided monthly.

^G Trailing 12 month operating performance will be calculated as the 12-month period preceding the most recently completed quarter. Trailing 12-month operating performance will be substituted with year-to-date results until the first 12 months of operations are reported.



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Distribution Date: []
Record Date: []
Determination Date: []

Statement of Cash Flows	Fiscal Quarter Ended []	Trailing 12 Months Ended []
Net cash provided by / (used in) operating activities		
Capital expenditures		
Net cash provided by / (used in) investing activities		
Net cash provided by / (used in) financing activities		

Key Financial and Performance Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
Comparable store sales percent increase/(decrease) for Master Lease Properties	%	%
Net debt to adjusted EBITDA ratio		
Cash interest payments		
Adjusted EBITDA to cash interest payments ratio		
Adjusted EBITDA less capital expenditures to cash interest payments ratio		
Adjusted EBITDAR to rent expense ratio		
Liquid assets covenant compliance (as defined in the master leases)	Yes / No	Yes / No
Tangible net worth (as defined in the master leases)	#	#

Key Portfolio Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
End of period number of stores – fee-owned and ground leased		
End of period number of stores – space leased		
Gross square feet of stores (in millions)		



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Distribution Date: []
Record Date: []
Determination Date: []

Master Lease Subtenants as of Fiscal Quarter Ended []

Subtenant Name	Subleased Property	Square Feet	Lease Commence Date	Lease Expiration Date	Rent	Rent per Square Foot	Percentage of Total Rent	Expense Provisions ^H
Total Subtenants								

^H Tenant to provide high level summary of expense reimbursement provisions.
#4825-9289-4926



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Determination Date: []

SECTION III



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CTL Real Estate Trust Certificates

[MONTHLY][QUARTERLY] DISTRIBUTION DATE STATEMENT

Management's Comments

[To Come]

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Record Date: []
Determination Date: []



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Reports available [www.glas.agency]

Distribution Date: []
Record Date: []
Determination Date: []

Definitions

- (A) **“Tenant’s Sales per Square Foot”** is not a measure of the Trust’s financial performance and is provided solely for investors’ informational purposes based on the information that the Trust receives from the Tenant. This measure of operations is derived from sales information reported to the Trust by the Tenant in accordance with the [Master Lease]. The Trust and the Manager do not have the ability to verify the calculation of this information. The calculation of this information by the tenant may be different than how similar measures of operations might be calculated by others. Finally, the Trust is unable to reconcile “Tenant’s Sales per Square Foot” to a comparable GAAP financial measure because no reconciliation is provided for in the [Master Lease]. Therefore, investors should be cautious about relying upon “Tenant’s Sales per Square Foot.”
- (B) **“Tenant’s Four-Wall EBITDAR”** is not a measure of the Trust’s financial performance and is provided solely for investors’ informational purposes based on the information that the Trust receives from the Tenant. This measure of operations is calculated in accordance with the [Master Lease] and is reported to the Trust by the tenant in accordance therewith. The Trust and the Manager do not have the ability to verify the calculation of this measure of operations. In addition, the calculation of “Tenant’s Four-Wall EBITDAR” in accordance with the [Master Lease] may be different than how similar measures of operating statistic might be calculated by others. Finally, the Trust is unable to reconcile “Tenant’s Four-Wall EBITDAR” to a comparable GAAP financial measure because no reconciliation is provided for in the [Master Lease]. Therefore, investors should be cautious about relying upon “Tenant’s Four-Wall EBITDAR.”



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Distribution Date: []
Record Date: []
Determination Date: []

Disclaimer

Forward-Looking Statements: This distribution statement contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements include, among others, statements of expectations, beliefs, future plans and strategies, anticipated results from operations and developments and other matters that are not historical facts. The forward-looking statements are based on our beliefs as well as on a number of assumptions concerning future events. Readers of these materials are cautioned not to put undue reliance on these forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties and other factors that could cause actual events or results to differ materially from those expressed or implied by the forward-looking statements. We do not undertake a duty to update these forward-looking statements, which speak only as of the date on which they are made. The most important factors that could prevent us from achieving the stated goals include, but are not limited to: (a) the severity, duration and geographical scope of the COVID-19 pandemic, the effects of the pandemic and measures intended to prevent its spread on the our business, results of operations, cash flows and financial condition, including declines in rental revenues and increases in operating costs in the portfolio; deterioration in the financial conditions of the tenants and their ability to satisfy their payment obligations y; constraints in the ability to access capital and other sources of funding; increased risk of claims, litigation and regulatory proceedings and uncertainty; and the ability of federal, state and local governments to respond to and manage the pandemic effectively; (b) the ability and willingness of the tenants, operators, managers and other third parties to satisfy their obligations under their respective contractual arrangements, including, in some cases, their obligations to indemnify, defend and hold us harmless from and against various claims, litigation and liabilities; (c) the ability of the tenants, operators, borrowers and managers to maintain the financial strength and liquidity necessary to satisfy their respective obligations and liabilities to third parties; (d) macroeconomic conditions such as a disruption of or a lack of access to the capital markets, changes in the debt rating on U.S. government securities, default or delay in payment by the United States of its obligations; (e) the nature and extent of future competition, including new construction in the markets in which the our properties are located; (f) the ability of the tenants, operators and managers, as applicable, to comply with laws, rules and regulations in the operation of the properties; (g) the ability and willingness of the tenants to renew their leases upon expiration of the leases, the ability to reposition our properties on the same or better terms in the event of nonrenewal or in the event the we exercises our right to replace an existing tenant or manager; and (h) the other factors set forth in the our periodic filings with the Securities and Exchange Commission.

Non-GAAP Presentation: Certain of the financial measures presented in this distribution statement are non-GAAP financial measures, other metrics and other information. We believe that non-GAAP financial measures, other metrics and other information provide useful information to investors regarding our financial condition, result of operations and other matters. The non-GAAP financial measures, other metrics and information as



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Distribution Date: []
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Determination Date: []

presented in this distribution statement may be adjusted in management's reasonable judgment as appropriate, taking into account a variety of circumstances, facts and conditions. These adjustments may be material and may or may not be specifically identified in footnotes or otherwise. Our measures, metrics and other information (and the methodologies used to derive them) may not be comparable to those used by other companies. The foregoing language applies to (and supersedes if different from) the specific definitions contained herein. Readers are cautioned to refer to our periodic filings furnished to or filed with the SEC, including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, which are prepared in accordance with GAAP. This distribution statement and the information contained herein should be reviewed in conjunction with such filings.

SEC Reporting: The information in this distribution statement should be read in conjunction with our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, our earnings press release dated [], 202[1] and other information filed with, or furnished to, the SEC. You can access our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act at [www.\[\]](http://www.[]) as soon as reasonably practicable after they are filed with, or furnished to, the SEC. You can also review these SEC filings and other information by accessing the SEC's website at <http://www.sec.gov>. We routinely post important information on our website at [www.\[\]](http://www.[]) in the ["Investors"] section, including financial information. We intend to use our website as a means of disclosing material, non-public information and for complying with our disclosure obligations under Regulation FD. Such disclosures will be included on our website under the heading "Investors." Accordingly, investors should monitor such portion of our website in addition to following our press releases, public conference calls and filings with the SEC. The information on or connected to our website is not, and shall not be deemed to be, a part of, or incorporated into this distribution statement.

Exhibit B-2: Form of Monthly / Quarterly Report (Severed Leases—Retail Properties)

[Attached]

PRIVILEGED AND CONFIDENTIAL – ATTORNEY-CLIENT WORK PRODUCT
SUBJECT TO FRE 408

Retail Quarterly / Annual Reporting
Package (For Severed Leases)

Severed Lease Retail Tenant Operating Performance as of Determination Date^A

Tenant's Sales per Square Foot Tier^B	# of Properties	Square Feet	Tenant's Sales per Square Foot	Tenant's Four-Wall EBITDAR^(A)	Rent
>\$[]					
>\$[]					
>\$[]					
<=\$[]					
Total					

EBITDAR / Rent Tier^B	# of Properties	Square Feet	Tenant's Sales per Square Foot	Tenant's Four-Wall EBITDAR^(A)	Rent
>[3.0]x					
>[2.0]x					
>[1.0]x					
<=[1.0]x					
Total					

^A Trailing 12-month reporting to be substituted with year-to-date up until the first 12 months of operations are reported.

^B If the Severed Landlord acquires less than 25 Properties, it will receive one line of reporting. Tenant may insert here the Microsoft Excel spreadsheets containing 4 Wall EBITDAR and Sales Per Square Foot for each Severed Property pursuant to Section 20.21, and Landlord will tier the information as applicable.

PRIVILEGED AND CONFIDENTIAL – ATTORNEY-CLIENT WORK PRODUCT
SUBJECT TO FRE 408

Retail Quarterly / Annual Reporting
Package (For Severed Leases)

Severed Lease Guarantor Operating Performance

Key Financial and Performance Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
Comparable store sales percent increase/(decrease) for Severed Properties	%	%
Liquid assets covenant compliance (as defined in the master leases)	Yes / No	Yes / No
Tangible net worth (as defined in the master leases)	#	#

Key Portfolio Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
End of period number of stores – fee-owned and ground leased		
End of period number of stores – space leased		
Gross square feet of stores (square feet in millions)		

PRIVILEGED AND CONFIDENTIAL – ATTORNEY-CLIENT WORK PRODUCT
SUBJECT TO FRE 408

Retail Quarterly / Annual Reporting
Package (For Severed Leases)

Severed Lease Subtenants as of Fiscal Quarter Ended []

Subtenant Name	Subleased Property	Square Feet	Lease Commence Date	Lease Expiration Date	Rent	Rent per Square Foot	Percentage of Total Rent	Expense Provisions^A
Total Subtenants								

^A Tenant to provide high level summary of expense reimbursement provisions.

Exhibit B-3: Form of Monthly / Quarterly Report (Severed Leases—DC Properties)

[Attached]

PRIVILEGED AND CONFIDENTIAL – ATTORNEY-CLIENT WORK PRODUCT
SUBJECT TO FRE 408

D.C. Quarterly / Annual Reporting Package
(For Severed Leases)

Severed Lease Guarantor Operating Performance

Key Financial and Performance Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
Liquid assets covenant compliance (as defined in the master leases)	Yes / No	Yes / No
Tangible net worth (as defined in the master leases)	#	#

Key Portfolio Metrics	Fiscal Quarter Ended []	Trailing 12 Months Ended []
End of period number of stores – fee-owned and ground leased		
End of period number of stores – space leased		
Gross selling space (square feet in millions)		

PRIVILEGED AND CONFIDENTIAL – ATTORNEY-CLIENT WORK PRODUCT
SUBJECT TO FRE 408

D.C. Quarterly / Annual Reporting Package
(For Severed Leases)

Severed Lease Subtenants as of Fiscal Quarter Ended []

Subtenant Name	Subleased Property	Square Feet	Lease Commence Date	Lease Expiration Date	Rent	Rent per Square Foot	Percentage of Total Rent	Expense Provisions
Total Subtenants								

Exhibit C: DTC Letter of Representations

[Attached]

The Depository Trust Company

A subsidiary of the Depository Trust & Clearing Corporation

BLANKET ISSUER LETTER OF REPRESENTATIONS

(To be completed by Issuer and Co-Issuer(s), if applicable)

Copper Property CTL Pass Through Trust

(Name of Issuer and Co-Issuer(s), if applicable)

01/26/2021

(Date)

The Depository Trust Company
18301 Bermuda Green Drive
Tampa, FL 33647
Attention: Underwriting Department

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request to be made eligible for deposit by The Depository Trust Company ("DTC").

Issuer is: **(Note: Issuer shall represent one and cross out the other.)**

~~Incorporated in~~ [formed under the laws of] New York

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

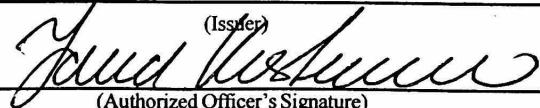
Very truly yours,

Note:

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Copper Property CTL Pass Through Trust

By:


(Authorized Officer's Signature)

Yana Kislenko

(Print Name)

3 Second Street, Suite 206

(Street Address)

Jersey City, New Jersey, USA 07311

(City)

(State)

(Country)

(Zip Code)

(212) 202-6246

(Phone Number)

ClientServices.Americas@glas.agency

(E-mail)

DTCC

Address)

The Depository Trust Company

A subsidiary of the Depository Trust & Clearing Corporation

Additional Signature Page to BLANKET ISSUER LETTER OF REPRESENTATIONS For use with Co-Issuers

(Name of Issuer and Co-Issuer(s), if applicable)

In signing this Blanket Issuer Letter of Representations dated as of _____
Co-Issuer agrees to and shall be bound by all "Issuer" representations.

(Co-Issuer)

By: _____
(Authorized Officer's Signature)

(Print Name)

(Street Address)

(City) (State) (Country) (Zip Code)

(Phone Number)

(E-mail Address)

SAMPLE OFFERING DOCUMENT LANGUAGE
DESCRIBING BOOK-ENTRY-ONLY ISSUANCE

(Prepared by DTC—bracketed material may be applicable only to certain issues)

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

SCHEDULE A

(To Blanket Issuer Letter of Representations)

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. [Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.]

[6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and dividend payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Securities to [Tender/Remarketing] Agent's DTC account.]

10. DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

11. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

Exhibit D: Form of PSA

[Attached]

PURCHASE AND SALE AGREEMENT

by and among

[SELLER ENTITY(IES)],

[collectively,] as Seller,

and

[BUYER ENTITY],

as Buyer

[____], 202[]

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Exhibits and Schedules

Exhibit A:	Form of Deed [*** NOTE: IF GROUND LEASE, ADD: Form of Ground Lease Assignment; IF MULTIPLE PROPERTIES, SOME FEE, SOME GROUND LEASE, BIFURCATE EXHIBIT A INTO EXHIBIT A-1(Form of Deed) AND EXHIBIT A-2 (Form of Ground Lease Assignment) ***]
Exhibit B:	Form of Bill of Sale
Exhibit C:	Form of Omnibus Assignment
Exhibit D:	Form of New Lease
Exhibit E:	Form of Tenant Estoppel Certificate
Exhibit F:	Form of Owner's Title Affidavit
Exhibit G:	Form of Settlement Statement
Exhibit H:	Form of FIRPTA Certificate
Exhibit I:	Form of Seller Closing Update Certificate
Exhibit J:	Form of Buyer Closing Update Certificate
Exhibit K:	[***Form of Ground Lease Estoppel***]
Exhibit L:	[***Form of REA Estoppel--- NOTE: EVEN IF PROPERTY IS SUBJECT TO AN REA, DO NOT OFFER THIS UP IN FIRST DRAFT ***]
Schedule A:	Legal Description
Schedule B:	Property Address(es) and Base Rent
Schedule C:	[***Ground Lease***]
Schedule D:	Service Contracts
Schedule E:	Title Commitment
Schedule F:	Local Law Provisions
Schedule G:	[***REA***]

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “Agreement”) is dated as of [], 202[] (the “Effective Date”) by and among (a) [SELLER ENTITY], a [Delaware limited liability company/limited partnership] (“Seller”) *****IF MULTIPLE PROPERTIES, REVISE TO:** [SELLER ENTITY #1], a [Delaware limited liability company/limited partnership], and [SELLER ENTITY #2], a [Delaware limited liability company/limited partnership] (each, with respect to the Property that such Seller owns, a “Seller” and, collectively, “Seller”)***], (b) [BUYER ENTITY], a [Delaware limited liability company] (“Buyer”), and (c) is joined by [TITLE COMPANY] (“Escrow Agent”), but only for the limited purposes set forth in Article 14 and other specific provisions in this Agreement relating to the performance of certain duties by the Escrow Agent as expressly set forth in this Agreement.

RECITALS

A. Seller is the owner of (i) that certain real property, consisting of the land more particularly described in Schedule A attached hereto (the “Land”), together with all of Seller’s right, title and interest in and to all rights, privileges and easements appurtenant to or used in connection with the ownership and operation of the Land and (ii) all buildings and improvements erected on the Land, which is commonly known by the address listed in Schedule B attached hereto (the “Improvements” and, together with the Land, collectively, the “Real Property”).

*****IF MULTIPLE PROPERTIES, REVISE TO:** Seller is the owner of (i) those certain real properties, consisting of the land more particularly described in Schedules A-1 through A-[] attached hereto (collectively, the “Land”), together with all of Seller’s right, title and interest in and to all rights, privileges and easements appurtenant to or used in connection with the ownership and operation of the Land and (ii) all buildings and improvements erected on the Land, which are commonly known by the addresses listed in Schedule B attached hereto (collectively, the “Improvements” and, together with the Land, collectively, the “Real Property”).***]

*****IF GROUND LEASE REVISE TO:** Seller is the owner of that certain leasehold interest (the “Leasehold Interest”) in that certain real property, which is commonly known by the address listed in Schedule B attached hereto, created pursuant to that certain lease (together with all amendments thereto, and any amendments from time to time entered into in accordance with this Agreement, the “Ground Lease”) described in Schedule C attached hereto, consisting of the Leasehold Interest and estate (collectively, the “Leasehold Estate”) in the land more particularly described in Schedule A attached hereto (the “Land”), together with all of Seller’s right, title and interest in and to all rights, privileges and easements appurtenant to or used in connection with the Leasehold Interest in the Land and all buildings and improvements thereon erected (the “Improvements” and, together with the Land, collectively, the “Real Property”) ***]

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, subject to and upon the terms and conditions contained in this Agreement, the Real Property and the balance of the Property (the term “Property” and other capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in Article 1) owned by Seller (the “Transaction”).

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1

Definitions

Section 1.1 Definitions. Capitalized terms used in this Agreement shall have the meanings set forth below:

“Additional Survey Requirements” shall have the meaning set forth in Section 4.2(c).

“Adjusted Purchase Price Balance” shall mean the Purchase Price less the Deposit, as such amount shall be adjusted to reflect the pro-rations contemplated in Section 10.4 of this Agreement and any other adjustments or credits required by this Agreement.

“Adjustment Date” shall have the meaning set forth in Section 10.4(a).

“Affiliate” shall mean, respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. The term “Affiliated” shall have the correlative meaning.

“Agreement” shall mean this Agreement, including all Exhibits and Schedules attached hereto, as the same may be amended, modified, or supplemented from time to time in writing by Seller and Buyer.

[******IF MULTIPLE PROPERTIES, ADD:*** “Allocated Purchase Price” shall have the meaning set forth in Section 2.2.***]

“Approved Bank” shall have the meaning set forth in Section 14.1.

“Base Rent” shall mean the amount of base rent allocated to [the/each] Property under the Master Lease, which allocated base rent, as of the Effective Date, is set forth in Schedule B attached hereto.

“Bill of Sale” shall mean a bill of sale in the form attached hereto as Exhibit B.

“Broker” shall mean [_____].

“Business Day” shall mean any day of the week other than (a) Saturday and Sunday, (b) a day on which banking institutions in the State of New York are obligated or authorized by law or executive action to be closed to the transaction of normal banking business, or (c) a day on which governmental functions in New York, New York or the State of New York are interrupted because of extraordinary events such as hurricanes, power outages, declarations of national or local emergency or acts of terrorism.

“Buyer” has the meaning set forth in the preamble of this Agreement, together with its successors and permitted assigns under this Agreement.

“Buyer Lender” shall mean any mortgage and/or mezzanine lender providing financing to Buyer in connection with its acquisition of the Property.

“Buyer Representations” shall have the meaning set forth in Section 8.1.

“Buyer Representatives” shall have the meaning set forth in Section 6.1.

“Buyer Closing Update Certificate” shall mean a certificate in substantially the form of Exhibit J attached hereto.

“Closing” shall mean the consummation of the purchase and sale of the Property pursuant to the terms of this Agreement.

“Closing Date” shall have the meaning set forth in Section 10.1(c).

[******IF APPLICABLE, ADD:*** “Closing Extension Deposit” shall have the meaning set forth in Section 10.1(b).***]

“Code” shall mean the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder.

“Confidential Information” shall mean (a) all documents, studies, reports, test results, brochures, offering materials, photographs, leases, lease guarantees, rent rolls, lease schedules, surveys, title reports and commitments, legal documents, financial information, computer output and other materials and information relating to the Property, the Master Lease Tenant, the Master Lease, the New Lease Tenant, the New Lease, the Master Lease Guarantor, [the Subleases and/or the Subtenants] and all analyses, compilations, forecasts, projections and other documents prepared based upon such materials and information, any and all proposals made in connection with a potential sale of the Property (including the Existing Third Party Reports and any proposals involving a price for the Property), whether the same are in electronic, pictorial, written or other form, that have been provided to Buyer and Buyer Representatives through the Datasite, via email or other methods of delivery, and (b) the terms of this Agreement and any information contained herein or otherwise provided to Buyer concerning the identity of the direct or indirect beneficial owners of Seller.

“Consequential Damages” shall mean, with respect to an indemnified matter, consequential, speculative or similar special damages incurred by the indemnified party.

“Control” shall mean, with respect to any Person, (a) the ownership of more than fifty percent (50%) of the Equity Interests of such Person or (b) the power (whether or not exercised) to elect a majority of the directors of such Person or to exercise voting control of such Person or to otherwise direct or cause the direction of the management and policies of such Person through the ownership of Equity Interests, whether by contract or otherwise. The terms “Controlled by”, “Controlling” and “under common Control with” shall have their respective correlative meanings.

“Datasite” shall mean the “Due Diligence Documents” shared folder hosted on the [***Dropbox datasite available at [https://www.dropbox.com/home/\[_____\]](https://www.dropbox.com/home/[_____])***].

“Deed” shall mean a special warranty deed or its equivalent conveying the Real Property from Seller to Buyer in the form attached hereto as Exhibit A. [*****ATTACH A DEED FORM FOR THE APPLICABLE STATE; FOR MULTIPLE PROPERTY TRANSACTIONS IN MULTIPLE STATES, ATTACH A DEED FORM FOR EACH STATE; OMIT IN GROUND LEASE ONLY TRANSACTION*****]

[***“Deposit” shall mean (a) the First Deposit made by Buyer pursuant to Section 3.1, [*****DELETE CLAUSES (b) AND/OR (c) IF N/A*****][***(b) the Second Deposit made by Buyer pursuant to Section 3.2, and (c) the Closing Extension Deposit made by Buyer pursuant to Section 10.1,***] together with any interest thereon.][*****IF THE TRANSACTION IS A SIGN AND CLOSE: (1) delete the following defined terms: Deposit, Closing Extension Deposit, First Deposit, Second Deposit, and (2) make revisions indicated in Sections 4.2 and 6.1*****].

“Designated Title Insurers” shall mean: (a) First American Title Insurance Company, [____], Attention: [Matthew Clay]; and (b) [Commonwealth Land Title Company], [____], Attention: [William Wagasy].

“Disclosed Subleases” shall mean any Subleases disclosed to Seller or its Affiliates prior to the Effective Date either (a) pursuant to the Asset Purchase Agreement or (b) by Tenant in writing.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Effective Date” has the meaning set forth in the Preamble of this Agreement.

“Environmental Laws” shall any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, binding guidance or policies, orders, decisions, determinations, decrees or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to pollution, the environment, natural resources, public health and safety and industrial hygiene (in each case, as the same relate to Hazardous Substances), including the management, use, generation, manufacture, labeling, registration, production, storage, release, discharge, spilling, leaking, emitting, injecting, escaping, abandoning, dumping, disposal, handling, treatment, removal, decontamination, cleanup, transportation or regulation of or exposure to any Hazardous Substance, including the Industrial Site Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act (as it relates to Hazardous Substances).

“Equity Interests” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interests or participations that confer on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Escrow Agent” shall have the meaning set forth in the Preamble of this Agreement.

“Excluded Items” shall mean: (a) materials relating to Seller’s marketing efforts for the sale of the Property, including communications with other potential purchasers; (b) projections and other internal memoranda or materials; (c) appraisals, Seller’s strategic plans for the Property, internal analyses (including Seller’s analyses with respect to its leasing of space in the Property), computer software, and submissions relating to Seller’s obtaining of internal authorizations; and (d) attorney and accountant work product and all other materials subject to any legal privilege in favor of Seller.

“Existing Mortgage” shall mean any mortgage, deed of trust or similar instrument encumbering the Property as of the Effective Date, but excluding any of the foregoing relating to any financing of any tenant’s interest in the Property.

“Existing PCR” shall mean that certain property condition report for the Property set forth in the Datasite as of the Effective Date.

“Existing Phase I” shall mean that phase I (and, if applicable, phase II) environmental audit for the Property set forth in the Datasite as of the Effective Date.

“Existing PZR” shall mean that certain zoning report for the Property set forth in the Datasite as of the Effective Date.

“Existing Survey” shall mean that certain survey for [the] [each] Property obtained by Seller prior to the Effective Date and depicting, as of the [respective] date of such survey, the legal boundaries, structures, encroachments and, to the extent locatable, easements of record as of such date, a true and complete copy of which has been delivered to Buyer or its Affiliates by Seller or has been made available to Buyer or its Affiliates in the Datasite.

“Existing Third-Party Reports” shall mean, collectively, the Existing PCR, the Existing Phase I, the Existing PZR and any other third-party reports disclosed by Seller to Buyer as of the Effective Date.

“Extended Gap Cure Election Period” shall have the meaning set forth in Section 4.2(c).

“Final Closing Statement” shall have the meaning set forth in Section 10.4(d).

“FIRPTA Certificate” shall mean a certificate in substantially the form of Exhibit H attached hereto.

“First Deposit” shall have the meaning set forth in Section 3.1.

“Gap Cure Election Period” shall have the meaning set forth in Section 4.2(c).

“Gap Title Objection” shall have the meaning set forth in Section 4.2(c).

“Gap Title Objection Property” shall have the meaning set forth in Section 4.2(c).

“Governmental Authorities” shall mean, collectively, any government, court, regulatory or administrative agency, commission or authority or other governmental instrumentality, federal, state, municipal or local, domestic, foreign or multinational entity or body having jurisdiction over (a) the Person in question or (b) the Real Property or any part thereof.

[******IF GROUND LEASE, ADD:******] “Ground Lease” shall have the meaning given to such term in Recital A above.

[******IF GROUND LEASE, ADD THE FOLLOWING AND USE THE FORM OF THE OMNIBUS ASSIGNMENT AS THE GROUND LEASE ASSIGNMENT FORM, BUT MAKE ANY CONFORMING CHANGES NEEDED TO (1) MAKE IT RECORDABLE IN THE APPLICABLE RECORDING OFFICE (CONSULT LOCAL COUNSEL) AND (2) COMPLY WITH ANY PARTICULAR REQUIREMENTS OF THE GROUND LEASE BEING ASSIGNED:******] “Ground Lease Assignment” shall mean an Assignment and Assumption of Ground Lease in the form attached hereto as Exhibit A.

[******IF GROUND LEASE, ADD:******] “Ground Lessee” shall have the meaning given to such term in Schedule C attached hereto.

[******IF GROUND LEASE ADD:******] “Ground Lessor” shall have the meaning given to such term in Schedule C attached hereto.

“Hazardous Materials” shall mean each and every element, compound, chemical mixture, emission, contaminant, pollutant, material, waste or other substance (including radioactive substances, whether solid, liquid or gaseous) which is defined, determined or identified as hazardous or toxic under any Environmental Law or for which liability or standards of care or a requirement for investigation or remediation are imposed under, or that are otherwise subject to, any Environmental Law, including, without limitation, asbestos, asbestos containing materials, urethane, polychlorinated biphenyls, any petroleum product, petroleum derived products and/or its constituents or derivatives, and any caustic, flammable or explosive materials. Without limiting the generality of the foregoing, the term shall mean and include:

- (a) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder; excluding, however, common maintenance and cleaning products of a type and in a quantity regularly found at properties with a standard of operation and maintenance comparable to the applicable Property;
- (b) “hazardous waste” and “regulated substances” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;
- (c) “hazardous materials” as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;
- (d) “chemical substance or mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder; and

(e) “hazardous materials” as defined under all applicable environmental protection statutes of each state and municipality in which the Demised Premises are located.

“Improvements” has the meaning set forth in the Recitals of this Agreement.

“Land” has the meaning set forth in the Recitals of this Agreement.

“Laws and Regulations” shall mean, collectively, all present and future building, fire, sanitary, zoning, environmental, housing and other statutes, laws, ordinances, codes, orders, restrictions, resolutions, requirements, rules and regulations of all Governmental Authorities having jurisdiction with respect to the Real Property or any part thereof, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.

“Lead Title Insurer” shall mean the Designated Title Insurer listed in clause [*****BUYER TO SELECT LEAD INSURER**: (a)/(b)***] of the definition of Designated Title Insurers.

[*****IF GROUND LEASE, ADD:*****] “Leasehold Estate” shall have the meaning given to such term in the Recitals of this Agreement.

[*****IF GROUND LEASE, ADD:*****] “Leasehold Interest” shall have the meaning given to such term in the Recitals of this Agreement.

“Leasing Costs” shall mean any tenant improvement costs (or tenant allowances granted in lieu thereof), any leasing commissions and/or any free rent (other than the free rent set forth in the New Lease) payable by Seller with respect to the Master Lease.

“Lender’s Title Policy” shall have the meaning set forth in Section 4.2(b).

“Lender’s Title Policy Premium” shall have the meaning set forth in Section 4.2(b).

“Lien” shall mean adverse interests, security interests, claims, liens, pledges, options, warrants, judgments, encumbrances, charges, voting trusts, voting agreements, proxies or other similar arrangements, restrictions or legal or equitable limitations (other than Permitted Exceptions).

“Local Custom” shall have the meaning set forth in Article 13.

“Losses” shall mean, with respect to a particular indemnified matter, any and all claims, demands, causes of action, losses, liabilities, costs and expenses (including reasonable attorneys’ fees, court costs and disbursements) arising from or in connection with such matter, but excluding in all cases Consequential Damages.

“Master Lease” shall mean that certain [Retail/Distribution Center] Master Lease, dated as of December 7, 2020, between Master Lease Landlord, as landlord, and Master Lease Tenant, as tenant, an executed copy of which is set forth in the Datasite.

“Master Lease Documents” shall mean the Master Lease, the Master Lease EIA[, the Master Lease Pledge Agreement,] and the Master Lease Guaranty.

“Master Lease EIA” shall mean that certain Environmental Indemnity Agreement, dated as of December 7, 2020, by Master Lease Guarantor and Master Lease Tenant in favor of Master Lease Landlord disclosed in the Datasite.

“Master Lease Guarantor” shall mean the guarantors under the Master Lease Guaranty, together with any successors, assigns and/or replacements thereto pursuant to the Master Lease Guaranty.

“Master Lease Guaranty” shall mean that certain Guaranty Agreement, dated as of December 7, 2020 by Master Lease Guarantor in favor of Master Lease Landlord disclosed in the Datasite.

“Master Lease Landlord” shall mean Seller, as successor-in-interest to [*****FOR RETAIL MASTER LEASE ONLY, ADD*****] [JCPenney Puerto Rico, Inc., a Puerto Rico corporation,] J.C. Penney Corporation, Inc., a Delaware corporation, and J.C. Penney Properties, LLC, a Delaware limited liability company, in its capacity as the Landlord (as defined in the Master Lease) that leases the Property (and the other properties demised thereunder) to Master Lease Tenant pursuant to the Master Lease, together with Seller’s successors and assigns in such capacity.

[*****FOR RETAIL MASTER LEASE ONLY**: “Master Lease Pledge Agreement” shall mean that certain Pledge Agreement, dated as of December 7, 2020, by Penney Tenant Holdings LLC, a Delaware limited liability company, in favor of Master Lease Landlord disclosed in the Datasite ***].

“Master Lease Tenant” shall mean the Tenant (as defined in the Master Lease) that leases the Property (and the other properties demised thereunder) from Master Lease Landlord pursuant to the Master Lease, together with such Tenant’s permitted successors and permitted assigns under the Master Lease.

“Material Casualty” shall mean any damage or destruction to all or any portion of the Real Property that was not caused by Buyer or any agent or affiliate thereof: (a) would cost in the aggregate twenty percent (20%) or more of the Purchase Price to repair and restore in the certified opinion of a mutually acceptable architect or contractor; or (b) otherwise (on a permanent basis) either (i) materially limits or materially restricts ingress and egress to and from such Real Property, in each case, on a permanent basis, or (ii) reduces the current parking at the Real Property such that the Real Property is no longer compliant with Laws and Regulations pertaining to zoning.

“Material Condemnation” shall mean any taking by eminent domain of all or any portion of the Real Property that: (a) includes twenty percent (20%) or more of the Improvements on such Real Property; (b) results in an award that is twenty percent (20%) or more of the Purchase Price; or (c) otherwise (on a permanent basis) either (i) materially limits or materially restricts ingress and egress to and from such Real Property, in each case, on a permanent basis, or (ii) reduces the current parking at the Property such that the Property is no longer compliant with Laws and Regulations pertaining to zoning.

“Maximum Liability” shall have the meaning set forth in Section 12.4(c).

“Maximum Violation Threshold” shall have the meaning set forth in Section 4.2(e).

“NDA” shall have the meaning set forth in Section 6.2(a).

“New EIA” shall mean a new environmental indemnity agreement, dated as of the Closing Date, in substantially the form of the Master Lease EIA, executed by the Master Lease Guarantor and the New Lease Tenant in favor of Buyer relating solely to the Property and covering obligations from and after the Closing Date.

“New Guaranty” shall mean a new guaranty, dated as of the Closing Date, in substantially the form of the Master Lease Guaranty, executed by the Master Lease Guarantor in favor of Buyer relating solely to the New Lease and solely covering the obligations of the New Lease Tenant thereunder from and after the Closing Date.

“New Lease” shall mean a new lease, dated as of the Closing Date, in the form of Exhibit D attached hereto, executed by Buyer, as landlord, and New Lease Tenant, as tenant, relating solely to the Property and from and after the Closing Date.

“New Lease Documents” shall mean the New Lease, the New Guaranty, and the New EIA.

“New Lease Tenant” shall mean the Master Lease Tenant or an Affiliate thereof that shall serve as the “Severed Tenant” (as such term is defined in the Master Lease) for the New Lease in accordance with the applicable provisions of the Master Lease.

“Notice of Claim” shall have the meaning set forth in Section 12.4(b).

“OFAC” shall mean the Office of Foreign Assets Control of the Department of Treasury.

“Omnibus Assignment” shall mean an Omnibus Assignment (Contracts and Other Property Rights) pertaining to the Property in the form attached hereto as Exhibit C.

“Owner’s Affidavit” shall mean the affidavit required by the Title Company to be executed by Seller attached hereto as Exhibit F.

“Owner’s Title Policy” shall have the meaning set forth in Section 4.2(b).

“Owner’s Title Policy Premium” shall have the meaning set forth in Section 4.2(b).

“Owner’s Title Policy Premium (Buyer)” shall have the meaning set forth in Section 10.5(b)(iv).

“Owner’s Title Policy Premium (Seller)” shall have the meaning set forth in Section 10.5(a)(iv).

“Parties” shall mean, collectively, Seller and Buyer.

“PDF” shall have the meaning set forth in Section 15.6.

“Permitted Exceptions” shall have the meaning set forth in Section 4.1.

“Person” shall mean any individual, estate, trust, partnership, limited liability company, limited liability partnership, corporation, governmental agency or other legal entity and any unincorporated association.

“Personal Property” shall mean all fixtures, equipment, machinery, furniture, furnishings, fittings and other articles of personal property (including, without limitation, supplies, signage, inventory and tenant files and other books and records) that are (a) attached or affixed to, or located on, or used or employed in connection with, the Real Property and the use, maintenance, ownership or operation thereof and (b) owned by Seller.

“Pre-Closing Period” shall have the meaning set forth in Section 9.1(a).

“Preliminary Closing Statement” shall have the meaning set forth in Section 10.4(d).

“Property” shall mean the Real Property and all right, title and interest, if any, of Seller in, to and under [*****FOR GROUND LEASE, REVISE TO:** shall mean the Real Property and all right, title and interest, if any, of Seller in, to and under Seller’s Leasehold Estate with respect to***] the following: (a) any strips and gores of land within or adjoining the Land, and any land lying in the bed of any street, road or avenue, opened or proposed, public or private, in front of or adjoining the Real Property or any portion thereof, to the center line thereof, and all awards made or to be made in lieu thereof and any unpaid award for damage to the Real Property by reason of change of grade of any street; (b) all Personal Property; (c) all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits now or hereafter pertaining to the Land, including, without limitation, any REA and any air or development and zoning rights or privileges and easements relating to, affecting or appurtenant to the Land or any portion thereof; (d) the New Lease (once entered into) and any Subleases relating to the Real Property[, all security deposits and advance rentals made thereunder and any guarantees related thereto; (e) all Assigned Service Contracts; (f) all consents, authorizations, variances, licenses, permits and certificates of occupancy, if any, issued by any Governmental Authorities with respect to the Real Property; (g) all intangible property associated with the Real Property, including, without limitation, trademarks, logos, trade or business names, copyrights, mailing lists, internet domain names, promotional materials, business licenses and telephone numbers, if any, owned by or licensed to Seller and used by Seller with respect to its ownership, leasing and/or use or operation of the Real Property; (h) all warranties, guaranties, indemnities and bonds relating to the Real Property and/or the Personal Property; (i) all site plans, architectural renderings, plans and specifications, as-built drawings, floor plans and other similar plans or diagrams relating to the Real Property; and (i) all other assets relating to or benefiting the Real Property or the ownership, occupancy, operation, maintenance and/or repair thereof. Notwithstanding anything to the contrary in this Agreement, in no event shall the term “Property” include the Excluded Items.

“Property Taxes” shall have the meaning set forth in Section 10.4(b).

[*****DELETE IF THIS PROPERTY HAS NO PURCHASE OPTION IN FAVOR OF THE DEVELOPER UNDER THE REA OR THE GROUND LESSOR UNDER THE GROUND LEASE:** “Purchase Option” shall mean that certain purchase option set forth in Section [] of the REA/Ground Lease.***].

“Purchase Price” shall have the meaning set forth in Section 2.2.

“Qualified Assignee” shall have the meaning set forth in Section 15.3.

[*****FOR GROUND LEASES, ADD:*****] “Qualifying Ground Lessor Estoppel” shall mean an estoppel certificate from the Ground Lessor that: (a) is dated not earlier than thirty (30) days prior to the Scheduled Closing Date and no later than three (3) Business Days prior to the Closing Date (subject to any adjournment rights herein); (b) is in substantially the form and content of Exhibit K attached hereto¹ or in such other form as is provided for in the applicable Ground Lease; and (c) does not disclose a material default by (or a material claim against) the ground lessee under such Ground Lease or a material adverse discrepancy with a Seller Representation.

[*****NOTE: DO NOT OFFER THIS IN FIRST DRAFT*****][***“Qualifying REA Estoppel” shall mean an estoppel certificate from an REA Developer: (a) is dated not earlier than thirty (30) days prior to the Scheduled Closing Date and no later than three (3) Business Days prior to the Closing Date (subject to any adjournment rights herein); (b) is in substantially the form and content of Exhibit L attached hereto or in such other form as is provided for in the applicable REA; and (c) does not disclose a material default by (or a material claim against) Seller under such REA or a material adverse discrepancy with a Seller Representation.***]

“Qualifying Tenant Estoppel” shall mean an estoppel certificate from the Master Lease Tenant that: (a) is dated not earlier than thirty (30) days prior to the Scheduled Closing Date; (b) is in substantially the form and content of Exhibit E attached hereto or in such other form as is provided for in the applicable REA; and (c) does not disclose a material default by (or a material claim against the landlord) under the Master Lease or a material breach of a Seller Representation.

[***“REA” shall mean the agreements described in Schedule G attached hereto***][**DELETE IF NO REA FOR THIS PROPERTY**]

[***“REA Developer” shall mean [____], together with its successors and assigns under the REA.***][**DELETE IF NO REA FOR THIS PROPERTY**]

[***“REA Purchase Option” shall mean that certain purchase option set forth in Section [____] of the REA.***][**DELETE IF NO REA FOR THIS PROPERTY/REA HAS NO PURCHASE OPTION FOR THIS PROPERTY**]

“Real Property” has the meaning set forth in the Recitals of this Agreement.

“Required Estoppels” shall mean (a) a Qualifying Tenant Estoppel and (b) [*****IF APPLICABLE (I.E., THERE IS AN REA AND WE HAVE CONCEDED IN A LATER DRAFT TO OBTAIN), ADD:** and (b) a Qualifying REA Estoppel***] [*****FOR GROUND LEASE, ADD:** [(b/c)] a Qualifying Ground Lessor Estoppel***].

“Required Removal Exceptions” shall have the meaning set forth in Section 4.2(d).

“Scheduled Closing Date” shall mean [____], 202[____].

[*****DELETE IF N/A:** “Second Deposit” shall have the meaning set forth in Section 3.2.***]

¹ Confirm that Ground Lease does not provide an agreed form and if not, anything in the attached form that exceeds what fee owner is required to provide by the express terms of the Ground Lease shall not be obligatory.

“Seller” has the meaning set forth in the preamble of this Agreement.

“Seller Failure” has the meaning set forth in Section 12.3(a).

“Seller Knowledge Parties” shall mean the following employees of Seller’s manager [who are knowledgeable regarding the daily operations and management of Seller and the Property] : [Greg Apter; Neil Aaronson; and Joel Schneider] from Hilco.

“Seller Parties” shall mean Seller, its Affiliates and its and their direct and indirect owners, agents, officers, directors, trustees, advisors, brokers, managers, members, partners, employees, representatives, principals, Affiliates, contractors, attorneys, accountants and other consultants, or the successors and assigns of any of the foregoing parties.

“Seller Representations” shall mean the representations and warranties of Seller expressly set forth in Section 8.2.

“Seller’s Actual Knowledge” shall have the meaning set forth in Section 8.3.

“Seller Closing Update Certificate” shall mean a certificate in substantially the form of Exhibit I attached hereto.

[*****DELETE IF N/A**: “Service Contract” shall mean any contract or agreement entered into by Seller with a third party to provide for cleaning, security, management or other services for the Property that is in effect as of the Effective Date and is disclosed on Schedule D attached hereto***].

“Settlement Statement” shall mean a settlement statement in substantially the form of Exhibit G attached hereto.

“SNDA” shall have the meaning set forth in Section 9.1(e).

“State” shall mean the state or commonwealth in which [the/each] Property is located.

[*****DELETE IF N/A**: “Subleases” shall mean any subleases or licenses or similar occupancy agreements (other than the Master Lease) affecting all or any portion of the Property***].

[*****DELETE IF N/A**: “Subtenants” shall mean any subtenant under a Sublease***].

“Title Commitment” shall mean the title commitment for the Property attached as Schedule E hereto. [*****FOR PORTFOLIO TRANSACTIONS WHERE THE TITLE COMMITMENTS MAY BE LENGTHY, CONSIDER REFERENCING THE TITLE COMMITMENTS FOR THE PROPERTIES MADE AVAILABLE ON THE DATASITE*****]

“Title Company” shall mean the Designated Title Insurer selected by Buyer to act as the Lead Title Insurer as indicated in the definition of Lead Title Insurer.

“Title Co-Insurer” shall mean the Designated Title Insurer that is not selected by Buyer to act as the Lead Title Insurer.

“Transaction” shall have the meaning set forth in the Recitals.

“Transfer Tax Forms” shall have the meaning set forth in Section 10.2(f).

“Transfer Taxes” shall mean any state, county and/or local transfer taxes or documentary taxes applicable to the conveyance of the Real Property pursuant to this Agreement.

“Updated Survey” shall have the meaning set forth in Section 4.2(c).

“Updated Title Commitment” shall have the meaning set forth in Section 4.2(c).

“Violations” shall have the meaning set forth in Section 4.2(e).

ARTICLE 2

Agreement; Purchase Price

Section 2.1 Agreement to Sell and Purchase. In consideration of the payment of the Purchase Price by Buyer to Seller and for other good and valuable consideration, Seller shall sell, assign, transfer and convey the Property to Buyer, and Buyer shall purchase, acquire and accept the Property from Seller, subject to and in accordance with the terms and conditions of this Agreement.

Section 2.2 Purchase Price. The aggregate Purchase Price for the Property shall be [] and No/100 Dollars (\$[].00) (the “Purchase Price”). [******FOR MULTIPLE PROPERTIES, REPLACE WITH:*** The aggregate Purchase Price for the Property shall be [] and No/100 Dollars (\$[].00) (the “Purchase Price”), which Purchase Price is the sum of the purchase price allocated to each Property on Schedule B attached hereto (each such allocated purchase price, the “Allocated Purchase Price”).***] Subject to the adjustments and apportionments as hereinafter set forth, the Purchase Price shall be paid to Seller on the Closing Date by wire transfer of immediately available federal funds to an account designated by Seller prior to Closing.

Section 2.3 Allocation of Purchase Price. At Closing, the entire Purchase Price shall be allocated to the Property and, in connection therewith and in furtherance thereof: (a) the Parties shall execute all forms required to be filed for tax purposes with any taxing authority in a manner consistent with such allocation; and (b) the Parties agree that the value of the Personal Property that is included in the Transaction contemplated by this Agreement is *de minimis*, and no part of the Purchase Price is allocable thereto [******FOR MULTIPLE PROPERTIES, ADD: ;*** and (c) the Parties agree that the portion of the Purchase Price allocated to each Property shall be the Allocated Purchase Price for such Property***].

Section 2.4 [****FOR MULTIPLE PROPERTIES, ADD THIS SECTION*****]
Indivisible Economic Package.** Except to the extent Buyer exercises its right under this Agreement to terminate this Agreement with respect to a particular Property in the case of a Material Casualty, Material Condemnation or title defect affecting such Property, Buyer has no right to purchase, and Seller has no obligation to sell, less than all of the Property, it being the express agreement and understanding of Buyer and Seller that, as a material inducement to Seller

and Buyer to enter into this Agreement, Buyer has agreed to purchase, and Seller has agreed to sell, all of the Property, subject to and in accordance with the terms and conditions hereof. In addition, the parties acknowledge that this Agreement is intended to effect the transfer of title to all the properties constituting the Property, and notwithstanding any reference in this Agreement to any singular property, building or parcel or any other similar reference implying that this Agreement relates to only one property, this Agreement shall be construed to relate to the transfer of title to the properties constituting the Property (so that, provisions relating to the delivery of the deed (or assignment of ground lease, as applicable), bill of sale, and so forth, shall be construed to require a separate deed (or assignment of ground lease, as applicable) for each such property rather than a single deed, as well as separate bills of sale and the like), and the covenants, representations and warranties provided by Seller shall be construed to be given by each individual Seller solely as to itself and the property that it owns, but all other references to the Property, Land, Personal Property, or Improvements shall be deemed to refer to all of the Property, Land, Personal Property, or Improvements in the aggregate.

ARTICLE 3

Deposit

Section 3.1 First Deposit. By not later than 3:00pm (EST) on the Business Day immediately following the Effective Date, Buyer shall deposit [_____] and No/100 Dollars (\$[_____]00) (the “First Deposit”) [*****NOTE: THIS AMOUNT SHOULD BE 10% OF THE PURCHASE PRICE UNLESS THE SALE IS ABOVE \$100M, IN WHICH CASE THE INITIAL DEPOSIT CAN BE A SMALLER TBD PERCENTAGE*****] with Escrow Agent by wire transfer of immediately available funds to an account designated by Escrow Agent, and Escrow Agent shall promptly provide Seller and Buyer with written confirmation of receipt of (or, if applicable, failure to receive) the First Deposit by such deadline. If Buyer fails to timely deliver the First Deposit to Escrow Agent, this Agreement shall, at Seller’s written election, terminate and be null and void.

Section 3.2 Second Deposit. [*****DELETE IF THERE WILL BE NO SECOND DEPOSIT*****] On or before [_____] , Buyer shall deposit [_____] and No/100 Dollars (\$[_____]00) (the “Second Deposit”) with Escrow Agent by wire transfer of immediately available funds to an account designated by Escrow Agent, and Escrow Agent shall promptly provide Seller and Buyer with written confirmation of receipt of (or, if applicable, failure to receive) the Second Deposit by such deadline. Buyer’s failure to timely fund the Second Deposit shall operate to terminate this Agreement and Seller shall be entitled to retain any portion of the Deposit funded as liquidated damages.

Section 3.3 Deposit Generally. The Deposit shall be held subject to the terms of Article 14 of this Agreement. If the Closing occurs, the Deposit shall be released to Seller and credited against the Purchase Price. If the Closing does not occur by the Closing Date, the Deposit shall be disbursed as provided in this Agreement. The Deposit shall, once delivered, be a “hard deposit” and shall be non-refundable to Buyer except as otherwise expressly provided in this Agreement. [*****IF TRANSACTION IS A SIGN AND CLOSE, DELETE THIS ARTICLE 3 AS “INTENTIONALLY OMITTED”---DO NOT DELETE THE ENTIRE ARTICLE AS THAT WILL REQUIRE ALL SECTION REFERENCES TO BE UPDATED*****]

ARTICLE 4

Title and Survey

Section 4.1 Permitted Title Exceptions. Seller shall transfer the Property subject to the following exceptions and other title matters (collectively, the “Permitted Exceptions”):

(a) all present and future building, zoning and other restrictions, regulations, requirements, laws, ordinances, resolutions and orders of any State, municipal, Federal or other governmental authority, including without limitation (i) all boards, bureaus, commissions, departments and bodies thereof, now or hereafter having or acquiring jurisdiction over the Property or the use or improvement thereof and (ii) all matters set forth in the Existing PZR Report;

(b) the rights of tenants under written leases with Master Lease Tenant;

(c) all such matters as are set forth on Schedule B to the Title Commitment;

(d) the state of facts and all other matters shown on the Existing Survey;

(e) the New Lease, the rights of the New Lease Tenant under the New Lease, and the rights of any Subtenants under any Subleases, in each case, as tenants or subtenants (as applicable) only and with no options to purchase;

(f) [***the REA Purchase Option;***]

(g) the rights, if any, relating to construction, maintenance and operation of public utility lines, wires, poles, cables, pipes, distribution boxes and other equipment and installations on, over and under the Property;

(h) real estate taxes, water charges and sewer rents, if any, not yet due and payable and subject to adjustment as provided herein;

(i) any title and survey matters that are or have been created by Buyer or any Buyer Representatives; and

(j) such other title and survey matters as are approved, or deemed approved, as Permitted Exceptions pursuant to Section 4.2 hereof.

Section 4.2 Title Insurance; Updated Title and Survey; Objections.

(a) **Approval of Commitments.** Buyer acknowledges that it has received and reviewed (i) the Title Commitment, (ii) copies of the documents evidencing the exceptions to title shown on Schedule B to the Title Commitment and (iii) a copy of the Existing Survey, and Buyer hereby accepts all matters with respect to the Property that are set forth or disclosed in the Title Commitment and/or the Existing Survey, or that are otherwise Permitted Exceptions. [*****FOR SIGN AND CLOSE TRANSACTIONS: (1) DELETE THE FOLLOWING PHRASE:** “Except as set forth in Section 4.2(c) and (d) below,” **(2) DELETE SECTIONS 4.2(c) BELOW AS “INTENTIONALLY OMITTED” AND (3) REMOVE THE DEFINITIONS IN SECTION**

4.2(c) FROM THE GLOSSARY OF DEFINED TERMS*]** Except as set forth in Sections 4.2(c) and (d) below, Buyer shall have no right to terminate this Agreement based on any matters set forth in the Existing Survey, the Title Commitment or the Permitted Exceptions, and Seller shall have no obligation to take any steps, bring any action or proceeding or make or incur any effort or expense whatsoever to eliminate, modify or cure any such matters, Buyer hereby (i) acknowledging and agreeing that it has had a full opportunity to review the Title Commitment, the Existing Survey and the Permitted Exceptions, (ii) agreeing to accept the foregoing and title to the Property subject to the foregoing, and (iii) that it shall accept title to the Real Property at Closing as set forth in the Title Commitment and, subject to the provisions of Section 4.2, any Updated Title Commitment and any Updated Survey.

(b) **Acceptable Title Policy.** At Closing, the Title Company shall issue to Buyer (and Buyer shall accept title to the Property as set forth in) an ALTA (6-17-2006)² Owner's Policy for the Property (the "Owner's Title Policy") pursuant to the Title Commitment (including all endorsements contained therein) in the amount of the Purchase Price [*****FOR MULTIPLE PROPERTIES, REPLACE WITH:** the Allocated Purchase Price for each such Property***], subject only to the Permitted Exceptions and such other exceptions as the Title Company, without additional premium to Buyer, (i) will omit as exceptions to coverage or (ii) so long as not in respect of matters aggregating to more than \$500,000, will except with insurance against collection out of or enforcement against the Property. If Buyer elects to obtain mortgage financing for its purchase of the Property, Buyer shall have the right to cause the Title Company to issue an ALTA (6-17-2006)³ Loan Policy for such financing in the original principal amount of such financing (or such lesser amount as may be acceptable to any Buyer Lender) (the "Lender's Title Policy"). The premium charged by the Title Company to issue the Owner's Title Policy (the "Owner's Title Policy Premium"), together with all endorsements thereto as are set forth in the Title Commitment, and the incremental additional premium (i.e., the premium in excess of the Owner's Policy Premium after taking into account all available "simultaneous issue" rates and discounts) charged by the Title Company to issue the Lender's Title Policy (the "Lender's Title Policy Premium"), together with all endorsements thereto as may be required by Buyer or any Buyer Lender (including, without limitation, any so called "mezzanine endorsement" to the Owner's Title Policy), shall be paid by the Party responsible for such premium costs pursuant to Section 10.5. Each Owner's Title Policy and each Lender's Title Policy shall be (A) issued by the Title Company, as lead insurer and (B) co-insured, at no additional cost or expense to the Party paying the premium for the issuance of the applicable policy in accordance with this Agreement, fifty percent (50%) by the Title Co-Insurer pursuant to appropriate co-insurance endorsements. Buyer hereby acknowledges and agrees that (1) Buyer's election to obtain a Lender's Title Policy, or the issuance (or non-issuance) of a Lender's Title Policy in any form, shall in no event be construed as a financing contingency or condition to Buyer's obligation to consummate the Closing of the Transaction in accordance with this Agreement and (2) the foregoing requirement that each Owner's Title Policy and each Lender's Title Policy shall be issued (and co-insured, as applicable) as provided above is a material inducement to Seller's agreement to enter into this Agreement and such requirement is based on, among other considerations material to Seller, Seller's objective to expedite and achieve certainty with respect to Closing, to reduce external legal costs and expenses resulting from dealing with other title insurance companies, and to take advantage of favorable

² Note to Draft: CLTA form for CA.

³ Note to Draft: CLTA form for CA.

title premium pricing available to Seller as a result of Seller's use of the Title Company and the Title Co-Insurer to insure its prior acquisition of the Property.

(c) **Updated Title and Survey; Gap Title Objections.** ******IF SIGN AND CLOSE, DELETE 4.2(c) THROUGH (f) BELOW AND DELETE THE TERMS DEFINED IN SUCH SECTIONS******

(i) Notwithstanding the foregoing provisions of Section 4.2(a) and Section 4.2(b): (A) not later than three (3) Business Days after the Effective Date: (1) Seller shall cause the Title Company to update the Title Commitment (the "Updated Title Commitment"), which update shall include, in addition to any updates to title matters disclosed by the Title Company's search of the applicable public records, the proposed amount of the Owner's Title Policy (which shall be an amount equal to the Purchase Price) ******FOR MULTIPLE PROPERTIES, REPLACE WITH: ******(which shall be an amount equal to the Allocated Purchase Price for each Property)*********] and any information that may be provided to Seller by Buyer in writing prior to such three (3) Business Day period (without prejudice to Buyer's right to subsequently provide such information to the Title Company), including, without limitation, the name of the proposed Buyer, the name of any Buyer Lender, and any other information reasonably required by Buyer; and (2) Seller shall cause the surveyor to update the Existing Survey (the "Updated Survey"), which update shall include, in addition to any updates disclosed by the Updated Title Commitment, (I) such surveyor's certification of the Updated Survey to the Title Company and, to the extent such information is provided to Seller by Buyer in writing prior to such three (3) Business Day period (without prejudice to Buyer's right to subsequently provide such information to the surveyor), to Buyer and to any Buyer Lender and (II) any additional survey requirements requested by Buyer or any Buyer Lender (such additional requirements, the "Additional Survey Requirements"); and (B) promptly following the date on which such Updated Title Commitment or Updated Survey is completed, as applicable, Seller shall cause the same to be delivered to Seller, Buyer and their respective counsel;

(ii) Notwithstanding the foregoing provisions of Section 4.2(a) and Section 4.2(b), not later than three (3) Business Days after its receipt of any Updated Title Commitment or Updated Survey, Buyer shall deliver to Seller all objections to any material title or survey matter that Buyer may have to the extent that such objections (any such timely objection, a "Gap Title Objection"): (A) are not Permitted Exceptions and (B) are first disclosed in such Updated Title Commitment or Updated Survey (i.e., such matters did not appear on the Title Commitment, any previous Updated Title Commitment or previous Updated Survey received by Buyer that was not, in either such case, timely objected to by Buyer), as applicable). Buyer's failure to timely deliver written notice of a Gap Title Objection in respect of a particular Updated Title Commitment or Updated Survey in accordance with this Section 4.2(c) shall constitute a waiver by Buyer of any and all objections that may arise with respect to matters contained in the Updated Title Commitment and/or the Updated Survey.

(iii) Upon receipt of a Gap Title Objection, Seller shall have the right, but not the obligation, to elect to endeavor to cure the Gap Title Objection, in which case Seller shall use its commercially diligent efforts to cure, at its sole expense, such Gap Title Objection and shall be entitled to one or more adjournments of the Closing Date, not to exceed forty-five (45) days in the aggregate (inclusive of any other adjournment rights granted to Seller in this Agreement) (the

“Extended Gap Cure Election Period”), in order to do so. If: (A) Seller fails to elect to endeavor to cure a Gap Title Objection within five (5) Business Days after receiving written notice of a Gap Title Objection (the “Gap Cure Election Period”), Seller will be deemed to have elected not to endeavor to cure the Gap Title Objection, in which case Buyer shall have the right, by delivering written notice to Seller within three (3) Business Days after the expiration of the Gap Cure Election Period, [to terminate this Agreement, in which case the Deposit shall be returned to Buyer and the Parties shall have no further obligations under this Agreement except for those obligations that expressly survive termination hereof] [*****FOR MULTIPLE PROPERTIES, REPLACE THE PRECEDING BRACKETED CLAUSE WITH:** terminate this Agreement solely with respect to the Property to which the applicable Gap Title Objection relates (the “Gap Title Objection Property”), in which case the proportional share of the Deposit allocable to such Gap Title Objection Property (based on Allocated Purchase Price thereof) shall be returned to Buyer, the Parties shall proceed to Closing with respect to the Properties other than such Gap Title Objection Property and the Purchase Price shall be reduced by the Allocated Purchase Price for such Gap Title Objection Property; it being agreed by Buyer that any such termination shall not affect Buyer’s obligation to purchase the Properties other than the Gap Title Objection Property***]; or (B) Seller elects, within the Gap Cure Election Period, to endeavor to cure a Gap Title Objection and thereafter either (1) fails to cure the Gap Title Objection within the Extended Gap Cure Election Period or (2) prior to the expiration of the Extended Gap Cure Election Period, notifies Buyer that it is not able or is no longer willing to endeavor to cure such Gap Title Objection, then Buyer shall have the right, by delivering written notice to Seller within three (3) Business Days after the expiration of the Extended Gap Cure Election Period or the receipt of such notice from Seller (as applicable), [to terminate this Agreement, in which case the Deposit shall be returned to Buyer, and the Parties shall have no further obligations under this Agreement except for those obligations that expressly survive termination hereof] [*****FOR MULTIPLE PROPERTIES, REPLACE THE PRECEDING BRACKETED CLAUSE WITH:** to terminate this Agreement solely with respect to the applicable Gap Title Objection Property, in which case the proportional share of the Deposit with respect to such Gap Title Objection Property (based on Allocated Purchase Price thereof) shall be returned to Buyer, the Parties shall proceed to Closing with respect to the Properties other than such Gap Title Objection Property and the Purchase Price shall be reduced by the Allocated Purchase Price for such Gap Title Objection Property; it being agreed by Buyer that any such termination shall not affect Buyer’s obligation to purchase the Properties other than the Gap Title Objection Property***]. If Buyer does not timely terminate this Agreement in accordance with this Section 4.2(c), then the Gap Title Objection shall be deemed a Permitted Exception and Seller and Buyer shall proceed to Closing without any abatement or adjustment to the Purchase Price. In no event shall a Permitted Exception give rise to or constitute a Gap Title Objection.

(d) **Required Removal Exceptions.** Notwithstanding the foregoing provisions of Section 4.2(c) or anything to the contrary set forth in this Agreement, Seller agrees to remove from title the following (“Required Removal Exceptions”): (i) all Existing Mortgages encumbering the Property, (ii) judgment liens and mechanics’ liens for work commissioned by Seller and not the responsibility of New Lease Tenant under the New Lease, (iii) any title encumbrance or exception voluntarily recorded against the Property by (or with the written consent of) Seller after the Effective Date, and (iv) any monetary liens (other than Existing Mortgages, which shall be subject exclusively to clause (i) above) caused by the intentional actions or intentional omissions of Seller that may be removed by the payment of an ascertainable sum not to exceed in the aggregate

\$[250,000][******IF PURCHASE PRICE IS LESS THAN \$10M, REDUCE THIS TO \$100,000******] and that are not the responsibility of New Lease Tenant under the New Lease. If Seller fails to remove a Required Removal Exception on or prior to Closing, subject to any adjournment rights of Seller provided in this Article, Buyer shall have the right to exercise its rights and remedies provided in Section 12.3 to terminate this Agreement or to seek specific performance of Seller's obligation hereunder by delivering written notice to Seller within five (5) days after Buyer becomes aware of such failure. If Buyer does not timely terminate this Agreement pursuant to Section 12.3 or commence an action for specific performance, the Required Removal Exception will be deemed a Permitted Exception and Seller and Buyer shall proceed with Closing without abatement or adjustment to the Purchase Price.

(e) **Violations.** Notwithstanding the foregoing or anything to the contrary in this Agreement, in no event shall Seller be responsible for any violations with respect to the Property ("Violations"), or any Liens imposed in connection with Violations or any condition or state of repair or disrepair that may result in Violations, including those shown in searches and municipal reports provided by the Title Company with the Title Commitment (and any Updated Title Commitment) and those that have been liquidated and reduced to a monetary amount, all of which shall be assumed by Buyer as of Closing; provided, however, that if any Violation both imposed and noted against the Property arises between the date hereof and Closing and can be cured by the payment of a fine or penalty, Seller shall cure such Violation; provided, further, however, that if Seller fails to cure any Violations that Seller is obligated to cure in accordance with this clause (e), then Buyer shall have no right to terminate this Agreement, but shall receive a credit against the Adjusted Purchase Price Balance in the amount of such Violations.

(f) **No Further Action.** Except as otherwise expressly set forth in this Section 4.2, nothing contained in this Agreement shall be deemed to require Seller to take or bring any action or proceeding or any other steps to cure or remove any Violations, title or survey matters, or to expend any moneys therefor, nor shall Buyer have any right of action against Seller, at law or in equity, for Seller's inability to convey title in accordance with the terms of this Agreement.

ARTICLE 5

New Lease Documents

Section 5.1 Sale Subject to New Lease Documents. Buyer acknowledges and agrees that: (a) the sale of the Property is subject to the New Lease Documents and the New Lease Tenant's rights as tenant under the New Lease; (b) the Property will be encumbered by the New Lease; (c) Buyer will assume the rights and obligations of Seller, as landlord, under the Master Lease with respect to (and only with respect to) the Property from and after (but not before) Closing pursuant to the terms of the New Lease; and (d) as between Seller and Buyer, Seller and its affiliates shall retain (i) all rights and obligations under the Master Lease Documents with respect to (and only with respect to) the Property prior to Closing and (ii) all rights and obligations under the Master Lease Documents with respect to all other properties (other than the Property) prior to, on and after Closing.

Section 5.2 Covenants and Representations Regarding New Lease Documents. To facilitate the consummation of the Closing, the Parties have, prior to the Effective Date, finalized

the drafting of the New Lease and attached the same as Exhibit D to this Agreement and have finalized the drafting of the other New Lease Documents, which are substantially in the form of the executed copies of each of the Master Lease Documents that have been disclosed to Buyer on the Datasite in advance of the Effective Date, and the Parties hereby acknowledge and agree (a) that the form of the New Lease Documents are in substantially the form of the corresponding Master Lease Documents, with only such changes as may be reasonably required to allocate the applicability of such Master Lease Documents to the Property and not the other properties to which the Master Lease Documents are subject and (b) to execute, deliver and/or accept such New Lease Documents at Closing.

ARTICLE 6

Inspection and Confidentiality

Section 6.1 Access. ****IF SIGN AND CLOSE, DELETE THIS SECTION 6.1 AS "INTENTIONALLY OMITTED"**** Buyer, personally or through its authorized agents or representatives (the "Buyer Representatives"), shall have the right, from the Effective Date through the Closing Date, to enter upon the Real Property and to make such investigations, including appraisals, engineering studies, soil tests, environmental studies and underwriting analyses, as Buyer deems necessary or advisable, subject to the following conditions and limitations: (a) such entry and investigations shall be conducted during normal business hours and Buyer shall give Seller written notice at least one (1) Business Day before conducting any such entry or investigations (which notice may be given by electronic mail to [_____] ([_____]@hilco.com)); (b) a representative of Seller or Master Lease Tenant shall have the right to be present during such entry or investigations; (c) such entry or investigations shall be subject to the rights of Master Lease Tenant under the Master Lease and to the rights of any Subtenants under their Subleases and neither Buyer nor Buyer Representatives shall interfere with the use, occupancy or enjoyment of Master Lease Tenant or any Subtenant or other occupants of the Property or their respective employees, contractors, customers or guests; (d) neither Buyer nor Buyer Representatives shall damage the Property or any portion thereof; (e) unless Seller agrees otherwise, before Buyer or Buyer Representatives conduct any investigations or inspections of the Property, including inspections of building systems, the Improvements or any invasive testing or inspections, Buyer or Buyer Representatives, as applicable, shall deliver to Seller a certificate of insurance naming Seller and Master Lease Tenant as additional insureds, evidencing commercial general liability insurance (including property damage, bodily injury and death) issued by an insurance company having a rating of at least "A-/VII" by A.M. Best Company, with limits of at least \$3,000,000 per occurrence and \$5,000,000 in the aggregate for bodily or personal injury or death; (f) without Seller's prior written consent, which Seller may give or withhold in its sole and absolute discretion, Buyer shall not perform any invasive testing at, on or around the Property, including, without limitation, any Phase II exams, soil borings or other invasive tests; (g) Buyer shall use commercially diligent efforts to perform all on-site due diligence reviews on an expeditious and efficient basis; and (h) Buyer shall indemnify, hold harmless and defend the Seller Parties from and against all Losses resulting from or relating to any entry and/or inspections conducted by Buyer or Buyer Representatives, including, without limitation, Losses incurred in making any and all repairs necessitated to cure any damage to the Property resulting from such activities but excluding Losses from the mere discovery of conditions existing as of the time of

inspection. The foregoing indemnification obligation shall survive the Closing or termination of this Agreement.

Section 6.2 Confidentiality.

(a) Buyer shall, prior to the Closing: (i) comply with all of its obligations under any non-disclosure agreement executed by Buyer or Buyer Representatives in connection with the Transaction (the “NDA”); (ii) use the Confidential Information only for purposes of evaluating the Property in connection with its purchase thereof in accordance with the terms of this Agreement and the NDA; and (iii) not disclose or permit the disclosure of the Confidential Information to any Person without Seller’s prior written consent, except (A) to the extent that such disclosure is expressly permitted pursuant to the NDA and (B) to Buyer’s employees, officers, directors, attorneys, accountants, lenders, mortgage brokers, and investors (all actual or prospective) and other Persons who are or may be involved with Buyer with respect to this Transaction and who (1) have a need to review the Confidential Information for the purpose of advising Buyer on the suitability of the Property for purchase, (2) have been informed in writing of the confidential nature of such information, and (3) have agreed to receive and use all Confidential Information in accordance with the provisions of this Section 6.2. Buyer shall cause all Persons to whom it discloses the Confidential Information to keep the same confidential in accordance with the terms of this Agreement and Buyer shall be responsible for any breach of this Agreement by any Person to whom Buyer discloses the Confidential Information.

(b) Notwithstanding the above terms, to the extent that Buyer is required to disclose the Confidential Information by any Laws and Regulations, stock exchange rule, or pursuant to a subpoena, court order or other legal proceeding, Buyer shall (i) notify Seller (both by telephone and in writing) within one (1) Business Day of its knowledge of such legally required disclosure and (ii) cooperate with Seller and Seller’s counsel in any appeal or challenge to such disclosure. If no protective order or similar relief is obtained, Buyer shall (A) disclose only that portion of the Confidential Information that it is legally obligated to disclose, (B) exercise reasonable efforts to obtain reliable assurances that the disclosed information will be kept confidential and (C) exercise reasonable efforts to provide Seller with a copy of the information to be disclosed before the same is given to any third party.

(c) If this Agreement is terminated, Buyer shall (i) destroy all Confidential Information which is in tangible form, including any copies Buyer has made and other embodiments thereof, and (ii) destroy all extracts, summaries and compilations thereof and references thereto which are in Buyer’s notes, documents, databases or other records (whether prepared by Buyer or by Seller), and in either case Buyer will certify in writing to Seller that it has done so.

(d) Buyer acknowledges that the Confidential Information is of a special, unique, unusual, extraordinary and intellectual character and that Seller’s interest in the Confidential Information may be irreparably injured by disclosure of such Confidential Information in violation of this Agreement. Buyer further acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Section 6.2 by it and that, in addition to all other remedies available at law or in equity, Seller shall be entitled to seek the remedies of specific performance or injunctive or other equitable relief as a remedy for any breach or potential breach by Buyer of this Section 6.2 (but Buyer gives no assurances under this Agreement that such remedies will be

granted to Seller) and further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

- (e) The provisions of this Section 6.2 shall survive the termination of this Agreement.

ARTICLE 7

[Conditions Precedent, Casualty Damage or Condemnation] [NTD: INTENTIONALLY OMIT ARTICLE IF SIGN AND CLOSE]

Section 7.1 Conditions Precedent Favoring Buyer.

(a) Buyer's obligations under this Agreement are subject to the timely fulfillment of the conditions set forth in this Section 7.1 on or before the Scheduled Closing Date. Each condition may be waived in whole or in part only by written notice of such waiver from Buyer to Seller:

(i) Seller shall have executed and delivered to Buyer, or deposited in escrow with Escrow Agent, all instruments and documents required to be delivered to Buyer at the Closing under this Agreement;

(ii) Seller shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by it prior to or at the Closing;

(iii) subject to Section 8.4, on the Closing Date, the Seller Representations shall be true, complete and accurate, in all material respects, on and as of the Effective Date and on and as of the Closing Date as if then remade on and as of the Closing Date, except that Seller shall not be deemed to have breached the foregoing condition precedent by reason of: (A) changes that are: (1) caused by the acts or omissions of Buyer or its agents or Affiliates, (2) a result of the ownership or operation of the Property in the normal course of business occurring after the Effective Date and that are not prohibited to have occurred and did not arise by reason of a breach of any covenant made by Seller under this Agreement; or (3) caused by matters that are outside of the reasonable control of Seller and that are not prohibited to have occurred and did not arise by reason of a breach of any covenant made by Seller under this Agreement; (B) deviations, breaches or other matters that will be an obligation on the part of New Lease Tenant to perform to Buyer under the New Lease from and after the Closing Date, whether or not the same arose by reason of a breach of any covenant made by Seller under this Agreement; and (C) casualty or condemnation (which shall be governed exclusively by Section 7.3 and Section 7.4, respectively);

(iv) the Required Estoppels shall have been received by Seller and delivered to Buyer in accordance with the provisions of this Agreement; provided, however, that Seller shall have the right by written notice to Buyer prior to the Scheduled Closing Date to one or more adjournments of the Closing Date, not to exceed sixty (60) days in the aggregate (inclusive of any other adjournment rights granted to Seller in this Agreement) in order to obtain the Required Estoppels;

(v) Seller has caused New Lease Tenant and Master Lease Guarantor, as applicable, to execute and deliver into escrow the New Lease Documents; and

(vi) delivery at the Closing of the Owner's Title Policy (or a pro forma thereof), with liability in the amount of the stated Purchase Price for the Property, issued by the Title Company in the form required by Section 4.2(b), and insuring that fee title to [*****FOR GROUND LEASE**: the Leasehold Estate in***] the Real Property and the Improvements vests in Buyer, subject only to the Permitted Exceptions.

(b) If the conditions precedent in favor of Buyer set forth above in Section 7.1(a) are not satisfied in all material respects as of the Closing Date, Buyer may elect in its sole discretion not later than the Scheduled Closing Date, and as its sole remedy, either to: (i) waive such condition and proceed with the Closing as contemplated by this Agreement (without any reduction in the Purchase Price); [*****FOR MULTIPLE PROPERTIES, ADD**: it being agreed by Buyer that Buyer shall not have the option to elect to waive the failure of a condition as to less than all of the Properties and that Buyer's obligation to proceed to Closing under this Agreement is an "all or none" obligation;***] (ii) terminate this Agreement by written notice thereof to Seller, in which event the Deposit shall be returned to Buyer and, except for those obligations which expressly survive the termination of this Agreement, the Parties shall have no further obligations or liabilities to each other hereunder; or (iii) to the extent such failure is the result of a Seller default hereunder beyond applicable notice and cure periods expressly provided for herein, exercise its rights and remedies under Section 12.3; provided, however, that Seller shall not be in default for failure to satisfy any condition precedent set forth above in Section 7.1(a)(iv) through (vi).

(c) Except as expressly set forth in this Agreement as conditions precedent to Buyer's obligation to consummate the Closing, Buyer acknowledges and agrees that its obligation to perform under this Agreement and consummate the Closing is not contingent upon Buyer's ability to obtain any (i) governmental or quasi-governmental approval of changes or modifications in use or zoning, (ii) modification of any existing land use restrictions, (iii) consents to assignments of any Service Contracts or other agreements which Buyer requests, (iv) endorsements to Buyer's title policies or (v) debt or equity financing for its acquisition of the Property.

Section 7.2 Conditions Precedent Favoring the Seller. Seller's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 7.2 on or before the Scheduled Closing Date. Each condition may be waived in whole or part only by written notice of such waiver from Seller to Buyer [*****FOR MULTIPLE PROPERTIES, ADD**: ; it being agreed by Buyer that Seller may elect to waive the failure of a condition as to one or more of the Properties, in which event, Buyer shall have the obligation to proceed to Closing under this Agreement with respect to those of the Properties where such conditions were either timely fulfilled, or were waived in writing by Seller***]:

(a) Buyer shall have delivered the Purchase Price (less the Deposit) to Escrow Agent;

(b) Buyer shall have executed and delivered to Seller, or deposited in escrow with Escrow Agent, all instruments and documents required to be delivered by Buyer at the Closing under this Agreement;

(c) Buyer shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing;

(d) The Buyer Representations shall be true, accurate and complete in all material respects on and as of the Effective Date and on and as of the Closing Date as if then remade on and as of the Closing Date; and

(e) Buyer shall have executed and delivered into escrow the New Lease Documents to be executed by it.

Section 7.3 Risk of Casualty.

(a) If, prior to the Closing Date, all or any part of the Improvements are damaged by fire or other casualty, Seller shall promptly give notice to Buyer of such fact and thereafter, promptly following Seller's receipt thereof, an estimate of the cost and time to restore prepared by an independent insurance examiner or engineer selected by Seller and reasonably approved by Buyer.

(b) If, prior to the Closing Date, a Material Casualty occurs, Buyer may, at Buyer's option and in its sole discretion, elect to either (i) terminate this Agreement and receive a return of its Deposit [*****FOR MULTIPLE PROPERTIES, ADD:** (or the proportional share thereof based on Allocated Purchase Price) with respect to the Property that is affected by such Material Casualty; it being agreed by Buyer that any such termination shall not affect Buyer's obligation to purchase the Properties unaffected by such Material Casualty and that, in such event, Seller and Buyer shall proceed to Closing with respect to such unaffected Properties and the Purchase Price shall be reduced by the Allocated Purchase Price for the affected Property;***] or (ii) proceed to Closing in accordance with the terms hereof with no reduction in the Purchase Price.

(c) In the event of a fire or other casualty that is not a Material Casualty, or if there is a Material Casualty and Buyer elects to proceed pursuant to Section 7.3(b)(ii), (i) Buyer shall proceed to Closing in accordance with the terms hereof with no reduction in the Purchase Price, (ii) Buyer shall have the right to participate with Seller in the adjustment and settlement of such casualty insurance claim and (iii) Seller shall assign to Buyer at Closing all insurance proceeds payable on account of such damage (net of collection costs and costs of repair with respect to such casualty reasonably incurred by Seller), including without limitation, rental interruption insurance with respect to periods following Closing (provided that Seller obtains a letter from the applicable insurance carrier(s) consenting to the assignment of such proceeds to Buyer). With respect to any Material Casualty, Buyer shall be deemed to have elected to proceed under Section 7.3(b)(ii) unless, within ten (10) Business Days from the occurrence of such Material Casualty, Buyer provides Seller with written notice that Buyer elects to terminate this Agreement with respect to the Property pursuant to Section 7.3(b)(i).

(d) Any disputes under this Section 7.3 as to whether there has occurred a Material Casualty shall be resolved by expedited arbitration before a single arbitrator acceptable to Seller and Buyer in their reasonable judgment in accordance with the commercial arbitration rules of the American Arbitration Association; provided that if Seller and Buyer fail to agree on an arbitrator within five (5) days after a dispute arises, then either party may request that The Real Estate Board of New York, Inc. designate an arbitrator. Such arbitrator shall be an independent architect or engineer having at least ten (10) years of experience in the construction of commercial real estate in the State where the Property is located. The determination of the arbitrator shall be conclusive

and binding upon the parties and the costs and expenses of such arbitrator shall be borne equally by Seller and Buyer.

(e) Whether or not the Property is located in the State of New York, this Section 7.3 is an express agreement to the contrary of Section 5-1311 of the New York General Obligations Law or any Laws and Regulations providing for an allocation of risk among parties to a contract. **[***NOTE: EVEN IF NO PROPERTY IS LOCATED IN NY, LEAVE THIS PROVISION IN SINCE THE AGREEMENT IS GOVERNED BY NY LAW; IF NO PROPERTY IS LOCATED IN NY AND SELLER AGREES TO A BUYER'S REQUEST TO CHANGE THE LAW OF THIS AGREEMENT TO A STATE OTHER THAN NY (WHICH IS NOT RECOMMENDED), THEN ADJUST THIS PROVISION***]**

Section 7.4 Risk of Condemnation.

(a) If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, or shall be the subject of a duly noticed hearing held by a Governmental Authority relating to a pending taking in the exercise of the power of eminent domain, Seller shall promptly give notice to Buyer of such fact.

(b) If, prior to the Closing Date, a Material Condemnation occurs, Buyer may, at Buyer's option and in its sole discretion, elect to either (i) terminate this Agreement and receive a return of its Deposit **[***FOR MULTIPLE PROPERTIES, ADD:** (or the proportional share thereof based on Allocated Purchase Price) with respect to the Property that is affected by such Material Condemnation; it being agreed by Buyer that any such termination shall not affect Buyer's obligation to purchase the Properties unaffected by such Material Condemnation and that, in such event, Seller and Buyer shall proceed to Closing with respect to such unaffected Properties and the Purchase Price shall be reduced by the Allocated Purchase Price for the affected Property,***] or (ii) proceed to Closing in accordance with the terms hereof without reduction in the Purchase Price.

(c) In the event of a condemnation by right of eminent domain that is not a Material Condemnation, or if there is a Material Condemnation and Buyer elects to proceed under Section 7.4(b)(ii), (i) Buyer shall proceed to Closing in accordance with the terms hereof (without reduction in the Purchase Price) and (ii) Seller shall assign to Buyer on the Closing Date all condemnation awards and proceeds payable as a result of such condemnation (net of collection costs). With respect to any Material Condemnation, Buyer shall be deemed to have elected to proceed under Section 7.4(b)(ii) unless, within ten (10) days from the occurrence of such Material Condemnation, Buyer provides Seller with written notice that Buyer elects to terminate this Agreement with respect to the Property pursuant to Section 7.4(b)(i).

(d) Any disputes under this Section 7.4 as to whether there has occurred a Material Condemnation shall be resolved by expedited arbitration before a single arbitrator acceptable to Seller and Buyer in their reasonable judgment in accordance with the commercial arbitration rules of the American Arbitration Association; provided that if Seller and Buyer fail to agree on an arbitrator within five (5) days after a dispute arises, then either party may request that The Real Estate Board of New York, Inc. designate an arbitrator. Such arbitrator shall be an independent architect or engineer having at least ten (10) years of experience in the construction of commercial

real estate in the State where the Property is located. The determination of the arbitrator shall be conclusive and binding upon the parties and the costs and expenses of such arbitrator shall be borne equally by Seller and Buyer.

(e) Whether or not the Property is located in the State of New York, this Section 7.4 is an express agreement to the contrary of Section 5-1311 of the New York General Obligations Law or any Laws and Regulations providing for an allocation of risk among parties to a contract. **[***NOTE: EVEN IF NO PROPERTY IS LOCATED IN NY, LEAVE THIS PROVISION IN SINCE THE AGREEMENT IS GOVERNED BY NY LAW; IF NO PROPERTY IS LOCATED IN NY AND SELLER AGREES TO A BUYER'S REQUEST TO CHANGE THE LAW OF THIS AGREEMENT TO A STATE OTHER THAN NY (WHICH IS NOT RECOMMENDED), THEN ADJUST THIS PROVISION***]**

ARTICLE 8

Representations, Warranties and Covenants

Section 8.1 Buyer Representations. Subject to the limitations set forth in this Agreement, Buyer hereby represents and warrants to, and covenants with, Seller as of the Effective Date and as of the Closing Date as follows (the “Buyer Representations”):

(a) Buyer acknowledges that it is an experienced and sophisticated purchaser of commercial real estate projects such as the Property and that, prior to the Effective Date, it has had a full and complete opportunity to (i) review all information on the Datasite, (ii) review all Third-Party Reports and (iii) conduct such other investigations, examinations, inspections and analyses of the Property as Buyer, in its absolute discretion, has deemed appropriate. Buyer further acknowledges that, except for the Seller Representations, Buyer has not relied upon any statements, representations or warranties by any Seller Party or any agent of any Seller Party, including Broker;

(b) Buyer acknowledges and agrees that it is purchasing the Property subject to the Property being in “**AS IS, WHERE IS**” AND “**WITH ALL FAULTS, LIABILITIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN**” basis condition with respect to all facts, circumstances, conditions and defects (and Seller shall have no obligation to determine or correct any such facts, circumstances, conditions or defects and Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property), and, subject to Section 7.3 and Section 7.4 of this Agreement, loss by casualty or condemnation excepted, with no right of set-off or, except as expressly set forth herein, reduction in the Purchase Price, and that, except for the Seller Representations, such sale shall be without representation or warranty of any kind, express or implied, including any warranty of income potential, operating expenses, uses, merchantability or fitness for a particular purpose, and Seller does hereby disclaim and renounce any such representation or warranty. Buyer specifically acknowledges that, except as expressly provided in the Seller Representations, Buyer is not relying on, either directly or indirectly, any representations or warranties of any kind whatsoever, express or implied, from Seller, any other Seller Party, including Broker or any other Person as to any matters concerning the Property, including, without limitation: (i) the income from or value of the Property; (ii) any income to be derived from the Property; (iii) the suitability of the Property for

any and all activities and uses which Buyer may conduct thereon, including the possibilities for further development of the Property or construction thereon; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property or any improvements thereon; (v) the manner, quality, state of repair or lack of repair of the Property (including the roof, foundation, HVAC systems or any other component of the Property or any improvements thereon); (vi) the nature, quality or condition of the Property, including with respect to water conditions, soil, geological or geotechnical condition (including soil expansiveness, corrosivity, or stability, or seismic, hydrological, geological and topographical conditions and configurations, including, without limitation, any opinions or conclusions of any soils engineer(s) retained to perform geotechnical and/or soils studies or to oversee any soils engineering aspects of developing the Property); (vii) the compliance of or by Seller, the Property, or its operation with any Laws and Regulations; (viii) the manner or quality of the construction or materials incorporated into the Property; (ix) compliance with Environmental Laws or land use laws, rules, regulations, orders, codes or requirements, including the Americans with Disabilities Act of 1990; (x) the presence or absence of radon gas, methane gas, asbestos any other Hazardous Materials at, on, under, or adjacent to the Property; (xi) the conformity of any improvements to any plans or specifications, including, without limitation, any plans and specifications that may have been or may be provided to Buyer; (xii) the conformity of the Property to past, current or future applicable zoning or building requirements; (xiii) deficiency of any shoring; (xiv) deficiency of any drainage; (xv) the fact that all or a portion of the Property may be located on or near an earthquake fault line or in or near an earthquake or seismic hazard zone; (xvi) the existence of vested land use, zoning or building entitlements affecting the Property; (xvii) water rights or the availability of or access to water; (xviii) the presence or suitability of any utilities or availability thereof; (xix) the completeness or accuracy of any information provided to Buyer by the Seller Parties or their agents; (xx) any matters relating to the leases or the tenants; (xxi) any knowledge that any Seller Party may have relating to the Property that is has, or has not, shared with Buyer; (xxii) the Master Lease Tenant or the Master Lease Guarantor, including their creditworthiness or lack thereof; and/or (xxiii) any other matter relating to the Property, the New Lease Documents, the Master Lease Tenant, the New Lease Tenant, the Master Lease Guarantor or any Subtenants, or to the development, construction, operation, leasing or sale of the Property. Buyer acknowledges that to the extent required to be operative, the disclaimers and warranties contained herein are “conspicuous” disclaimers for purposes of any applicable law, rule, regulation or order. Buyer further acknowledges and agrees that, except for the Seller Representations (as the same may be updated at Closing), no Seller Party is under any duty to make any affirmative disclosures or inquiry regarding any matter which may or may not be known to Seller or any of the other Seller Parties, and Buyer, for itself and for its successors and assigns, hereby expressly waives and releases each of the Seller Parties from any such duty that otherwise might exist; provided, however, that the foregoing provision shall not prevent Buyer from relying on the Seller Representations, subject to the limitations and conditions relating thereto set forth in this Agreement;

(c) Except as expressly provided below in this Section 8.1(c), Buyer, for Buyer and Buyer’s successors and assigns, irrevocably and unconditionally releases the Seller Parties from, and irrevocably and unconditionally waives all claims and liabilities against the Seller Parties for or attributable to, the following:

(i) any and all statements or opinions heretofore or hereafter made, or information furnished, by or on behalf of the Seller Parties to Buyer or any of Buyer's agents or representatives (other than to the extent that the same constitute a breach of Seller Representations of which Buyer had no knowledge as and when such Seller Representations were made); and

(ii) any and all Losses of any kind or nature whatsoever, whether known, unknown, foreseen or unforeseen, attributable to the Property, whether arising or accruing before, on or after the Closing and whether attributable to events or circumstances which have heretofore or may hereafter occur, including all Losses with respect to the structural, physical, or environmental condition of the Property including claims or liabilities relating to the presence, discovery or removal of any Hazardous Materials in, at, under or about the Property and any other matters described in Section 8.1(b);

Buyer acknowledges and agrees that (A) Buyer may hereinafter discover facts different from or in addition to those now (or as of the Closing) known to Buyer, (B) Buyer's agreement to release, acquit and discharge the Seller Parties as set forth herein shall remain in full force and effect notwithstanding the existence or discovery of any such additional or different facts, (C) Buyer knowingly waives any rights, privileges and benefits under any federal, state or local law which may negatively impact the validity or enforceability of any part of the releases set forth in this Agreement, (D) upon the completion of the Closing, the Seller Parties shall be deemed to have satisfied all of their respective obligations, covenants and liabilities in this Agreement and in any documents executed by the Seller Parties in connection herewith other than those obligations of the Seller that, by the express terms of this Agreement, survive the Closing (in which case such survival shall be subject to the limitations set forth in this Agreement) and (E) Buyer irrevocably covenants never to commence or prosecute, or to collude with others to commence or prosecute, against any Seller Party any action or proceeding based upon any claim covered by the foregoing release;

provided, however, that the foregoing releases and waivers set forth in this Section 8.1(c) are not intended and shall not be construed to affect or impair any rights or remedies that Buyer may have against Seller as a result of: (1) a breach of any of the Seller Representations, or of any covenant of Seller expressly set forth in this Agreement, subject to the terms and limitations on the Seller's liability as expressly set forth elsewhere in this Agreement; (2) any criminal act or tort act of Seller; or (3) a breach by Seller of any of its obligations under the Master Lease relating to the Property that occurred prior to the Closing.

Buyer understands the legal significance of the foregoing provisions and acknowledges and agrees that the provisions of Section 8.1(b)-(c) were a material factor in Seller's agreement to complete the Transaction and Seller's acceptance of the Purchase Price and that Seller is unwilling to consummate the Transaction unless the Seller Parties are expressly released as set forth in Section 8.1(b)-(c).

The releases contained in Section 8.1(b)-(c) and elsewhere in this Agreement include claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist, which, if known by Buyer, would materially affect Buyer's release of the Seller Parties. Buyer specifically waives the provisions of any law of any state, territory or jurisdiction the import of which is as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding anything to the contrary in this Agreement, the provisions of Section 8.1(b)-(c) shall survive the Closing or termination of this Agreement.

(d) Buyer is a [limited liability company], duly formed, validly existing and in good standing under the Laws and Regulations of the [State of Delaware]. This Agreement constitutes the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to general principles of equity and to bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect affecting the rights of creditors or debtors generally. Buyer has the power to enter into, execute and deliver this Agreement and to perform its obligations hereunder.

(e) There are no actions, suits or proceedings pending or, to the knowledge of Buyer, threatened, against or affecting Buyer which, if determined adversely to Buyer, would adversely affect its ability to perform its obligations pursuant to the terms of this Agreement.

(f) Neither (i) the execution, delivery or performance of this Agreement by Buyer nor (ii) compliance herewith (A) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the charter documents or by-laws of Buyer, (2) to the best of Buyer's knowledge, any law or any order, writ, injunction or decree of any court or Governmental Authority, or (3) to the best of Buyer's knowledge, any agreement or instrument to which Buyer is a party or by which it is bound or (B) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

(g) No authorization, consent or approval of any Governmental Authority (including courts) is required for the execution and delivery by Buyer of this Agreement or the performance of its obligations pursuant to the terms of this Agreement.

(h) Buyer is currently (i) in compliance with, and shall at all times during the term of this Agreement remain in compliance with, the regulations of OFAC and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism") or regulations relating thereto, and (ii) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or any other similar list maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, executive order or regulation. Buyer has taken, and shall continue to take until Closing, such measures as are required by applicable law to ensure that funds used to pay to Seller the Purchase Price are derived (A) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated and (B) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated.

(i) Buyer's rights under this Agreement do not, and its acquisition of the Property shall not, constitute "plan assets" within the meaning of 29 C.F.R. Section 2510.3-101, because one or more of the following circumstances is true:

(i) Equity interests in Buyer are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(ii) Less than twenty-five (25%) percent of all equity interests in Buyer are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(iii) Buyer qualifies as an "operating company", "venture capital operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c), (d) or (e);

(j) Buyer is not a "governmental plan" within the meaning of Section 3(32) of ERISA and the execution of this Agreement and the purchase of the Property by Buyer is not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(k) Buyer has not (i) filed any petition in bankruptcy or made any assignment for the benefit of creditors, (ii) filed any petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws wherein Buyer is named a debtor, or (iii) received written notice of any such petition or action filed or initiated against it.

The representations and warranties of Buyer contained in this Section 8.1 shall survive the Closing, but only to the extent provided in Section 12.4(b).

Section 8.2 Seller Representations. Subject to the limitations set forth in this Agreement, Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date (subject to the rights of Seller to update such representations and warranties as set forth in Section 7.1(a)(iii)) as follows (the "Seller Representations"):

(a) Seller is a [limited liability company/limited partnership], duly formed, validly existing and in good standing under the laws of the State of Delaware. Seller has the power to enter into, execute and deliver this Agreement and to perform all duties and obligations imposed upon it hereunder.

(b) Seller's execution and delivery of this Agreement and performance of its obligations hereunder have been duly authorized by all necessary action on the part of Seller, and do not violate or conflict with Seller's organizational documents, any judgment, decree or order of any court applicable to or affecting Seller, breach the provisions of or constitute a default under any material contract to which Seller is a party or by which Seller is bound, or violate or conflict with any Laws and Regulations applicable to Seller.

(c) There is no action, suit, litigation, hearing or administrative proceeding pending or, to Seller's Actual Knowledge, threatened against Seller or the Property in any court, administrative bureau, or other regulatory setting, that, if determined adversely to Seller, would reasonably be

expected to materially and adversely affect Seller's ability to perform its obligations pursuant to the terms of this Agreement.

(d) Seller is not is a "foreign person" as such term is defined in Section 1445(e)(3) of the Code.

(e) Seller is currently (i) in compliance with, and shall at all times during the term of this Agreement remain in compliance with, the regulations of the OFAC and any statute, executive order (including Executive Order 13224, dated September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"), or regulations relating thereto and (ii) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or any other similar list maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, executive order or regulation.

(f) Seller has not (i) filed any petition in bankruptcy or made any assignment for the benefit of creditors, (ii) filed any petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws wherein Seller is named a debtor or (iii) received written notice of any such petition or action filed or initiated against it.

(g) Except for the Master Lease, any Disclosed Subleases and any Subleases disclosed in any estoppel delivered pursuant hereto (whether or not a Qualifying Tenant Estoppel), there are, to Seller's Actual Knowledge, no other leases or Subleases affecting the Property. Seller has delivered or made available to Buyer on the Datasite a true and correct copy of the Master Lease Documents and all Disclosed Subleases of which Seller has actual knowledge. Seller makes no representation that Master Lease Tenant or any Subtenant will not be in default under the Master Lease or any Sublease. The termination of any Sublease between the date hereof and Closing, by reason of a Subtenant default or otherwise, shall not constitute a default by Seller or otherwise affect the obligations of Buyer under this Agreement.

(h) Seller has not executed any brokerage agreements with respect to the leasing of any space at the Property or, except for the brokerage agreement referenced in Article 11, with respect to the sale of all or any portion of the Property.

(i) Seller is not a party to any Service Contracts [other than the Assigned Service Contracts].

(j) There are no condemnation or eminent domain proceedings pending, or to Seller's Actual Knowledge, threatened in writing against the Property.

(k) There are no Leasing Costs (exclusive of free rent set forth in the Master Lease and/or the New Lease) due by Seller with respect to the Master Lease or the New Lease.

(l) Seller has no employees.

(m) Neither Seller nor Seller nor any entity that would be considered a single employer with Seller or Seller under Code Section 414(b) or Code Section 414(c) maintains, contributes to, or otherwise has incurred any liability with respect to any "employee benefit plan" within the

meaning of Section 3(3) of ERISA with respect to persons who are or were employed at the Property or otherwise perform or performed services at the Property.

(n) Seller has delivered to Buyer, or made available to Buyer on the Datasite, a true, complete and correct copy of the Existing Phase I. Except as set forth in the Existing Phase I, (i) Seller has received no written notice of non-compliance with Environmental Laws, or with permits issued pursuant thereto, at the Property from any Governmental Authority that have not been corrected.

(o) Other than any right of first offer and/or right of first negotiation in favor of New Lease Tenant in the New Lease [******INCLUDE IF THE PROPERTY IS SUBJECT TO AN REA PURCHASE OPTION***: and other than the REA Purchase Option***], Seller has not granted any option, right of first offer, right of first refusal or any other similar right in favor of any Person with respect to the purchase of the Property (or any portion thereof).

The representations and warranties of Seller contained in this Section 8.2 shall survive the Closing, but only to the extent provided in Section 12.4(b).

Section 8.3 Seller's Actual Knowledge.

(a) Whenever a representation is qualified by the phrase "to Seller's Actual Knowledge", "to Seller's knowledge" or words of similar import, the accuracy of such representation shall be based solely on the actual (as opposed to constructive or imputed) knowledge of the Seller Knowledge Parties, without investigation or inquiry. Buyer acknowledges that the Seller Knowledge Parties are named solely for the purpose of defining the scope of Seller's knowledge and not for the purpose of imposing any liability on or creating any duties running from the Seller Knowledge Parties to Buyer and Buyer agrees that none of the Seller Knowledge Parties shall have any personal or other liability under this Agreement or in connection with the Transaction.

Section 8.4 Notice of Breach.

(a) To the extent that, before the Effective Date, Buyer obtained actual knowledge that any of the Seller Representations are inaccurate, untrue, or incorrect in any way, such representations and warranties shall be deemed modified to reflect such actual knowledge as of the Effective Date. For purposes of this Agreement, Buyer shall be deemed to have actual knowledge that any representation or warranty contained herein is inaccurate, untrue, or incorrect to the extent that: (i) Buyer or any of its Affiliates has actual knowledge of any fact or information which is inconsistent with such representation or warranty at the time such representation or warranty was made; and/or (ii) any written materials delivered to Buyer or any of its Affiliates or made available to Buyer on the Datasite prior to the Effective Date (including, without limitation, the Third-Party Reports relating to the Property) contain information inconsistent with any such representations and warranties. As of the Closing, Buyer shall also be deemed to have actual knowledge that any representation or warranty contained herein is inaccurate, untrue, or incorrect to the extent that: (A) any written materials delivered to Buyer or any of its Affiliates thereof or made available to Buyer on the Datasite from and after the Effective Date, but prior to Closing, contain information inconsistent with any such representations and warranties; (B) Buyer or any

of its Affiliates has actual knowledge of any fact or information which is inconsistent with such representation or warranty at the time such representation or warranty was made and/or (C) any estoppel certificate executed in connection with the Transaction and delivered to Buyer prior to Closing, contains any fact or information which is inconsistent with such representation or warranty and/or (D) such inaccuracy is the subject matter of an obligation of New Lease Tenant under the New Lease.

(b) If, after the Effective Date but prior to the Closing, Buyer or any Affiliate thereof first obtains actual knowledge that any of the Seller Representations made herein is untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within five (5) Business Days of obtaining such actual knowledge (but, in any event, prior to the Closing). In such event, Seller shall have the right (but not the obligation) to attempt to cure such misrepresentation or breach and shall, at its option, be entitled to a reasonable adjournment of the Closing (not to exceed forty-five (45) days in the aggregate with all other adjournment rights exercised by Seller hereunder) for the purpose of such cure. If Seller elects to attempt to so cure but is unable to so cure any misrepresentation or breach of warranty, or elects not to cure the same, then Buyer, as its sole remedy for any and all such materially untrue, inaccurate or incorrect representations or warranties, shall elect within five (5) Business Days thereafter either to (i) waive such misrepresentations or breaches of representations and warranties and consummate the Transaction without any reduction of or credit against the Purchase Price or (ii) terminate this Agreement in its entirety by written notice given to Seller on the Closing Date (or prior to the Closing Date if Seller elects not to cure the same), in which event this Agreement shall be terminated, the Deposit shall be returned to Buyer, to the extent such representation was willfully or knowingly inaccurate by Seller as of the date made, Seller shall reimburse Buyer for all of Buyer's out-of-pocket cost and expenses incurred in connection with the Transaction (up to \$100,000)[*****FOR TRANSACTIONS WITH PURCHASE PRICES OF LESS THAN \$10M, REDUCE TO \$50,000*****], and, thereafter, no Party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives any termination of this Agreement[; provided, however, to the extent such inaccuracy is the subject matter of an obligation of New Lease Tenant under the New Lease, then Buyer shall automatically be deemed to have elected to proceed pursuant to the foregoing clause (i).

ARTICLE 9

Covenants

Section 9.1 Seller Covenants. [*****FOR SIGN AND CLOSE TRANSACTIONS, DELETE THIS ARTICLE 9 AS "INTENTIONALLY OMITTED" AND, WHERE SB IS THE BUYER, LIMIT TO (d)-(e) *****]

(a) **Continued Operations.** Seller covenants that, between the date of this Agreement and the Closing Date or earlier termination of this Agreement (the "Pre-Closing Period"): (i) Seller shall continue to use its commercially diligent efforts to cause Master Lease Tenant to comply with its obligations under the Master Lease solely as such obligations pertain to the Property during the Pre-Closing Period; (ii) Seller shall exercise its rights and remedies under the Master Lease with respect to the Property required in Seller's reasonable judgment to satisfy the requirements of the immediately preceding sentence; (iii) Seller shall undertake and/or continue to perform all

of its material obligations as landlord under the Master Lease for the Property, as required under the Master Lease, but shall not be obligated to complete, or cause Master Lease Tenant to complete, any ongoing capital projects at the Property prior to Closing; and (iv) Seller shall not enter into any new Service Contract relating to the Property without Buyer's prior written consent, which consent shall be granted or withheld in Buyer's sole discretion. With respect to all Service Contracts, Buyer may, no later than thirty (30) days prior to the Scheduled Closing Date, inform Seller of any of the Service Contracts that Buyer wishes Seller to terminate, effective as of Closing Date, and Seller shall promptly take all steps required under the relevant Service Contracts to terminate same at the sole cost and expense of Seller; provided, however, that in no event may Buyer elect to terminate any Service Contracts disclosed to Buyer on or prior to the Effective Date that, by their terms, (A) are not terminable, (B) are not terminable on less than thirty (30) days' prior written notice or (C) are only terminable upon the payment of a termination fee of more than one (1) month's fees (unless Buyer agrees to pay any such excess termination fees). Any Service Contracts (1) not timely elected by Buyer to be terminated pursuant to the preceding sentence or that satisfy any of the characteristics set forth in clauses (A), (B) or (C) in the proviso to the preceding sentence and/or (2) entered into after the Effective Date with Buyer's written approval shall be "Assigned Service Contracts".

(b) **Leases.** During the Pre-Closing Period, Seller shall not: (i) market space in the Property, solicit tenants or negotiate leases for space in the Property or (ii) exercise any right that Seller has, as landlord, to terminate the Master Lease for the Property; provided, however, that Seller may exercise its rights and remedies (other than to terminate the Master Lease as to the Property) against the Master Lease Tenant and/or Master Lease Guarantor if either are in default under their respective Master Lease or Master Lease Guaranty obligations.

(c) **Insurance.** During the Pre-Closing Period, Seller shall either: (i) cause Master Lease Tenant to maintain in full force and effect all casualty insurance coverages required to be maintained by Master Lease Tenant under the Master Lease relating to the Property or (ii) obtain, at Seller's sole expense, insurance policies providing coverage equivalent thereto.

(d) **Marketing of the Property.** During the Pre-Closing Period, so long as this Agreement shall be in effect, Seller shall not initiate, solicit, engage in, continue or respond to any offers from, or negotiations with, any Person other than Buyer for the sale, transfer or other disposition of the Property or Seller's interest therein.

(e) **Required Estoppels and SNDAs.** During the Pre-Closing Period, Seller shall request and use commercially diligent efforts to obtain the Required Estoppel Certificates in the form described in the definition of "Required Estoppel" and deliver to Buyer, promptly upon receipt, copies of the executed Required Estoppel Certificates. Seller agrees, at no cost or expense to Seller, to (i) deliver subordination non-disturbance and attornment agreements ("SNDAs") to New Lease Tenant or any Subtenant requested by Buyer, on forms prepared by Buyer and any Buyer Lender, as reasonably requested by Buyer, and (ii) use commercially diligent efforts to allow Buyer to obtain (or pursue directly) such SNDAs directly from New Lease Tenant or such Subtenant(s); provided that the failure to obtain any such SNDAs will not constitute the failure of a condition to Buyer's obligations under this Agreement or constitute a breach of Seller's obligations under this Agreement so long as Seller has requested and used commercially diligent efforts to obtain any such requested SNDAs to the extent required by this Section 9.1(f).

Section 9.2 Buyer Covenants. During the Pre-Closing Period, Buyer covenants that it shall use commercially diligent efforts to finalize the form of the New Lease Documents.

ARTICLE 10

Closing

Section 10.1 Time and Place of Closing.

(a) The Closing shall take place commencing at 9:00 a.m. (EST), with the Adjusted Purchase Price Balance received by 3:00 p.m. (EST), with Escrow Agent, on the Scheduled Closing Date, TIME BEING OF THE ESSENCE, subject to the Seller's and Buyer's right to adjourn the Closing as expressly permitted under this Agreement.

(b) [***Notwithstanding the foregoing, Buyer shall be entitled to adjourn the Scheduled Closing Date for up to thirty (30) days in the aggregate, by delivering to Escrow Agent, on or prior to 3:00 p.m. (EST) on the third Business Day prior to the Scheduled Closing Date, cash in the amount of \$[5% of the Purchase Price] (the "Closing Extension Deposit"), together with written notice of such adjournment, to Seller and Escrow Agent which shall set forth the adjourned date for the Closing in accordance with this Section 10.1(b).***][*****DELETE THIS CLAUSE (b) IF N/A*****]

(c) The date on which the Closing shall actually occur under this Agreement is referred to herein as the "Closing Date".

Section 10.2 Seller's Deliveries. By not later than 5:00 p.m. (EST) on the Business Day immediately preceding the Closing Date, Seller shall deliver or cause to be delivered to the Title Company (for recording or delivery to Buyer, as applicable, upon the completion of Closing) each of the following items, each executed by Seller and acknowledged to the extent appropriate:

(a) a Deed for the Real Property [*****FOR GROUND LEASE, REPLACE WITH:** a Ground Lease Assignment for the Leasehold Estate***], in form sufficient for recording;

(b) a Bill of Sale for the Personal Property;

(c) the Omnibus Assignment;

(d) if applicable, the New Lease Documents, executed by Master Lease Tenant and Master Lease Guarantor;

(e) the Required Estoppels, if any, received by Seller;

(f) any documentation required to be executed by Seller with respect to any Transfer Taxes (collectively, the "Transfer Tax Forms");

(g) the Seller Closing Update Certificate reaffirming the Seller Representations as of the Closing Date (subject to the rights of Seller to update such representations and warranties as set forth in Section 7.1(a)(iii));

- (h) the Final Closing Statement;
- (i) the Owner's Affidavit;
- (j) the FIRPTA Certificate;
- (k) [originals (or copies to the extent originals are unavailable) of the Assigned Service Contracts and Subleases in Seller's possession or reasonable control;]
- (l) originals (or copies to the extent originals are unavailable) of all permits, licenses, approvals, plans, specifications, guaranties and warranties relating to the Property, to the extent in Seller's possession or reasonable control, except that Seller shall not have any obligation to deliver or make available to Buyer any Excluded Items;
- (m) all security codes and master keys to any portion of the Real Property, to the extent in Seller's possession; and
- (n) such other documents as may be required by the express terms of this Agreement to be delivered by Seller and such other customary conveyance documents, certificates, deeds and other instruments as Buyer or the Title Company may reasonably require to carry out the Transaction and as are customary in like transactions in the State in which such Property is located.

Section 10.3 Buyer's Deliveries. By not later than 5:00 p.m. (EST) on the Business Day immediately preceding the Closing Date (except in the case of the funds to be deposited by Buyer pursuant to Section 10.3(a) below, as to which delivery shall be on the Closing Date), Buyer shall deliver to the Title Company (for delivery to Seller upon the completion of Closing), each of the following items, each executed by Buyer and acknowledged to the extent appropriate:

- (a) immediately available federal funds sufficient to pay the Adjusted Purchase Price Balance (subject to apportionments and adjustments as set forth herein) and Buyer's share of all escrow costs and closing expenses, which funds [*****DELETE IF SIGN AND CLOSE:** , together with the Deposit,***] shall be released to Seller and credited against the balance of the Purchase Price at Closing;
- (b) [*****FOR GROUND LEASE, ADD:** a Ground Lease Assignment for the assignment of the Leasehold Estate;***]
- (c) the Omnibus Assignment;
- (d) the New Lease;
- (e) the Transfer Tax Forms;
- (f) the Buyer Closing Update Certificate;
- (g) the Final Closing Statement; and

(h) such other documents as may be required by the express terms of this Agreement to be delivered by Buyer and such other customary documents, certificates and other instruments as Seller or the Title Company may reasonably require to carry out the Transaction and as are customary in like transactions in the State in which such Property is located.

Section 10.4 Apportionments.

(a) **Adjustments and Prorations.** The following items shall be apportioned or adjusted between Seller and Buyer as of 11:59 p.m. (EST) on the day immediately preceding the Closing Date (the “Adjustment Date”) on the basis of the actual number of days of the month which shall have elapsed as of the Closing Date and based upon the actual number of days in the month in which the Closing occurs and a 365-day year, and otherwise as set forth in this Section 10.4, in all cases such that Seller shall be charged with the economic benefits and burdens of being a beneficial owner of the Property through and including the day preceding the Closing Date, and Buyer shall be charged with the economic benefits and burdens of being a beneficial owner of the Property from and after the Closing Date:

(i) the Base Rent for the Property (with the understanding that, since the Master Lease and the New Lease are each “triple net” leases pursuant to which the Master Lease Tenant and the New Lease Tenant are responsible for the payment of real estate taxes and assessments, insurance, utilities, operating expenses, and all other costs and expenses customarily prorated among sellers and buyers, the proration of Base Rent shall be the primary item subject to proration at Closing);

(ii) prepaid fees for licenses and permits held by Seller pertaining to the Property and assigned to Buyer on the Closing Date; and

(iii) such other items as are customarily apportioned in real estate closings of commercial properties in the State where the Property is located that are not the responsibility of Master Lease Tenant under the Master Lease (as the same pertains to the Property) or the responsibility of the New Lease Tenant under the New Lease.

The foregoing prorations shall be paid by means of an adjustment to the balance of the Purchase Price payable pursuant to Section 2.1, which adjustment shall be an increase in the event of a net amount due to Seller, or a decrease in the event of a net amount due to Buyer, in either case resulting in the Adjusted Purchase Price Balance. Subject to the adjustments and prorations set forth in this Section 10.4, in no event shall Buyer be entitled to any interest in any working capital in the legal or beneficial possession or control of the Seller.

(b) **Property Taxes.** While real estate taxes and assessments for the Property (“Property Taxes”) shall not be apportioned at Closing since the payment of all Property Taxes is the responsibility of the Master Lease Tenant under the terms of the Master Lease (as the same pertains to the Property) through the Closing or the responsibility of the New Lease Tenant under the New Lease after the Closing, to the extent that any refund of Property Taxes is received by Seller or Buyer after the Closing, such refund shall be held in trust by Seller or Buyer, as the case may be, and shall be applied as follows: (i) first to the unreimbursed costs incurred in obtaining such refund; (ii) second, to Master Lease Tenant or New Lease Tenant, as applicable, if required

to be paid to Master Lease Tenant or New Lease Tenant, as applicable, under the Master Lease or New Lease, as applicable; and (iii) if not required to be paid to Master Lease Tenant or New Lease Tenant pursuant to the preceding clause (ii), such refund shall be paid to Seller for the period prior to the Closing Date and to Buyer for the period on or after the Closing Date.

(c) **Security Deposits.** Since Seller holds no security deposit under the Master Lease or otherwise relating to the Property, there shall be no obligation at Closing for Seller to pay over to Buyer any security deposit or to grant Buyer a credit to the Purchase Price in the amount of such security deposit.

(d) **Preliminary and Final Closing Statements.** All pro-rations and payments to be made under the foregoing provisions of this Section 10.4 shall be made on the basis of a written closing statement, in the form of the Settlement Statement, which Seller shall endeavor to provide to Buyer at least three (3) Business Days prior to Closing (the “Preliminary Closing Statement”) showing the net amount due either to Seller or Buyer as a result of the adjustments and pro-rations provided for in this Section 10.4. On or prior to the Closing, Seller and Buyer shall jointly agree upon any adjustments, pro-rations and/or additions to be made to the Preliminary Closing Statement in accordance with the terms of this Agreement and, upon the final determination of such adjustments, pro-rations and/or additions, Seller and Buyer shall each execute the final closing statement (the “Final Closing Statement”) which shall reflect the net amount due to Seller after such adjustments, pro-rations and/or additions. The adjustments, pro-rations and determinations agreed to by Seller and Buyer in the Final Closing Statement shall be conclusive and binding on the Parties hereto, except for any items that are not capable of being determined at the time the Final Closing Statement is agreed to by Seller and Buyer, which items shall be determined and paid in the manner set forth in the Final Closing Statement. Prior to and following the Closing Date, each Party shall provide the other with such information as the other shall reasonably request in order to finalize any such post-Closing adjustments. Notwithstanding anything in this Agreement to the contrary, any claim for any adjustment under this Section 10.4 will only be valid if made in writing with specificity and only if made on or before the date that is sixty (60) days after the Closing Date.

(e) **Survival.** The terms of this Section 10.4 shall survive the Closing.

Section 10.5 Closing Costs.

(a) Seller shall pay (i) fifty percent (50%) of Escrow Agent’s escrow fee or escrow termination charge, (ii) the cost of the Updated Title Commitment and the Updated Survey (other than the cost of any Additional Survey Requirements), (iii) to the extent that Local Custom so requires as set forth on Schedule F, the portion of the Owner’s Title Policy Premium required to obtain the base portion (i.e., non-extended coverage) of the Owner’s Title Policy (any portion of the Owner’s Title Policy Premium so allocated to Seller pursuant to Local Custom, the “Owner’s Title Policy Premium (Seller)”) obtained by Buyer at Closing, (v) the Broker Fee and (vi) Seller’s own attorneys’ fees.

(b) Buyer shall pay (i) fifty percent (50%) of Escrow Agent’s escrow fee or escrow termination charge, (ii) the cost of any Additional Survey Requirements, (iii) (A) any portion of the Owner’s Title Policy Premium allocated to buyers of real property pursuant to Local Custom

as set forth on Schedule F and, to the extent there is no Local Custom applicable to the payment of such Owner's Title Policy Premium, one hundred percent (100%) of such Owner's Title Policy Premium (the "Owner's Title Policy Premium (Buyer)"), and (B) one hundred percent (100%) of the Lender's Title Policy Premium, and the cost of all endorsements to the Owner's Title Policy and Lender's Title Policy, (iv) any recording or filing fees incurred in recording the Deed [***NTD: OR GROUND LEASE ASSIGNMENT, AS APPLICABLE***], (vi) all costs associated with Buyer's due diligence and financing, including the cost of appraisals, architectural, engineering, credit and environmental reports, mortgage recording taxes, application, commitment and counsel fees payable to any Buyer Lender and (vii) Buyer's own attorneys' fees.

(c) If any Transfer Taxes are imposed in connection with the transfer of the Property: (i) Seller and Buyer shall each, to the extent permitted under applicable Laws and Regulations, apply for and use diligent efforts to obtain the maximum exemption from the payment of such Transfer Taxes permitted under such applicable Laws and Regulations; (ii) to the extent no such exemption is available that eliminates all such transfer Taxes, (A) Seller shall pay that portion of the remaining Transfer Taxes that are imposed on sellers of real property in accordance with applicable Laws and Regulations and (B) Buyer shall pay that portion of the remaining Transfer Taxes that are imposed on buyers of real property in accordance with applicable Laws and Regulations; and (iii) to the extent that (A) no such exemption is available that eliminates all such Transfer Taxes and (B) applicable Laws and Regulations do not specify which party (transferor or transferee) is required to pay such Transfer Taxes, Seller and Buyer shall each pay fifty percent (50%) of such Transfer Taxes.

(d) Each Party shall, in addition to the costs specifically allocated as provided in Section 10.5(a) and Section 10.5(b), pay any other costs and expenses that are specifically allocated to it pursuant to this Agreement.

(e) All other customary purchase and sale closing costs shall be made in accordance with local custom in the jurisdiction where the Property is located.

(f) The provisions of this Section 10.5 shall survive the Closing.

ARTICLE 11

Real Estate Commission

Seller shall be obligated to pay a real estate commission and/or brokerage fee to Broker (the "Broker Fee") in accordance with separate agreements between Seller and Broker.] Each of Seller and Buyer represent and warrant to the other that (a) it dealt with no broker other than Broker and (b) no other brokerage fee or real estate commission is or shall be due or owing in connection with this Transaction as a result of the acts of the representing party. Each of Seller and Buyer hereby indemnify and hold the other harmless from any and all Losses incurred by reason of any breach of the foregoing representations and warranties by such representing party. Seller shall further indemnify and hold Buyer harmless from and against all Losses which may arise by reason of any claim asserted by Broker in connection with this Agreement or Broker's representation of Seller. The provisions of this Article 11 shall survive the Closing or the termination of this Agreement.

ARTICLE 12

Termination and Default

Section 12.1 Termination without Default. If the sale of the Property is not consummated because of the failure of any condition precedent to Buyer's obligations expressly set forth in this Agreement or for any other reason except a default by Buyer as provided in Section 12.2 or as a result of the actions or omissions of any Affiliate of Buyer, [******IF SIGN AND CLOSE, DELETE:*** the Deposit shall be returned to Buyer promptly, whereupon***] this Agreement shall terminate, [***and***] no Party shall have any further obligation to the other hereunder except for those obligations which expressly survive the termination of this Agreement.

Section 12.2 Buyer Default. If the Closing is not consummated due to Buyer's failure to perform its obligations in connection with the purchase of the Property in accordance with this Agreement, which failure is not cured within three (3) Business Days after written notice from Seller of such failure, then Seller shall be entitled to terminate this Agreement upon written notice, in which case (a) the Deposit shall be delivered to Seller as liquidated damages for Buyer's breach of this Agreement, it being agreed between the Parties that the actual Losses to Seller in the event of such breach are impractical to ascertain and the amount of the Deposit is a reasonable estimate thereof and (b) upon such termination, this Agreement shall terminate and the Parties shall have no further obligations to each other with respect to the Property or otherwise; provided, however, that this Section 12.2 is intended only to liquidate and limit Seller's right to damages arising due to Buyer's failure to purchase the Property in accordance with the terms of this Agreement and shall not limit the obligations of Buyer or Seller that survive the termination of this Agreement. [******IF SIGN AND CLOSE, REPLACE THE FOREGOING WITH:*** If the Closing is not consummated due to Buyer's failure to purchase the Property in accordance with this Agreement on the Closing Date, then Seller shall be entitled to terminate this Agreement upon written notice, it being agreed between the Parties that, upon such termination, (a) Seller shall have no further obligations to Buyer under this Agreement, (b) Seller shall retain all rights and remedies available to Seller under this Agreement or applicable law resulting from such failure and (c) Buyer shall retain all of its obligations which expressly survive the termination of this Agreement.***]

Section 12.3 Seller Default.

(a) If, in the absence of a Buyer default, the Closing is not consummated because of a failure by Seller to perform its obligations in accordance with the terms of this Agreement (a "Seller Failure"), which Seller Failure is not cured by Seller within three (3) Business Days after written notice from Buyer, then Buyer may, as its sole and exclusive remedy at law or in equity, either: (i) terminate this Agreement by giving written notice thereof to the Seller, in which event (A) the Deposit will promptly be returned to the Buyer, (B) to the extent Seller willfully refused to consummate the Transaction following satisfaction by Buyer of all conditions precedent to Seller's obligation to proceed to Closing, Seller shall reimburse Buyer for all of Buyer's out-of-pocket costs and expenses actually incurred in connection with the Transaction (up to a maximum amount of \$100,000) [******REDUCE TO \$50,000 IF PURCHASE PRICE IS LESS THAN \$10M******] and (C) the Parties shall have no further obligations to each other except for those obligations which expressly survive the termination of this Agreement; (ii) waive such Seller Failure and consummate the Transaction contemplated hereby in accordance with the terms of this

Agreement; or (iii) specifically enforce Seller's obligation to consummate the Transaction in accordance with the terms and conditions of this Agreement (and, in connection with such election, Seller hereby waives any requirement for the securing or posting of any bond by Buyer in connection with the pursuit of such remedy); provided, however, that (1) as a condition precedent to Buyer's election to bring an action for specific performance as the result of such Seller Failure hereunder, Buyer must commence such action within fifteen (15) days after the occurrence of such breach and (B) Buyer agrees that its failure timely to commence such an action for specific performance within such fifteen (15) day period shall be deemed a waiver by it of its right to commence such an action. Notwithstanding the foregoing or anything herein to the contrary, if specific performance is not available because Seller has sold the Property to a third party unaffiliated with Buyer [***(exclusive of the Purchase Option)***], Buyer shall have all rights and remedies available at law or in equity. [******IF A SIGN AND CLOSE, REPLACE THE FOREGOING WITH:*** If the Closing is not consummated due to Seller's failure to purchase the Property in accordance with this Agreement on the Closing Date, then Buyer shall be entitled to terminate this Agreement upon written notice, it being agreed between the Parties that, upon such termination, (a) Buyer shall have no further obligations to Seller under this Agreement, (b) Buyer shall retain all rights and remedies available to Buyer under this Agreement or applicable law resulting from such failure and (c) Seller shall retain all of its obligations which expressly survive the termination of this Agreement.***].

(b) [******IF A SIGN AND CLOSE, DELETE THE FOLLOWING:*** Notwithstanding the foregoing or anything herein to the contrary: if the Closing is not consummated because of a Seller Failure or Seller's inability to timely cure any such Seller Failure as provided in Section 12.3(a) above, and such Seller Failure is a result of any actions or omissions of Buyer or any Affiliate of Buyer, then Buyer shall be deemed to have elected to proceed pursuant to Section 12.3(a)(ii) with respect to such Seller Failure (and such Seller Failure shall not constitute a default by Seller hereunder).

This Section 12.3 is intended only to limit Buyer's right to damages arising due to Seller's failure to consummate the Transaction in accordance with the terms of this Agreement and shall not limit the obligations of Seller that survive the termination of this Agreement.

Section 12.4 Breach of Representations.

(a) Seller and Buyer agree that, following the Closing, Seller shall be liable for the actual Losses resulting from any breach of the Seller Representations of which Buyer had no actual knowledge (as defined in Section 8.4(a)) prior to or at the Closing; provided, however, that the Seller Representations are personal to Seller and Buyer and may not be assigned to or enforced by any other Person, other than to an assignee of Buyer in accordance with Section 15.3. Notwithstanding the foregoing, however, if the Closing occurs, Buyer hereby expressly waives, relinquishes and releases any right or remedy available to it at law, in equity, under this Agreement or otherwise to make a claim against Seller for damages that Buyer may incur, or to rescind this Agreement and the Transaction contemplated hereby, as the result of any Seller Representation being untrue, inaccurate or incorrect to the extent Buyer had actual knowledge (as defined in Section 8.4) that such representation or warranty was untrue, inaccurate or incorrect at the time of the Closing.

(b) All of the Seller Representations and Buyer Representations shall survive the Closing for three (3) months following the Closing Date (the “Survival Period”). Each such representation and/or warranty shall automatically be null and void and of no further force and effect after the expiration of the Survival Period unless, prior to the expiration of the Survival Period, the Party benefitting from such representation or warranty shall have provided written notice to the representing Party alleging that the representing Party was in breach of such representation or warranty when made, and that the benefitting party has suffered Losses as a result thereof (a “Notice of Claim”).

(c) If Buyer shall have timely delivered a Notice of Claim, Buyer may thereafter proceed to commence a proceeding therefor within sixty (60) days after the delivery of such Notice of Claim. If a court of competent jurisdiction, pursuant to an order in connection with such proceeding, determines that (i) Seller was in breach of a representation or warranty as of the date made, (ii) Buyer suffered Losses by reason of such breach, and (iii) Buyer did not have actual knowledge (as defined in Section 8.4) of such breach on or prior to the Closing Date, then the Buyer shall be entitled to receive an amount equal to its actual Losses. Notwithstanding the foregoing, exclusive of any adjustment and prorations pursuant to Section 10.4 and excluding Seller’s indemnification under Article 11, in no event shall Buyer be entitled to sue, seek, obtain or be awarded Losses from Seller, unless and until the aggregate amount of Losses for which Seller is liable to Buyer exceeds \$100,000 [*****INCREASE TO \$250,000 IF PURCHASE PRICE EXCEEDS \$10M*****], whereupon Buyer shall be entitled to the full amount of such Losses but in no event will Seller be liable to Buyer to the extent that the aggregate Losses to the Buyer exceed the sum of \$[*****TBD; GENERALLY SHOULD BE 1-3% OF THE PURCHASE PRICE*****] (the “Maximum Liability”).

(d) The provisions of this Section 12.4 shall survive the Closing.

ARTICLE 13

Local Law Provisions

This Agreement is subject to the additional provisions set forth in Schedule F attached hereto, including the allocation of Transfer Taxes and/or Owner’s Title Policy Premium costs (as applicable) among buyers and sellers of commercial properties that is either (a) required by Law and Regulations or (b) consistent with the local custom, in each case, of the state, county or other municipality in which the Property is located (collectively, the “Local Custom”). [*****FOR MULTIPLE PROPERTIES, REPLACE THE PRIOR SENTENCE WITH: This Agreement shall be subject to the additional terms and provisions set forth in Schedule F attached hereto, including the allocation of Transfer Taxes and/or Owner’s Title Policy Premium costs (as applicable) among buyers and sellers of commercial properties that is either (a) required by Law and Regulations or (b) consistent with the local custom, in each case, of the state, county or other municipality in which the Properties are located (collectively, the “Local Custom”), which additional terms and provisions shall only apply to the Properties in the applicable State.*****]

ARTICLE 14

Escrow

Section 14.1 Escrow Account. The funds represented by the Deposit may be, but shall not be required to be, held in escrow by Escrow Agent in an interest-bearing bank account with Citibank, N.A., JPMorgan Chase Bank, N.A. or any other bank in New York City that is a member of the New York City Clearinghouse Association (an “Approved Bank”). The Deposit: (a) shall become the property of Seller (i) upon the consummation of the Closing in accordance with the terms of this Agreement or (ii) after proper demand by Seller without objection from Buyer in the manner described below; (b) shall be returned to Buyer after proper demand by Buyer without objection from Seller in the manner described below; or (c) shall be delivered to Seller or Buyer in accordance with a final judgment, which is no longer subject to, or the subject of, an appeal of a court of competent jurisdiction directing the disposition of the Deposit. [*****DELETE THIS SECTION IF SIGN AND CLOSE*****]

Section 14.2 Demands; Reimbursement. [*****REVISE THIS SECTION TO ELIMINATE REFERENCES TO THE DEPOSIT IF SIGN AND CLOSE, BUT LEAVE SECTION OTHERWISE IN PLACE SINCE ESCROW AGENT STILL NEEDS PROTECTION IN CASE A PARTY SEEKS TO GET DOCUMENTS OUT OF ESCROW*****]

It is understood and agreed that Escrow Agent’s sole duties hereunder are as provided herein and that Escrow Agent, in the performance of its duties hereunder, is hereby released and exculpated from all liability except for willful misconduct or gross negligence and shall not be liable or responsible for anything done or omitted to be done in good faith as herein provided. If any Party makes a demand upon Escrow Agent, setting forth the basis for such demand, for payment of all or a portion of the Deposit, such Party shall deliver a concurrent copy thereof to the other Parties and the receiving Parties shall have five (5) Business Days after delivery of such notice to object to the release of the Deposit. If, before the expiration of such five (5) Business Day period, Escrow Agent does not receive a written objection to the proposed payment setting forth the basis for such objection, Escrow Agent is hereby authorized and directed to make such payment. If, before the expiration of such five (5) Business Day period, such other Party (or its counsel) delivers to Escrow Agent a written objection to such payment setting forth the basis for such objection, Escrow Agent shall promptly deliver a copy of such objection to the Party originally demanding payment, and shall continue to hold such amount until otherwise directed by the joint written instruction of the Parties or by a final judgment of a court of competent jurisdiction which is no longer subject to, or the subject of, an appeal. In the event that a dispute shall arise as to the disposition of all or any portion of the Deposit held by Escrow Agent, Escrow Agent shall, at its option, either (a) commence an action of interpleader and deposit the same with a court of competent jurisdiction, pending the decision of such court, and shall be entitled to rely upon the final judgment of any such court with respect to the disposition of all or any portion of the Deposit, provided that such judgment is no longer subject to, or the subject of, an appeal or (b) hold the same pending receipt of joint instructions from the Parties and shall be entitled to rely upon such joint instructions with respect to the disposition of all or any portion of the Deposit. Escrow Agent shall be entitled to consult with counsel and be reimbursed for all reasonable out-of-pocket costs and expenses of such consultation with respect to its duties as Escrow Agent, and shall be further entitled to be reimbursed for all reasonable out-of-pocket costs and expenses incurred in connection with such activities. All such expenses shall be paid by the Party whose position shall not be sustained.

Section 14.3 Reliance. Escrow Agent may act or refrain from acting in respect of any matter referred to herein, in full reliance upon and by and with the advice of counsel which may be selected by Escrow Agent, and shall be fully protected in so acting or so refraining from acting upon the advice of such counsel. Escrow Agent shall have the right to rely upon the certificates, notices and instruments delivered to it pursuant hereto, and all the signatures thereto or to any other writing received by Escrow Agent purporting to be signed by any party hereto, and upon the truth of the contents thereof. Escrow Agent shall not be bound by any modification of this Agreement which affects the rights or duties of Escrow Agent unless it shall have given its prior written consent thereto. Escrow Agent may, but shall not be required to, institute or defend any action or legal process involving any matter referred to herein which in any manner affects Escrow Agent or its duties or liabilities hereunder, but only (a) once requested to do so by any Party and (b) upon receiving full indemnity in an amount, and of such character, as Escrow Agent shall require, against any and all Losses of any kind in relation thereto.

Section 14.4 Indemnification. The Parties agree, jointly and severally, to defend and indemnify Escrow Agent and hold Escrow Agent harmless from any and all Losses, whether foreseen or unforeseen, and of every kind and nature, which may be incurred by Escrow Agent by reason of its acceptance of, and its performance under, this Agreement, except to the extent that such Losses arise by reason of the gross negligence or willful misconduct of Escrow Agent.

Section 14.5 Resignation. Escrow Agent may at any time resign hereunder by giving notice of its resignation to the Parties at least fifteen (15) days prior to the date specified for such resignation to take effect and, upon the effective date of such resignation, the Deposit shall be delivered by Escrow Agent to such Person as the Parties may have jointly designated in writing or to such Person as may be designated as hereinafter provided as the successor Escrow Agent, whereupon all duties and obligations of Escrow Agent named herein shall cease and terminate. If no such Person shall have been designated by the Parties by the date which is five (5) days prior to the date specified for such resignation to take effect, then Escrow Agent may designate an Approved Bank to act as escrow agent hereunder. *****INTENTIONALLY OMIT THIS SECTION IF SIGN AND CLOSE*****

Section 14.6 Taxes. Unless Seller retains the deposit pursuant to Section 12.2, Buyer shall pay all taxes on and with respect to the Deposit. Escrow Agent shall not be responsible for any diminution in value of the Deposit, the loss of any principal or interest thereon, or penalties incurred with respect thereto, for any reason whatsoever; provided that (a) the Deposit is held by Escrow Agent as provided in this Article 14 and (b) if Escrow Agent elects to invest the Deposit in in an interest bearing account, the Deposit is held with an Approved Bank. *****INTENTIONALLY OMIT THIS SECTION IF SIGN AND CLOSE*****

ARTICLE 15

Miscellaneous

Section 15.1 Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the Transaction, and it supersedes all prior discussions, understandings or agreements among Parties. All Exhibits and Schedules attached hereto are a part of this Agreement and are incorporated herein by reference.

Section 15.2 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 15.3 Assignment by Buyer. Without the prior written consent of Seller, Buyer shall not, directly or indirectly, assign this Agreement or any of its rights hereunder. Any attempted assignment in violation hereof shall, at the election of Seller, be of no force or effect and shall constitute a default by Buyer. Notwithstanding the foregoing, Buyer may assign its rights under this Agreement subject to the following conditions: (a) the assignment must be to a limited partnership, limited liability company or other entity controlled, and at least fifty percent (50%) of the legal and beneficial ownership of which, directly or indirectly, is owned, by a Person that, directly or indirectly, controls and owns at least fifty percent (50%) of the legal and beneficial ownership of Buyer as of the Effective Date (any such entity, a “Qualified Assignee”); (b) such Qualified Assignee must assume all of Buyer’s obligations hereunder in a manner reasonably acceptable to Seller and become jointly and severally liable with Buyer for all such obligations; and (c) at least five (5) Business Days prior to the proposed assignment, Buyer shall provide Seller with notice thereof and evidence that the foregoing conditions are satisfied. In addition, Buyer may direct Seller to convey the Property to a different entity formed by Buyer specifically for the purpose of taking title to the Property, provided that: (i) such entity must be a Qualified Assignee, (ii) such Qualified Assignee must assume all of Buyer’s obligations hereunder in a manner reasonably acceptable to Seller and become jointly and severally liable with Buyer for all such obligations, and (iii) Buyer shall give Seller written notice of the designated entities not less than five (5) Business Days before the Closing Date.

Section 15.4 Waiver. The excuse or waiver of the performance by a Party of any obligation of the other Party under this Agreement shall only be effective if evidenced by a written statement signed by the Party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any Party of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

Section 15.5 Governing Law; Jurisdiction.

(a) This Agreement and all documents executed and delivered in connection herewith shall be construed in accordance with the internal laws of the State of New York without regard to the principles of choice of law or conflicts of law.

(b) In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, the Parties hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement or which in any way relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement, the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.**

(c) Each of the Parties: (i) irrevocably submits itself to the jurisdiction of the courts of any state or federal court in the Borough of Manhattan, County of New York, State of New York,

for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith; (ii) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court; and (iii) consents to service of process by registered mail at the address to which notices are to be given if personal service is not with the exercise of reasonable efforts possible. The provisions of this Section 15.5 shall survive the Closing or termination of this Agreement.

Section 15.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. The exchange of signature pages by facsimile or Portable Document Format (“PDF”) transmission shall constitute effective delivery of such signature pages. Signatures of the Parties transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 15.7 Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (a) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a Business Day, on the Business Day next following such date), or (b) upon the delivery of a PDF via email transmission on a Business Day (or, if such date is not on a Business Day, on the Business Day next following such date), addressed as follows:

To Seller:

[_____]
[_____]
[_____]
Attention: [_____]
Email: [_____] .com

with a copy to:

[_____]
[_____]
[_____]
Attention: [_____]
Email: [_____] .com

with a copy to:

Milbank LLP
55 Hudson Yards
New York, New York 10001
Attention: Kevin O’Shea, Esq. and Kieran Murphy, Esq.
Email: koshea@milbank.com;
RENotice@milbank.com

Code and shall prepare and file all informational returns, including IRS Form 1099-S, and shall otherwise comply with the provisions of Section 6045(e) of the Code.

Section 15.10 Time Periods. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable. In the event the time for performance of any obligation hereunder expires on a day that is not a Business Day, the time for performance shall be extended to the next Business Day.

Section 15.11 Modification of Agreement. No modification of this Agreement shall be deemed effective unless in writing and signed by all Parties.

Section 15.12 Further Instruments. Each Party, promptly upon the request of the other, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions of this Agreement.

Section 15.13 Descriptive Headings; Word Meaning. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. Words such as “herein”, “hereinafter”, “hereof” and “hereunder” when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word “including” shall not be restrictive and shall be interpreted as if followed by the words “without limitation.”

Section 15.14 Time of the Essence. TIME IS OF THE ESSENCE TO THIS AGREEMENT AND TO ALL DATES AND TIME PERIODS SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, EACH PARTY’S OBLIGATION TO CONSUMMATE THE CLOSING ON THE APPLICABLE SCHEDULED CLOSING DATE, AS SAME MAY BE ADJOURNED AND/OR EXTENDED PURSUANT TO THE EXPRESS TERMS OF THIS AGREEMENT.

Section 15.15 Construction of Agreement. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that the Parties have contributed substantially and materially to the preparation of this Agreement.

Section 15.16 Limitations on Liability. Notwithstanding anything to the contrary in this Agreement, (a) subject to any additional limitations on Seller Parties’ liability set forth elsewhere in this Agreement, in no event shall any of the Seller Parties (other than Seller) or any of the direct or indirect owners of any of the Seller Parties (including Seller) have any personal liability under this Agreement and (b) subject to any additional limitations on Buyers’ liability set forth elsewhere in this Agreement, in no event shall any of the direct or indirect owners of Buyer have any personal liability under this Agreement. The acceptance of the Deed by the Buyer shall constitute full

performance of all of Seller's obligations hereunder other than those obligations of Seller, if any, that by the express terms hereof are to survive the Closing.

Section 15.17 Severability. The Parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. If, however, any provision in this Agreement is found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all Parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the Parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect.

Section 15.18 Press Releases; Seller Disclosure. The Parties hereto acknowledge and agree that the terms and conditions of this Agreement are proprietary and confidential in nature. Prior to the Closing, no Party shall issue or cause the publication of any press release or other public announcement or cause, permit or suffer any other disclosure which sets forth the terms of this Agreement or any other Confidential Information, without the express written consent of the other Parties; provided, however, that the foregoing shall not restrict: (a) the right of Buyer to disclose Confidential Information to the extent permitted under Section 6.2; (b) the right of Seller to provide the details of the Transaction (i) to its direct or indirect investors, lenders, property managers, asset managers, professional advisors and to the trust that owns an indirect ownership interest in the Properties and their respective employees, officers, directors, attorneys, accountants, lenders, trustees, prospective purchasers of interest in the Properties and/or any trust certificates evidencing ownership interests in such trust, rating agencies and other Persons (actual or prospective) who are or may be involved with Seller with respect to the Transaction; and/or (ii) to the extent that Seller is required to disclose Confidential Information by any Laws and Regulations or stock exchange rule or pursuant to a subpoena, court order or other legal proceeding in accordance with Section 6.2(b), but subject to the limitations in Section 6.2(b) as if the references therein to Buyer and Seller were to Seller and Buyer, respectively. If the Closing occurs, either Party may prepare a press release disclosing the Transaction and containing reasonable information following Closing, which shall be subject to the other Party's reasonable written approval prior to the issuance thereof. The provisions of this Section 15.18 shall survive the Closing or earlier termination of this Agreement.

Section 15.19 No Recording. The provisions hereof shall not constitute a lien on the Property. Neither Buyer nor its agents or representatives shall record or file this Agreement or any notice or memorandum hereof in any public records (other than the documents expressly contemplated in this Agreement to be recorded at the Closing). In addition, Buyer relinquishes any right to file all and any of the following against or in respect of the Property or any part thereof: (a) a *lis pendens* and any other notice of pendency of action (other than to the extent required by law to commence an action for specific performance of this Agreement pursuant to an express right to Buyer to commence such a proceeding); (b) a vendee's lien; and (c) any other Lien. If Buyer breaches the provisions of this Section, this Agreement shall, at Seller's election, terminate,

and Seller shall retain the Deposit in accordance with Section 12.2. The provisions of this Section 15.19 shall survive the Closing or termination of this Agreement.

Section 15.20 Joint and Several. If Seller or Buyer consists of more than one person or entity, the constituent parties of Seller or Buyer, as the case may be, shall be jointly and severally liable for the obligations of Seller or Buyer, as the case may be, under this Agreement and the other documents to be executed and delivered by Seller or Buyer at the Closing. In addition, a default by one or more constituent parties of Seller or Buyer, as the case may be, shall be deemed a default by Seller or Buyer, as the case may be.

[The balance of this page has intentionally been left blank. Signature pages follow.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

[_____] , a Delaware [limited liability
company/limited partnership]

By: _____
Name:
Title:

[Signatures continue on following page.]

BUYER:

[____], a [Delaware limited liability
company]

By: _____
Name:
Title:

[Signatures continue on following page.]

RECEIPT BY THE ESCROW AGENT

This Agreement, fully executed by both Seller and Buyer, has been received by Escrow Agent this ____ day of [____], 202[] and by execution hereof, Escrow Agent hereby covenants and agrees to be bound by the terms of this Agreement that are applicable to it.

ESCROW AGENT:

[] TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF DEED [*CONFORM TO APPLICABLE STATE***]**

DEED

[_____] ,
a [_____]

TO

[_____] ,
a [_____]

Dated: _____, 202[__]

Block:

Lots:

Address:

County:

Record and Return To:
[Buyer's Counsel]

DEED

THIS INDENTURE, made this ____ day of _____, 202[____], between [____], a [Delaware limited liability company], having an address [____] ("**Grantor**"), and [____], a [____] having an address at [____] ("**Grantee**").

WITNESSETH:

That Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby convey, grant and release unto Grantee, its heirs and successors and assigns, forever:

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being more particularly described on Exhibit A attached hereto and forming a part hereof, subject to all easements, covenants, conditions, restrictions and encumbrances of record.

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the above described premises to the center lines thereof;

TOGETHER with the appurtenances and all of the estate and rights of Grantor in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto Grantee, its heirs and successors and assigns, forever.

AND Grantor covenants that Grantor has not done or suffered anything to occur whereby said premises have been encumbered in any way whatsoever, except as aforesaid;

[**AND** Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.⁴

[SIGNATURE PAGE TO FOLLOW]

⁴ Note to Draft: To be updated for local law requirements.

IN WITNESS WHEREOF, Grantor has duly executed this Deed the day and year first above written.

GRANTOR:

[_____], a Delaware [limited liability company]

By: _____
Name:
Title:

[ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE]

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of _____ in the year 202[___] before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

My commission expires:

EXHIBIT A
LEGAL DESCRIPTION

[See attached.]

EXHIBIT B

FORM OF BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that _____, a _____, a _____ (“**Seller**”), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by _____, a _____ (“**Buyer**”), the receipt and sufficiency of which are hereby acknowledged, hereby sells, conveys, assigns, transfers, delivers and sets over to Buyer all of Seller’s right, title and interest, if any, in and to all Personal Property (as such term and all other capitalized terms used and not otherwise defined herein are defined in that certain Purchase and Sale Agreement between Seller, as seller, and [Buyer], as buyer, dated as of _____, 202[] (the “**Purchase Agreement**”)) attached or affixed to, or located on, or used or employed in connection with, the Real Property and excluding the Excluded Items.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns to and for its and their own use and behalf forever.

Buyer agrees to pay all sales taxes payable by reason of the transfer to Buyer of said Personal Property.

BUYER ACKNOWLEDGES THAT THE PERSONAL PROPERTY IS HEREBY SOLD, ASSIGNED, TRANSFERRED AND CONVEYED TO BUYER ON AN “AS IS”, “WHERE IS”, “WITH ALL FAULTS” BASIS, WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY, PROMISE, PROJECTION OR PREDICTION WHATSOEVER WITH RESPECT TO SUCH PERSONAL PROPERTY, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR SELLER’S EXPRESS REPRESENTATIONS SET FORTH IN THE PURCHASE AGREEMENT.

This Bill of Sale may be executed in any number of counterparts which, when taken together, shall constitute a single binding instrument. Execution and delivery of this Bill of Sale by transmission of a signed signature page by facsimile or PDF shall be sufficient for all purposes and shall be binding on any Person who so executes.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Seller and Buyer have executed this Bill of Sale as of
this _____ day of _____, 202[___].

SELLER:

[SELLER ENTITY]

By: _____

Name: _____

Title: _____

BUYER:

[BUYER ENTITY]

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF OMNIBUS ASSIGNMENT

THIS OMNIBUS ASSIGNMENT (CONTRACTS AND OTHER PROPERTY RIGHTS) (this "Assignment"), is made and entered into as of the ____ day of _____, 202[] (the "Effective Date") by _____, a _____, ("Assignor") for the benefit of _____, a _____ ("Assignee").

W i t n e s s e t h:

For Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in, to and under: (a) any strips and gores of land within or adjoining the Land (as this and all other capitalized terms used and not otherwise defined herein are defined in that certain Purchase and Sale Agreement between Assignor, as seller, and [Assignee], as buyer, dated as of [], 202[] (the "Purchase Agreement")), and any land lying in the bed of any street, road or avenue, opened or proposed, public or private, in front of or adjoining the Real Property or any portion thereof, to the center line thereof, and all awards made or to be made in lieu thereof and any unpaid award for damage to the Real Property by reason of change of grade of any street; (b) all Personal Property; (c) all easements, rights of way, privileges, licenses, appurtenances and other rights and benefits now or hereafter pertaining to the Land, including, without limitation, any air or development and zoning rights or privileges and easements relating to, affecting or appurtenant to the Land or any portion thereof; (d) the New Lease and all Subleases relating to the Real Property, [all security deposits and advance rentals made thereunder and any guarantees related thereto; (e) all Assigned Service Contracts;] (f) all consents, authorizations, variances, licenses, permits and certificates of occupancy, if any, issued by any Governmental Authorities with respect to the Real Property; (g) all intangible property associated with the Real Property, including, without limitation, trademarks, logos, trade or business names, copyrights, mailing lists, internet domain names, promotional materials, business licenses and telephone numbers, if any, owned by or licensed to Seller and used by Seller with respect to its ownership, leasing and/or use or operation of the Real Property; (h) all warranties, guaranties, indemnities and bonds relating to the Real Property; (i) all site plans, architectural renderings, plans and specifications, as-built drawings, floor plans and other similar plans or diagrams relating to the Real Property; and (j) all other assets relating to or benefiting the Real Property or the ownership, occupancy, operation, maintenance and/or repair thereof (collectively, the "Assigned Property").

TO HAVE AND TO HOLD unto Assignee and its successors and assigns to its and their own use and benefit forever.

THIS ASSIGNMENT IS MADE ON AN “AS-IS, WHERE-IS, WITH ALL FAULTS” BASIS, WITHOUT RECOURSE AND WITHOUT ANY REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER EXCEPT FOR THE REPRESENTATIONS OF SELLER EXPRESSLY SET FORTH IN THE PURCHASE AGREEMENT.

This Assignment is binding on, and inures to the benefit of, the parties hereto and their respective successors and assigns.

This Assignment may be executed in any number of counterparts which, when taken together, shall constitute a single binding instrument. Execution and delivery of this Assignment by transmission of a signed signature page by facsimile or PDF shall be sufficient for all purposes and shall be binding on any Person who so executes.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

_____, a

By: _____
Name:
Title:

EXHIBIT D
FORM OF NEW LEASE

[See attached.]

EXHIBIT E

[FORM OF TENANT ESTOPPEL CERTIFICATE]⁵

[INSERT NAME AND ADDRESS]

Ladies and Gentlemen:

Reference is made to that certain Retail Master Lease made as of December 7, 2020, by and between J. C. Penney Corporation, Inc., J. C. Penney Properties, LLC, and JCPenney Puerto Rico, Inc., as landlord (the "Landlord"), and Penney Tenant I LLC, as tenant (the "Tenant"), (as amended by those certain amendments and other documents listed on Exhibit A, the "Lease"). At [Tenant's][Landlord's] request, the undersigned hereby certifies, represents and warrants to [Tenant][Landlord] and _____ (collectively, the "Reliance Parties"), as follows:

1. A list of all documents constituting the Lease is set forth on Exhibit A hereto.
2. The Lease is in full force and effect and has not been amended, supplemented or terminated in whole or in part except as indicated on Exhibit A.
3. The term of the Lease commenced on _____, and expires on _____.
4. [Tenant (through Master Subtenant (as defined in the Lease)) is currently in occupancy of the premises (the "Leased Premises") leased to it pursuant to the Lease, and has not entered into any subleases of the Leased Premises other than that certain Master Sublease dated as of December __, 2020, by and among Tenant and certain affiliates of Tenant, collectively, as sublandlord, and Master Subtenant, as subtenant. Master Subtenant has not entered into any further subleases of the Leased Premises other than those subleases set forth on Exhibit B.]⁶
5. The monthly base rent due under the Lease is \$[_____] and such base rent has been paid through the monthly payment due on [_____].
6. To the extent billed to Tenant by Landlord, the additional rent due under the Lease has been paid through [_____].
7. Tenant has made no payments of base rent more than one month in advance.
8. Tenant is not entitled to any rent allowances, concessions or reductions or any period(s) of rent-free occupancy of the Leased Premises other than as set forth in the Lease.

⁵ Note to Draft: Please confirm whether any references to the Master Lease are necessary.

⁶ Tenant Estoppel only.

9. Tenant has deposited the sum of \$0.00 with Landlord as security for the performance of its rent and other obligations under the Lease.

10. Landlord is not required to perform any work to prepare the Leased Premises for Tenant's occupancy, and the Leased Premises has been accepted by Tenant without reservation for any such work.

11. To [Tenant's][Landlord's] knowledge, there is no default now existing of Tenant or of Landlord under the Lease.

12. [Tenant][Landlord] has not given [Landlord][Tenant] any outstanding notice of any event or circumstance that, with the giving of notice or the passage of time, or both, would constitute a default by [Landlord][Tenant] in the performance of any covenant, agreement, obligation or condition contained in this Lease.

13. [There are no proceedings pending or, to Tenant's knowledge, threatened against any Tenant Party (as defined in the Lease) before any court or administrative agency which, if adversely decided, would materially and adversely affect the financial condition or operations of the Tenant Parties and/or any of the Leased Premises other than the proceedings listed on Exhibit B.]⁷

14. [To Tenant's knowledge, Tenant has no defenses, offset, claim or counterclaim against Landlord under the Lease or against the obligations of Tenant under the Lease.]⁸

15. Other than to the extent expressly set forth in the Lease, Tenant has no renewal, extension or expansion option, no right of first offer or right of first refusal and no other similar right to purchase, renew or extend the term of the Lease or expand the property demised thereunder.

16. The undersigned is duly authorized to execute this Estoppel Certificate on behalf of [Tenant][Landlord].

17. This Estoppel Certificate may be relied upon by the Reliance Parties and their respective successors and assigns as of its date of delivery. Notwithstanding the foregoing, the undersigned disclaims any obligations to update this Estoppel Certificate if any matters arise subsequent to its delivery that would alter any statement set forth herein.

Very truly yours,

⁷ Tenant Estoppel only.

⁸ Tenant Estoppel only.

Dated _____, 20__ [_____]

By: _____

Name:

Title:

EXHIBIT F

FORM OF OWNER'S TITLE AFFIDAVIT

[See attached.]

EXHIBIT G

FORM OF SETTLEMENT STATEMENT

[See attached.]

EXHIBIT H
FORM OF FIRPTA CERTIFICATE

[_____] , 202[]

Section 1445 of the Internal Revenue Code of 1986, as amended (the “Code”), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [SELLER ENTIT(Y)/(IES)], a [Delaware limited liability company/limited partnership (“Seller”), the undersigned hereby certifies under penalties of perjury the following on behalf of Seller:

- (a) Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Treasury Regulations);
- (b) Seller is [not] a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii);
- (c) Seller’s U.S. employer identification number is [_____] ; and
- (d) Seller’s office address is [_____].

Seller understands that this certification may be disclosed to the Internal Revenue Service [by and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Seller:

[SELLER ENTIT(Y)/(IES)],
a [Delaware limited liability company/limited partnership]

By: _____

Name:

Title:

DATE: _____

EXHIBIT I

FORM OF SELLER CLOSING UPDATE CERTIFICATE

Pursuant to that certain Purchase and Sale Agreement dated as of [____], 202[] (the “Agreement”) by and among [SELLER ENTIT(Y)/(IES)] (“Seller”) and [BUYER ENTITY] (“Buyer”) and subject to and in accordance with the terms and provisions thereof, Seller hereby certifies to Buyer that, as of the date hereof, the representations and warranties made by it in Section 8.2 of the Agreement continue to be true and correct [except for the following: _____].

Seller:

[SELLER ENTIT(Y)/(IES)],
a [Delaware limited liability company/limited partnership]

By: _____

Name:

Title:

DATE: _____

EXHIBIT J

FORM OF BUYER CLOSING UPDATE CERTIFICATE

Pursuant to that certain Purchase and Sale Agreement dated as of [____], 202[] (the “Agreement”) by and among [SELLER ENTIT(Y)/(IES)] (“Seller”) and [BUYER ENTITY] (“Buyer”) and subject to and in accordance with the terms and provisions thereof, Buyer hereby certifies to Seller that, as of the date hereof, the representations and warranties made by Buyer in Section 8.1 of the Agreement continue to be true and correct [except for the following: _____].

Buyer:

[BUYER ENTITY],
a [Delaware limited liability company]

By: _____

Name:

Title:

DATE: _____

EXHIBIT K

*****FORM OF GROUND LEASE ESTOPPEL*****

[NAME AND ADDRESS OF GROUND LESSOR]

[_____]

Re: [Insert Property Address] (the “Property”)

Ladies and Gentlemen:

Reference is made to that certain [Ground Lease], dated as of [_____, 202[0], by and between [_____, a [_____] (“Lessor”), as ground lessor, and [_____, a [_____] (“Lessee”), as ground lessee, as amended by those certain amendments and other documents listed on Schedule A attached hereto and made a part hereof (as amended, the “Lease”) with respect to that certain property commonly known as [_____] and more particularly described on Exhibit A. At Lessee’s request, the undersigned hereby certifies to Lessee, to [_____, the proposed assignee of Lessee’s leasehold interest (the “Leasehold Estate”) under the Lease (the “Buyer”), and Buyer’s mortgage and mezzanine lenders (collectively, the “Reliance Parties”) (this certificate, the “Estoppel Certificate”), as follows:

1. A list of all documents constituting the Lease is set forth on Schedule A.
2. The Lease is in full force and effect and has not been amended or terminated in whole or in part except as indicated on Schedule A.
3. The term of the Lease commenced on [_____] and expires on [_____, subject to remaining renewal options as set forth in the Lease.
4. Except for [_____, all rent due under the Lease is current through [_____, 202[]. The current base rent under the Lease is as set forth on Schedule A; the current base year and operating expense payment information is as set forth on Schedule A. Lessee has not paid any rent in advance.
5. Lessee has not paid or delivered any letter of credit or security or other deposit with respect to the Lease that remains outstanding, except as set forth on Schedule A.
6. To Lessor’s actual knowledge, there are no events or conditions presently existing which with or without notice or lapse of time, or both, would (a) constitute a monetary or other default of Lessee or Lessor under the Lease, (b) entitle Lessor or Lessee to terminate the Lease or entitle Lessee to make claims against Lessor or any assignee thereof for any reason or (c) entitle Lessor to exercise any purchase option, right of first offer, right of first refusal or other similar right to acquire all or any portion of Lessee’s Leasehold Estate, in each case, except as follows: [_____].

7. If Buyer (at any time that it owns the Leasehold Estate) so requests in a written notice delivered to Lessor in accordance with the Lease and setting forth the name and notice address of any mortgage or mezzanine lender of Buyer, then Lessor shall deliver to such lender at such notice address, concurrently with the delivery thereof to Buyer, a copy of any default notice given by Lessor to Buyer pursuant to the Lease.

8. The undersigned is duly authorized to execute this Estoppel Certificate on behalf of Lessor.

9. This Estoppel Certificate may be relied upon by the Reliance Parties and their respective successors and assigns.

10. The foregoing certifications shall not be deemed to be an affirmative representation, warranty, or covenant and shall in no event subject the undersigned to any liability whatsoever, the sole effect of the same being to estop Lessor from taking a position against any Reliance Party that is inconsistent with the statements contained in this Estoppel Certificate to the extent (a) such recipient did not have actual knowledge of facts contrary to those contained herein and (b) Lessor's taking of such position would adversely affect such recipient.

[Signature page follows]

Dated _____, 20__

Very truly yours,

[LESSOR]

By: _____
Name:
Title:

Exhibit A
Legal Description

Schedule A

Lease Documents

1. Documents constituting the Lease:
 1. [_____].
2. The current monthly base rent under the Lease: [_____]. If applicable, Lessee's current monthly obligations for operating expenses, taxes and insurance, respectively, are (a) [_____] (for operating expenses), (b) [_____] (for taxes) and (c) [_____] (for insurance).
3. Security or other deposits currently held by Landlord: [_____].
4. Letters of credit currently held by Landlord: [_____]

EXHIBIT L

*****FORM OF REA ESTOPPEL*****

[NAME AND ADDRESS OF MALL OWNER]

[_____]

Re: [Insert Name of Shopping Center] (the "Shopping Center")

Ladies and Gentlemen:

Reference is made to (a) that certain [Reciprocal Easement Agreement] described on Exhibit A attached hereto (the "REA") in effect among [____], as successor-in-interest to [J.C. Penney] (the "JCP Parcel Owner"), [____] (the "Mall Owner"), and certain other parties reflected on Exhibit A and (b) that certain parcel of real property described on Exhibit B attached hereto (the "JCP Parcel"). At JCP Parcel Owner's request, the undersigned hereby certifies to [____], the proposed buyer of the JCP Parcel (the "Buyer"), and Buyer's mortgage and mezzanine lenders (collectively, the "Reliance Parties"), as follows:

1. A list of all documents constituting the REA is set forth on Exhibit A hereto.
2. The REA is in full force and effect and has not been amended, supplemented or terminated in whole or in part except as indicated on Exhibit A.
3. [Except for the amount of [\$____] in respect of [____]], all amounts due from JCP Parcel Owner to Mall Owner under the REA are current as of [____].
4. To Mall Owner's actual knowledge, there are no events or conditions presently existing which with or without notice or lapse of time, or both, would (a) constitute a monetary or other default of Mall Owner or JCP Parcel Owner under the REA, (b) entitle Mall Owner or JCP Parcel Owner to terminate the REA or (c) entitle Mall Owner to exercise any purchase option, right of first offer, right of first refusal or other similar right to acquire all or any part of the JCP Parcel or any interest therein, in each case except as follows: [____].
5. To Mall Owner's actual knowledge, Mall Owner has no outstanding defense, offset, or claim against JCP Parcel Owner under the REA, except as set forth in paragraph 3 above.
6. The undersigned has been duly authorized to execute this Estoppel Certificate on behalf of Mall Owner.
7. This Estoppel Certificate may be relied upon by the Reliance Parties and their respective successors and assigns.
8. The foregoing certifications shall not be deemed to be an affirmative representation, warranty, or covenant and shall in no event subject the undersigned to any liability whatsoever, the sole effect of the same being to estop Mall Owner from taking a position against any Reliance

Party that is inconsistent with the statements contained in this Estoppel Certificate to the extent (a) such recipient did not have actual knowledge of facts contrary to those contained herein and (b) Lessor's taking of such position would adversely affect such recipient.

Very truly yours,

Dated _____, 20__

[MALL OWNER]

By: _____

Name:

Title:

Exhibit A

REA Documents

Documents constituting the REA:

[_____]

Exhibit B

Legal Description

SCHEDULE A

LEGAL DESCRIPTION OF PROPERTY

[See attached.]

SCHEDULE B

PROPERTY ADDRESS(ES) AND BASE RENT

[*IF MULTIPLE PROPERTIES, ALSO ADD IN SELLER NAME FOR EACH
PROPERTY AND ALLOCABLE PURCHASE PRICE AMOUNTS***]**

Property Address

Base Rent as of Effective Date

[_____]

[\$[_____] per annum (subject to escalation as provided in the
New Lease)]

SCHEDULE C

*****GROUND LEASE*****

That certain [Ground Lease] dated as of [_____] between [____], as ground lessor (“[Original] Ground Lessor”) and [____], as ground lessee (“[Original] Ground Lessee”), as amended pursuant to the following documents: [***describe amendments here and, if the current Ground Lessor and/or Ground Lessee was not a party to the original Ground Lease, define them as follows: ([name of current Ground Lessor/Ground Lessee], as successor-in-interest to Original Ground Lessor/Original Ground Lessee, “Ground Lessor/Ground Lessee”)***)***]

SCHEDULE D

SERVICE CONTRACTS

[If blank, none.]

SCHEDULE E

TITLE COMMITMENT

[See attached.]

SCHEDULE F

LOCAL LAW PROVISIONS

[To be provided by Local Counsel]

The following provisions apply to the Property(ies) (and only to the Property(ies)) located in the State of [____]:

The following provisions apply to the Property(ies) (and only to the Property(ies)) located in the State of [____]:

SCHEDULE G

*****REA*****

[See attached.]

Exhibit E: Form of Registration Rights and Resale Cooperation Agreement

[Attached]

REGISTRATION RIGHTS AND RESALE COOPERATION AGREEMENT

This Registration Rights and Resale Cooperation Agreement (including all exhibits hereto and as may be amended, supplemented or amended and restated from time to time in accordance with the terms hereof, this “**Agreement**”) is made and entered into as of [●], 2021, by and between Copper Property CTL Pass Through Trust (the “**Trust**”) and Copper Bidco LLC (“**Bidco**”) on behalf of the Certificateholders from time to time (as defined below).

WHEREAS, the Amended and Restated Pass Through Trust Agreement, dated as of January 30, 2021, by and between GLAS Trust Company LLC, as trustee (the “**Trustee**”), and Bidco (the “**Trust Agreement**”) provides that the Trust will enter into a registration rights and resale cooperation agreement with the Trustee and Bidco for the benefit of Certificateholders and any Affiliates or Related Funds thereof that receive Trust Certificates;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Trust and each of the Certificateholders agree as follows:

1.

(a) Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Trust Agreement have the meanings given such terms in the Trust Agreement. As used in this Agreement, the following terms shall have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made (including any Related Funds of such Person). For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“*Automatic Shelf Registration Statement*” means an “automatic shelf registration statement” as defined in Rule 405 promulgated under the Securities Act, as such definition may be amended from time to time.

“*beneficially own*” (and related terms such as “beneficial ownership” and “beneficial owner”) shall have the meaning given to such term in Rule 13d-3 under the Exchange Act, and any Person’s beneficial ownership of securities shall be calculated in accordance with the provisions of such Rule.

“*Business Day*” means any day other than a Saturday, a Sunday or a day on which commercial banks are required or authorized to close in New York, New York, or, so long as any Trust Certificate is outstanding, the city and state in which the Trustee maintains its Corporate Trust Office or receives and disburses funds.

“*Certificateholder*” or “*Certificateholders*” means any holder of Trust Certificates.

“*Commission*” means the Securities and Exchange Commission.

“*Counsel to the Majority Participating Certificateholders*” means with respect to any (i) Demand Registration, the counsel selected by the Demanding Certificateholder, (ii) Underwritten Takedown, the counsel selected by the Majority Participating Eligible Certificateholders and (iii) any cooperation in third party sales pursuant to Section 13, the counsel selected by the Majority Participating Eligible Certificateholders.

“*Demanding Certificateholder*” means, with respect to any Demand Registration, the Eligible Certificateholder initially requesting such Demand Registration.

“*Disallowed Transferee*” means any of (i) the Debtors, (ii) Simon Property Group, Brookfield Asset Management, Penney Intermediate Holdings LLC or any tenant of a Retail Property or DC Property, (iii) the Trustee, the Manager, the Financial Advisor, any Real Estate Broker or any other advisor engaged by or on behalf of the Trust at any time during the term of this Trust Agreement (including without limitation, any Leasing Agents or Property Managers) or (iv) any Affiliate of or any successors in interest to the foregoing Persons.

“*Effective Date*” means the date that a Registration Statement filed pursuant to this Agreement is first declared effective by the Commission.

“*Eligible Certificateholder*” means any Certificateholder that, together with its Affiliates, holds at least 9% of the Registrable Certificates.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“*Form S-3*” means Form S-3 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-3.

“*Form S-4*” means Form S-4 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-4.

“*Form S-8*” means Form S-8 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-8.

“*Form S-11*” means Form S-11 under the Securities Act, or any other form hereafter adopted by the Commission for the general registration of securities under the Securities Act.

“*Fractional Undivided Interests*” means the fractional undivided interest in the Trust that is evidenced by a Certificate relating to the Trust.

“*Majority Participating Eligible Certificateholders*” means, with respect to any Underwritten Offering, Eligible Certificateholders representing a majority of the Registrable Certificates to be included in such Underwritten Offering held by all Eligible Certificateholders that have made the request requiring the Trust to conduct such Underwritten Offering.

“*Manager*” has the meaning given thereto in the Trust Agreement.

“*Person*” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“*Proceeding*” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“*Prospectus*” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Certificates covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“*Registrable Certificates*” means, collectively, (a) as of the date of this Agreement, all Trust Certificates issued, and any additional Trust Certificates issued or issuable after the date of this Agreement and (b) any additional Trust Certificates paid, issued or distributed in respect of any such securities by way of a stock dividend, stock split or distribution, or in connection with a combination of securities, and any security into which such Trust Certificates shall have been converted or exchanged in connection with a recapitalization, reorganization, reclassification, merger, consolidation, exchange, distribution or otherwise; *provided, however*, that as to any Registrable Certificates, such securities shall cease to constitute Registrable Certificates upon the date on which such securities are disposed of pursuant to an effective Registration Statement.

“*Registration Statement*” means any one or more registration statements of the Trust filed under the Securities Act that covers the resale of any of the Registrable Certificates pursuant to the provisions of this Agreement (including, without limitation, any Shelf Registration Statement), amendments and supplements to such registration statements, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such Registration Statements.

“*Related Fund*” means, with respect to any Certificateholder and its Affiliates (i) any investment funds or other entities who are advised by the same investment advisor, (ii) any investment funds or other entities who are managed by the same manager, (iii) their respective accounts, funds and investment vehicles advised or managed by such Certificateholder or its Affiliates.

“*Rule 144*” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 144A*” means Rule 144A promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 158*” means Rule 158 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 415*” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 424*” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Selling Certificateholder Questionnaire*” means a questionnaire reasonably adopted by the Trust from time to time.

“*Shelf Registration Statement*” means a Registration Statement filed with the Commission in accordance with the Securities Act for the offer and sale of Registrable Certificates by Certificateholders on a continuous or delayed basis pursuant to Rule 415.

“*Trading Day*” means a day during which trading in the Trust Certificates occurs in the Trading Market, or if the Trust Certificates are not listed on a Trading Market, a Business Day.

“*Trading Market*” means whichever of the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, or one of the markets operated by OTC Markets Group on which the Trust Certificates are listed or quoted for trading on the date in question.

“*Trust*” has the meaning set forth in the Preamble and includes the Trust’s successors under the Trust Agreement.

“*Trust Certificates*” means the pass-through certificates of the Trust to be issued pursuant to the Trust Agreement.

“*Underwritten Offering*” means an offering of Registrable Certificates under a Registration Statement in which the Registrable Certificates are sold to an Underwriter for reoffering to the public.

(b) Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Advice”	Section 17(c)
“Agreement”	Recitals
“Cooperation Grace Period”	Section 14(a)(B)
“Demand Registration”	Section 2(a)
“Demand Registration Request”	Section 2(a)
“FINRA”	Section 7
“Indemnified Party”	Section 8(c)
“Indemnifying Party”	Section 8(c)
“Initial Shelf Expiration Date”	Section 2(e)
“Initial Shelf Registration Statement”	Section 2(a)
“Losses”	Section 8(a)
“Registration Grace Period”	Section 5(a)(B)
“Transfer”	Section 10
“Trust Agreement”	Recitals
“Underwriters”	Section 4(a)
“Underwritten Takedown”	Section 2(i)

2. Demand Registration; Initial Shelf Registration.

(a) At any time and from time to time beginning one hundred twenty (120) days after the date of this Agreement, any Eligible Certificateholder or group of Eligible Certificateholders may request in writing (“***Demand Registration Request***”) that the Trust effect the registration of all or part of such Eligible Certificateholder’s or Eligible Certificateholders’ Registrable Certificates with the Commission under and in accordance with the provisions of the Securities Act (a “***Demand Registration***”). Upon the occurrence of the first such Demand Registration Request, the Trust shall, with the cooperation of the Manager, prepare a Shelf Registration Statement (as may be amended from time to time, the “***Initial Shelf Registration Statement***”), on or prior to the 60th day following a Demand Registration Request, and shall use its reasonable best efforts to cause such Registration Statement to be declared effective, as promptly as practicable after receipt of such request. The Trust shall include in the Initial Shelf Registration Statement the Registrable Certificates of each Certificateholder holding at least 0.5% of the outstanding Registrable Certificates who shall request inclusion therein of some or all of their Registrable Certificates by written notice to the Trust so long as such Certificateholders otherwise timely comply with the requirements of this Agreement with respect to the inclusion of such Registrable Certificates in the Initial Shelf

Registration Statement; *provided, however*, that the Trust will not be required to file a Registration Statement pursuant to this Section 2(a):

(A) unless (i) the number of Registrable Certificates requested to be registered on such Registration Statement equals at least (x) 15% of all Registrable Certificates at such time (if no Initial Shelf Registration Statement has been filed and declared effective) or (y) 10% of all Registrable Certificates at such time (if an Initial Shelf Registration Statement has been filed and declared effective) and (ii) the Registrable Certificates requested to be sold by the Certificateholders pursuant to such Registration Statement have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$50 million;

(B) if the Registrable Certificates requested to be registered are already covered by an existing and effective Registration Statement and such Registration Statement may be utilized for the offer and sale of the Registrable Certificates requested to be registered;

(C) if a registration statement filed by the Trust shall have previously been declared effective by the Commission within: (i) the one hundred twenty (120) days preceding the date such Demand Registration Request is made, in the case of the first such Demand Registration Request and (ii) the ninety (90) days preceding the date such Demand Registration Request is made, in the case of all subsequent Demand Registration Requests; and

(D) if the number of Demand Registration Requests previously made pursuant to this Section 2(a) shall exceed ten (10).

(b) A Demand Registration Request shall specify (i) the then-current name and address of such Eligible Certificateholder or Eligible Certificateholders, (ii) the aggregate number of Registrable Certificates requested to be registered, (iii) the total number of Registrable Certificates then beneficially owned by such Eligible Certificateholder or Eligible Certificateholders, and (iv) the intended means of distribution. If at the time the Demand Registration Request is made the Trust appears, based on public information available to such Eligible Certificateholder or Eligible Certificateholders, eligible to use Form S-3 for the offer and sale of the Registrable Certificates, the Eligible Certificateholder or Eligible Certificateholders making such request may request that the registration be in the form of a Shelf Registration Statement (for the avoidance of doubt, the Trust shall not be under the obligation to file a Shelf Registration on Form S-3 if, upon the reasonable opinion of its counsel, it is not eligible to make such a filing).

(c) The Trust may satisfy its obligations under Section 2(a) hereof by amending (to the extent permitted by applicable law) any registration statement previously filed by the Trust under the Securities Act, so that such amended registration statement will permit the disposition (in accordance with the intended methods of disposition specified as aforesaid) of all of the Registrable Certificates for which a Demand Registration Request has been properly made under Section 2(a)(A) hereof. If the Trust so amends a previously filed registration statement, it will be deemed to have effected a registration for purposes of Section 2(a) hereof; *provided, however*,

that the Effective Date of the amended registration statement, as amended pursuant to this Section 2(c), shall be the “the first day of effectiveness” of such Registration Statement for purposes of determining the period during which the Registration Statement is required to be maintained effective in accordance with Section 2(e) hereof.

(d) Within seven (7) days after receiving a Demand Registration Request, the Trust shall give written notice of such request to all other Certificateholders of Registrable Certificates and shall, subject to the provisions of Section 4(c) in the case of an Underwritten Offering, include in such registration all such Registrable Certificates held by Certificateholders holding at least 0.5% of the outstanding Registrable Certificates with respect to which the Trust has received written requests for inclusion therein within twenty (20) days after the giving of such notice, *provided* that such Registrable Certificates are not already covered by an existing and effective Registration Statement that may be utilized for the offer and sale of the Registrable Certificates requested to be registered in the manner so requested.

(e) The Trust will use its reasonable best efforts to cause the Initial Shelf Registration Statement to be declared effective by the Commission as promptly as practicable, and shall use its reasonable best efforts to keep a Registration Statement that has become effective as contemplated by this Section 2 continuously effective, and not subject to any stop order, injunction or other similar order or requirement of the Commission:

(A) in the case of a Registration Statement other than a Shelf Registration Statement, until all Registrable Certificates registered thereunder have been sold pursuant to such Registration Statement, but in no event later than two hundred seventy (270) days from the Effective Date of such Registration Statement; and

(B) in the case of a Shelf Registration Statement, until the earlier of: (x) three (3) years following the Effective Date of such Shelf Registration Statement; and (y) the date that all Registrable Certificates covered by such Shelf Registration Statement shall cease to be Registrable Certificates (such earlier date, the “***Initial Shelf Expiration Date***”);

provided, however, that in the event of any stop order, injunction or other similar order or requirement of the Commission relating to any Shelf Registration Statement, if any Registrable Certificates covered by such Shelf Registration Statement remain unsold, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which such stop order, injunction or similar order or requirement is in effect; *provided further, however*, that if any Shelf Registration Statement was initially declared effective on Form S-3 and, prior to the date determined pursuant to Section 2(e)(B), the Trust becomes ineligible to use Form S-3, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which the Trust did not have an effective Registration Statement covering unsold Registrable Certificates initially registered on such Shelf Registration Statement.

(f) The Initial Shelf Registration Statement shall be on Form S-11; *provided, however*, that, if the Trust becomes eligible to register the Registrable Certificates for resale by the Certificateholders on Form S-3 (including without limitation a Form S-3 filed as an

Automatic Shelf Registration Statement), the Trust shall be entitled to amend the Initial Shelf Registration Statement to a Shelf Registration Statement on Form S-3 or file a Shelf Registration Statement on Form S-3 in substitution of the Initial Shelf Registration Statement as initially filed.

(g) If the Initial Shelf Registration Statement is on Form S-11, then for so long as any Registrable Certificates covered by the Initial Shelf Registration Statement remain unsold, the Trust will, with the cooperation of the Manager, file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law, any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Trust with the Commission, or any other information necessary so that (i) the Initial Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (ii) the Trust complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided, however*, that these obligations remain subject to the Trust's rights under Section 6 of this Agreement.

(h) The Eligible Certificateholder or Eligible Certificateholders making a Demand Registration Request may, at any time prior to the Effective Date of the Registration Statement relating to such registration, revoke their request for the Trust to effect the registration of all or part of such Eligible Certificateholder's or Eligible Certificateholders' Registrable Certificates by providing a written notice to the Trust. If, pursuant to the preceding sentence, either (i) the entire Demand Registration Request is revoked or (ii) all Eligible Certificateholders have revoked their Demand Registration Request, then, at the option of the Eligible Certificateholder or Eligible Certificateholders who revoke such request, either (x) such Eligible Certificateholder or Eligible Certificateholders shall reimburse the Trust for all reasonable and documented out-of-pocket expenses incurred by each of the Trust and the Manager in the preparation, filing and processing of the Registration Statement, which out-of-pocket expenses, for the avoidance of doubt, shall not include overhead expenses and which requested registration shall not count as one of the permitted Demand Registration Requests hereunder or (y) the requested registration that has been revoked will be deemed to have been effected for purposes of Section 3.

(i) Upon the demand of one or more Eligible Certificateholders, the Trust shall, with the cooperation of the Manager, facilitate a "takedown" of Registrable Certificates in the form of an Underwritten Offering (each, an "***Underwritten Takedown***"), in the manner and subject to the conditions described in Section 4 of this Agreement, *provided* that (i) the number of securities included in such "takedown" shall equal at least 25% of all Registrable Certificates at such time and (ii) the Registrable Certificates requested to be sold by the Certificateholders in such "takedown" shall have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$75 million.

3. Subsequent Shelf Registration Statements. After the Initial Shelf Expiration Date and for so long as any Registrable Certificates remain outstanding, if there is not an effective Registration Statement which includes the Registrable Certificates that are currently outstanding, following a Demand Registration Request the Trust shall, with the cooperation of the Manager,

(i) if the Trust is eligible to register the Registrable Certificates on Form S-3, promptly file a Shelf Registration Statement on Form S-3 and use reasonable best efforts to cause such Registration Statement to be declared effective or (ii) promptly file a Shelf Registration Statement on Form S-11 and use reasonable best efforts to cause such Registration Statement to be declared effective and for so long as any Registrable Certificates covered by such Shelf Registration on Form S-11 remain unsold, the Trust will, with the cooperation of the Manager, file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law, any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Trust with the Commission, or any other information necessary so that (x) such Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (y) the Trust complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided, however*, that these obligations remain subject to the Trust's rights under Section 6 of this Agreement.

4. Procedures for Underwritten Offerings. The following procedures shall govern Underwritten Offerings pursuant to Section 2(h), whether in the case of an Underwritten Takedown or otherwise.

(a) (i) The Majority Participating Eligible Certificateholders shall select, engage and negotiate the terms of engagement (including any underwriting discounts and similar commissions or fees) of one or more investment banking firm(s) of national standing to be the underwriters and/or bookrunning managers (including the lead underwriter and/or bookrunning manager)(collectively, the “*Underwriters*”) for any Underwritten Offering pursuant to a Demand Registration Request or an Underwritten Takedown with the consent of the Trust, which consent shall not be unreasonably withheld, conditioned or delayed and (ii) the Trust shall engage the Underwriters selected by the Majority Participating Eligible Certificateholders pursuant to the foregoing clause (i).

(b) All Certificateholders proposing to distribute their securities through an Underwritten Offering, as a condition for inclusion of their Registrable Certificates therein, shall agree to concurrently enter into (i) an underwriting agreement with the Underwriters and (ii) if proposed in good faith by the Underwriters, a lockup agreement for a customary period not to exceed one hundred eighty (180) days in the case of the initial Underwritten Offering (so long as there has not been a proposed Transfer that Eligible Certificateholders have elected to participate in pursuant to Section 13(f), in which case the lock up period shall be ninety (90) days) or ninety (90) days in the case of any other Underwritten Offering; *provided, however*, that the underwriting agreement and each lockup agreement are in customary form and reasonably acceptable to the Majority Participating Eligible Certificateholders and, in the case of each lockup agreement, substantially identical for all of the Certificateholders participating in such Underwritten Offering; *provided further, however*, that no Certificateholder of Registrable Certificates included in any Underwritten Offering shall be required to make any representations or warranties to the Trust or the Underwriters (other than representations and warranties regarding (x) such Certificateholder's ownership of its Registrable Certificates to be sold or transferred, (y) such Certificateholder's power and authority to effect such transfer and (z) such matters pertaining to compliance with securities laws as may be reasonably requested) and

provided further, that any indemnity obligation shall be several and not joint for each Certificateholder.

(c) If the Underwriters for an Underwritten Offering pursuant to a Demand Registration or an Underwritten Takedown advises the Majority Participating Eligible Certificateholders that the total amount of Registrable Certificates or other Trust Certificates permitted to be registered is such as to materially adversely affect the success of such Underwritten Offering, the number of Registrable Certificates or other Trust Certificates to be registered on such Registration Statement will be reduced as follows: *first*, the Trust shall reduce or eliminate the securities of the Trust to be included by any Person other than the Demanding Certificateholder; *second*, the Trust shall reduce the number of Registrable Certificates to be included by Eligible Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Eligible Certificateholders to be included in the Underwritten Offering; and *third*, the Trust shall reduce the number of Registrable Certificates to be included by all other Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Certificateholders to be included in the Underwritten Offering.

(d) Within three (3) Business Days after receiving a request for an Underwritten Offering constituting a “takedown” from a Shelf Registration Statement, the Trust shall give written notice of such request to all other Certificateholders, and subject to the provisions of Section 4(c) hereof, include in such Underwritten Offering all such Registrable Certificates held by Certificateholders holding at least 0.5% of the outstanding Registrable Certificates with respect to which the Trust has received written requests for inclusion therein within five (5) days after the giving of such notice; *provided, however*, that such Registrable Certificates are covered by an existing and effective Shelf Registration Statement that may be utilized for the offering and sale of the Registrable Certificates requested to be registered.

(e) The Trust will not be required to undertake an Underwritten Offering pursuant to Section 2(h):

(A) If the Trust has undertaken an Underwritten Offering within (i) the one hundred eighty (180) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of the first such request, (ii) the one hundred twenty (120) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of the second such request and (iii) the ninety (90) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of any subsequent such request; and

(B) if the number of Underwritten Offerings previously made pursuant to Section 2(h) in the immediately preceding 12-month period shall exceed three (3); *provided* that an Underwritten Offering shall not be considered made for purposes of this clause (B) unless the offering has resulted in the disposition by the Certificateholders of at least 75% of the amount of Registrable Certificates requested to be included.

(f) at any time prior to the execution of an underwriting agreement in connection with an Underwritten Offering, the Majority Participating Eligible Certificateholders can

terminate any Underwritten Offering with written notice to the lead Underwriter provided however that any termination shall not remove any obligation of such revoking Certificateholders to reimburse the Trust, the Manager and Underwriters for all reasonable and documented out-of-pocket expenses incurred by each of the Trust, the Manager and the Underwriters in the preparation, filing and processing of the Registration Statement and incurred in connection with the underwritten offering.

5. Grace Periods - Registration.

(a) Notwithstanding anything to the contrary herein—

(A) the Trust shall be entitled to postpone the filing or effectiveness of, or, at any time after a Registration Statement has been declared effective by the Commission, suspend the use of, a Registration Statement (including the Prospectus included therein) if in the good faith judgment of the Trustee, such registration, offering or use would reasonably be expected to materially affect in an adverse manner or materially interfere with any material transaction under consideration by the Trust or would require the disclosure of information that has not been, and is not otherwise required to be, disclosed to the public and the premature disclosure of which would materially affect the Trust in an adverse manner, in the reasonable judgment of the Trustee; *provided however*, that in the event such Registration Statement relates to a Demand Registration Request or an Underwritten Offering pursuant to Section 2(h), then the Certificateholders initiating such Demand Registration Request or such Underwritten Offering shall be entitled to withdraw the Demand Registration Request or request for the Underwritten Offering and, if such request is withdrawn, it shall not count against the limits imposed pursuant to Section 2(a)(D) and the Trust shall pay all registration expenses in connection with such registration; and

(B) at any time after a Registration Statement has been declared effective by the Commission and there is no duty to disclose under applicable law, the Trust may delay the disclosure of material non-public information concerning the Trust if the disclosure of such information at the time would, in the good faith judgment of the Trustee, adversely affect the Trust (the period of a postponement or suspension as described in clause (A) and/or a delay described in this clause (B), a “**Registration Grace Period**”).

(b) The Trust shall promptly (i) notify the Certificateholders of Registrable Certificates proposed to be included in any Underwritten Offering in writing of the existence of the event or material non-public information giving rise to a Registration Grace Period (*provided* that the Trust shall not, and shall direct the Manager to not, disclose the content of such material non-public information to any Certificateholder, without the express consent of such Certificateholder) or the need to file a post-effective amendment, as applicable, and the date on which such Registration Grace Period will begin, (ii) use reasonable best efforts to terminate a Registration Grace Period as promptly as practicable and (iii) notify the Certificateholders in writing of the date on which the Registration Grace Period ends.

(c) The duration of any one Registration Grace Period shall not exceed thirty (30) days, and the aggregate of all Registration Grace Periods in total during any 365-day period shall not exceed forty-five (45) days. For purposes of determining the length of a Registration Grace Period, the Registration Grace Period shall be deemed to begin on and include the date the Certificateholders receive the notice referred to in clause (i) of Section 5(b) and shall end on and include the later of the date the Certificateholders receive the notice referred to in clause (iii) of Section 5(b) and the date referred to in such notice. In the event the Trust declares a Registration Grace Period, the period during which the Trust is required to maintain the effectiveness of an Initial Shelf Registration Statement or a Registration Statement filed pursuant to a Demand Registration Request shall be extended by the number of days during which such Registration Grace Period is in effect.

6. Registration Procedures. If and when the Trust is required to effect any registration under the Securities Act as provided in Sections 2(a), 4(a), or 5 of this Agreement, the Trust shall, with the cooperation of the Manager:

(a) prepare and file with the Commission the requisite Registration Statement to effect such registration and thereafter use its reasonable best efforts to cause such Registration Statement to become and remain effective, subject to the limitations contained herein;

(b) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Certificates covered by such Registration Statement until such time as all of such Registrable Certificates have been disposed of in accordance with the method of disposition set forth in such Registration Statement, subject to the limitations contained herein;

(c) (i) before filing a Registration Statement or Prospectus or any amendments or supplements thereto, at the Trust's expense, furnish to the Certificateholders whose securities are covered by the Registration Statement copies of all such documents, other than documents that are incorporated by reference into such Registration Statement or Prospectus, proposed to be filed and such other documents reasonably requested by such Certificateholders (which may be furnished by email), and afford legal counsel or any accountant or other agent retained by any such Certificateholders a reasonable opportunity to review and comment on such documents; and (ii) in connection with the preparation and filing of each such Registration Statement pursuant to this Agreement, (A) upon reasonable advance notice to the Trust, give each of the foregoing such reasonable access to all financial and other records, corporate documents and properties of the Trust as shall be necessary, in the reasonable opinion of Counsel to the Majority Participating Certificateholders and such Underwriters, to verify the accuracy of the information in the Registration Statement and to conduct a reasonable due diligence investigation for purposes of the Securities Act and Exchange Act, and (B) upon reasonable advance notice to the Trust and during normal business hours, provide such reasonable opportunities to discuss the business of the Trust with its officers and

employees, representatives of the Manager and the independent public accountants who have certified its financial statements as shall be necessary, in the reasonable opinion of Counsel to the Majority Participating Certificateholders and such Underwriters, to conduct a reasonable due diligence investigation for purposes of the Securities Act and the Exchange Act;

(d) (i) notify each selling Certificateholder of Registrable Certificates, promptly after the Trust receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed and (ii) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus;

(e) with respect to any offering of Registrable Certificates, furnish to each selling Certificateholder of Registrable Certificates, and the managing Underwriters for such Underwritten Offering, if any, without charge, such number of copies of the applicable Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus, final Prospectus, and any other Prospectus (including any Prospectus filed under Rule 424, Rule 430A or Rule 430B promulgated under the Securities Act and any “issuer free writing prospectus” as such term is defined under Rule 433 promulgated under the Securities Act)), all exhibits and other documents filed therewith and such other documents as such seller or such managing Underwriters may reasonably request including in order to facilitate the disposition of the Registrable Certificates owned by such seller, and upon request, a copy of any and all transmittal letters or other correspondence to or received from, the Commission or any other governmental authority relating to such offer;

(f) cause all Registrable Certificates included in such Registration Statement to be registered with or approved by such other federal or state governmental agencies or authorities as necessary upon the opinion of legal counsel to the Trust or Counsel to the Majority Participating Certificateholders of Registrable Certificates included in such Registration Statement to enable such Certificateholder or Certificateholders thereof to consummate the disposition of such Registrable Certificates in accordance with their intended method of distribution thereof;

(g) with respect to any Underwritten Offering, obtain and, if obtained, furnish to each Certificateholder that is named as an Underwriter in such Underwritten Offering and each other Underwriter thereof, a signed

(A) opinion of outside legal counsel for the Trust (including a customary 10b-5 statement), dated the date of the closing under the underwriting agreement and addressed to the Underwriters, reasonably satisfactory (based on the customary form and substance of opinions of issuers’ counsel customarily given in such an offering) in form and substance to such Underwriters, if any, and

(B) “comfort” letter, dated the date of the underwriting agreement and another dated the date of the closing under the underwriting agreement and addressed to the Underwriters and signed by the independent public accountants who have certified the Trust’s financial statements included or incorporated by reference in such registration statement, reasonably satisfactory (based on the customary form and substance of “cold comfort” letters of issuers’ independent public accountant customarily given in such an offering) in form and substance to such Certificateholder and such Underwriters, if any,

in each case, covering substantially the same matters with respect to such Registration Statement (and the Prospectus included therein) and, in the case of the accountants’ comfort letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer’s counsel and in accountants’ comfort letters delivered to Underwriters in such types of offerings of securities;

(h) notify each Certificateholder of Registrable Certificates included in such Registration Statement at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the Prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and for which the Trust chooses to suspend the use of the Registration Statement and Prospectus in accordance with the terms of this Agreement, and, at the written request of any such Certificateholder, promptly prepare and furnish to it a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such Prospectus, as supplemented or amended, shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) notify the Certificateholders of Registrable Certificates included in such Registration Statement promptly of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus or for additional information;

(j) advise the Certificateholders of Registrable Certificates included in such Registration Statement promptly after the Trust receives notice or obtains knowledge of any order suspending the effectiveness of a registration statement relating to the Registrable Certificates at the earliest practicable moment and promptly use its reasonable best efforts to obtain the withdrawal;

(k) otherwise comply with all applicable rules and regulations of the Commission and any other governmental agency or authority having jurisdiction over the offering of Registrable Certificates, and make available to its Certificateholders (as defined in the Trust Agreement), as soon as reasonably practicable, an earnings statement

covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first (1st) full calendar month after the Effective Date of such Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 and which requirement will be deemed satisfied if the Trust timely files complete and accurate information on Quarterly Report on Form 10-Q and Annual Report on Form 10-K and Current Reports on Form 8-K under the Exchange Act and otherwise complies with Rule 158;

(l) provide and cause to be maintained a transfer agent and registrar for the Registrable Certificates included in a Registration Statement pursuant to this Agreement and provide a CUSIP number for all such Registrable Certificates no later than the Effective Date thereof;

(m) enter into such agreements (including an underwriting agreement in customary form) and take such other actions as the Certificateholders beneficially owning a majority of the Registrable Certificates included in a Registration Statement or the Underwriters, if any, shall reasonably request in order to expedite or facilitate the disposition of such Registrable Certificates, including customary indemnification; and provide reasonable cooperation, including causing (x) representatives of the Manager and (y) at least one (1) executive officer and a senior financial officer of the Trust to attend and participate in “road shows”, investor presentations and other informational meetings organized by the Underwriters, if any, as reasonably requested and necessary to expedite or facilitate the sale of the Registrable Certificates, subject to availability and at the Trust’s expense. Notwithstanding the foregoing, the Trust shall have no obligation to participate in more than three (3) “road shows” in any twelve (12)-month period and such participation shall not unreasonably interfere with the business operations of the Trust;

(n) if requested by the managing Underwriter(s) or the Majority Participating Eligible Certificateholders being sold in connection with an Underwritten Offering, promptly incorporate in a prospectus supplement or post-effective amendment such information relating to the plan of distribution for such Registrable Certificates provided to the Trust in writing by the managing Underwriters and Eligible Certificateholders representing a majority of the Registrable Certificates being sold and that is required to be included therein relating to the plan of distribution with respect to such Registrable Certificates, including without limitation, information with respect to the number of Registrable Certificates being sold to such Underwriters, the purchase price being paid therefor by such Underwriters and with respect to any other terms of the Underwritten Offering of the Registrable Certificates to be sold in such offering, and make any required filings with respect to such information relating to the plan of distribution as soon as practicable after notified of the information;

(o) cooperate with the Certificateholders of Registrable Certificates included in a Registration Statement and the managing Underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Registrable Certificates to be sold, and enable such Registrable Certificates to be in such share amounts and registered in such names as the managing Underwriters, or, if none, the Majority Participating

Eligible Certificateholders, may reasonably request at least three (3) Business Days prior to any sale of Registrable Certificates to the Underwriters;

(p) cause all Registrable Certificates included in a Registration Statement to be listed on a national securities exchange on which similar securities issued by the Trust are then listed, if at all;

(q) in connection with any sale or transfer of Registrable Certificates (whether or not pursuant to a Registration Statement) that will result in the securities being delivered no longer constituting Registrable Certificates, cooperate with the Certificateholders to enable such Registrable Certificates to be in such denominations and registered in such names as the Certificateholders may request at least five (5) Business Days prior to any sale of the Registrable Certificates; and

(r) otherwise use its reasonable best efforts to take all other steps necessary to effect the registration of such Registrable Certificates contemplated hereby.

In addition, at least fifteen (15) Trading Days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Trust will notify each Certificateholder of the information the Trust requires from that Certificateholder, including any update to or confirmation of the information contained in the Selling Certificateholder Questionnaire, if any, which shall be completed and delivered to the Trust promptly upon request and, in any event, within five (5) Trading Days prior to the applicable anticipated filing date. Each Certificateholder further agrees that it shall not be entitled to be named as a selling security-Certificateholder in the Registration Statement or use the Prospectus for offers and resales of Registrable Certificates at any time, unless such Certificateholder has returned to the Trust a completed and signed Selling Certificateholder Questionnaire and a response to any requests for further information as described in the previous sentence and, if an Underwritten Offering, entered into an underwriting agreement with the Underwriters in accordance with Section 4(a). If a Certificateholder of Registrable Certificates returns a Selling Certificateholder Questionnaire or a request for further information, in either case, after its respective deadline, the Trust shall be permitted to exclude such Certificateholder from being a selling security Certificateholder in the Registration Statement or any pre-effective or post-effective amendment thereto. Each Certificateholder acknowledges and agrees that the information in the Selling Certificateholder Questionnaire or request for further information as described in this Section 6 will be used by the Trust in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement.

7. Registration and Cooperation Expenses. All fees and expenses incident to the Trust's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts, fees or selling commissions or broker or similar commissions or fees (which shall be borne by participating Certificateholders on a pro rata basis), or transfer taxes of any Certificateholder but including, for avoidance of doubt, any fees or expenses in connection with the preparation of a customary offering document or definitive documents in connection with the Trust's cooperation in third party sales pursuant to Section 13 hereof) shall be borne by the Trust whether or not any Registrable Certificates are sold pursuant to a Registration Statement or in connection with a proposed sale pursuant to Section 13. The fees and expenses

referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees and expenses (including, without limitation, fees and expenses with respect to (A) filings required to be made with any Trading Market on which the Trust Certificates are then listed for trading, if any, (B) compliance with applicable state securities or Blue Sky laws (including, without limitation, fees and disbursements of counsel for the Trust, any Underwriters or Certificateholders in connection with Blue Sky qualifications or exemptions of the Registrable Certificates and determination of the eligibility of the Registrable Certificates for investment under the laws of such jurisdictions as requested by the Certificateholders) and (C) if not previously paid by the Trust in connection with an issuer filing, any filing that may be required to be made by any broker through which a Certificateholder intends to make sales of Registrable Certificates with the Financial Industry Regulatory Authority (“*FINRA*”) pursuant to FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale), (ii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus, any free writing prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement (including, without limitation, expenses of printing certificates for Registrable Certificates and of printing prospectuses if the printing of prospectuses is reasonably requested by the Eligible Certificateholders representing a majority of the Registrable Certificates included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) reasonable fees and disbursements of counsel for the Trust, (v) the reasonable fees and expenses incurred in connection with any road show for Underwritten Offerings, (vi) Securities Act liability insurance, if the Trust so desires such insurance, (vii) all rating agency fees, if any, and any fees associated with making the Registrable Certificates eligible for trading through The Depository Trust Company, and (viii) fees and expenses of all other Persons retained by the Trust, including the Manager (and including reasonable fees and disbursements of legal counsel to the Manager), in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Trust will pay the reasonable fees and disbursements of the Counsel to the Majority Participating Eligible Certificateholders, in connection with the filing or amendment of any Registration Statement, Prospectus or free writing prospectus hereunder or any Underwritten Offering.

8. Indemnification.

(a) Indemnification by the Trust. The Trust shall, notwithstanding any termination of this Agreement, indemnify, defend and hold harmless each Certificateholder, the officers, directors, agents, partners, members, investment manager, managers, Certificateholders, Affiliates and employees of each of them, each Person who controls any such Certificateholder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, partners, members, investment manager, managers, Certificateholders, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and investigation and reasonable attorneys’ fees) and expenses (collectively, “*Losses*”), to which any of them may become subject, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus or (ii) any omission or alleged omission to

state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based upon information regarding such Certificateholder furnished in writing to the Trust by such Certificateholder expressly for use therein, or to the extent that such information relates to such Certificateholder or such Certificateholder's proposed method of distribution of Registrable Certificates and was provided by such Certificateholder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto, or (B) in the case of an occurrence of an event of the type specified in Section 6(h), related to the use by a Certificateholder of an outdated or defective Prospectus after the Trust has notified such Certificateholder in writing that the Prospectus is outdated or defective and prior to the receipt by such Certificateholder of the Advice contemplated and defined in Section 17(c) below, but only if and to the extent that following the receipt of the Advice, the misstatement or omission giving rise to such Loss would have been corrected. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in Section 8(c)), shall survive the transfer of the Registrable Certificates by the Certificateholders, and shall be in addition to any liability which the Trust may otherwise have.

(b) Indemnification by Certificateholders. Each Certificateholder shall, severally and not jointly, indemnify and hold harmless the Trust, its respective directors, officers, agents and employees, each Person who controls the Trust (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statements or omissions are based upon information regarding such Certificateholder furnished in writing to the Trust by such Certificateholder expressly for use therein or (ii) to the extent, but only to the extent, that such information relates to such Certificateholder or such Certificateholder's proposed method of distribution of Registrable Certificates and was provided by such Certificateholder expressly for use in a Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 6(h), to the extent, but only to the extent, related to the use by such Certificateholder of an outdated or defective Prospectus after the Trust has notified such Certificateholder in writing that the Prospectus is outdated or defective and prior to the receipt by such Certificateholder of the Advice contemplated in Section 17(c), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Certificateholder hereunder be greater in amount than the dollar amount of the net proceeds received by such Certificateholder upon the sale of the Registrable Certificates giving rise to such indemnification obligation. Such indemnity shall remain in full force and effect regardless of any investigation

made by or on behalf of an Indemnified Party (as defined in Section 8(c)), shall survive the transfer of the Registrable Certificates by the Certificateholders, and shall be in addition to any liability which the Certificateholder may otherwise have.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an “**Indemnified Party**”), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the “**Indemnifying Party**”) in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of legal counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with the defense thereof; *provided*, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate legal counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such legal counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ legal counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by legal counsel that in the reasonable judgment of such legal counsel a conflict of interest exists if the same legal counsel were to represent such Indemnified Party and the Indemnifying Party; *provided*, that the Indemnifying Party shall not be liable for the reasonable and documented fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable and documented fees and expenses of the Indemnified Party (including reasonable and documented fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section 8(c)) shall be paid to the Indemnified Party, as incurred, with reasonable promptness after receipt of written notice thereof to the Indemnifying Party; *provided*, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally judicially determined to not be entitled to indemnification hereunder. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action shall not relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 10, except to the extent that the Indemnifying Party is materially and adversely prejudiced in its ability to defend such action.

(d) Contribution. If a claim for indemnification under Section 8(a) or (b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault, if any, of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the relative fault considerations referred to in the immediately preceding paragraph (it being understood that, as between Certificateholder Indemnifying Parties with no or the same level of relative fault, contribution pro rata based on holdings of Registrable Certificates will be presumed to be just and equitable). Notwithstanding the provisions of this Section 8(d), no Certificateholder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Certificateholder from the sale of the Registrable Certificates subject to the Proceeding exceeds the amount of any Losses that such Certificateholder has otherwise been required to pay under this Section 8 or otherwise by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

9. Section 4(a)(7), Rule 144 and Rule 144A; Other Exemptions. With a view to making available to the Certificateholders of Registrable Certificates the benefits of Rule 144 and Rule 144A and other rules and regulations of the Commission that may at any time permit a Certificateholder of Registrable Certificates to sell Registrable Certificates without registration, until such time as when no Registrable Certificates remain outstanding, the Trust covenants that it will (i) if it is subject to the reporting requirement of Section 13 or 15(d) of the Exchange Act, file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted thereunder, or (ii) if it is not subject to the reporting requirement of Section 13 or 15(d) of the Exchange Act, make available information necessary to comply with Section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A, if available with respect to resales of the Registrable Certificates under the Securities Act, at all times, all to the extent required, and to take such further action as any Certificateholder may reasonably request, from time to time to enable such Certificateholder to sell Registrable Certificates without registration under the Securities Act within the limitation of the exemptions provided by (x) Section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A (if available with respect to resales of the Registrable Certificates), as such rules may be amended from time to time, or (y) any other rules or regulations now existing or hereafter adopted by the Commission. Upon the reasonable request of any Certificateholder of Registrable Certificates, the Trust will deliver to such Certificateholder a written statement as to whether it

has complied with such information requirements, and, if not, the specific reasons for non-compliance.

10. Transfer of Registration Rights. Any Certificateholder may freely assign its rights hereunder on a pro rata basis in connection with any sale, transfer, assignment, or other conveyance (any of the foregoing, a “**Transfer**”) of Registrable Certificates to any transferee or assignee; *provided*, that all of the following additional conditions are satisfied: (a) such Transfer is effected in accordance with applicable securities laws; (b) such transferee or assignee agrees in writing to become subject to the terms of this Agreement; (c) the Trust is given written notice by such Certificateholder of such Transfer, stating the name and address of the transferee or assignee and identifying the Registrable Certificates with respect to which such rights are being transferred or assigned and provide the amount of any other Trust Certificates of the Trust beneficially owned by such transferee or assignee; and (d) such transferee or assignee shall have previously submitted the certification required pursuant to Section 4.05(a) of the Trust Agreement and in connection therewith the Trust shall have determined in good faith that such transferee is not a Disallowed Transferee; *provided further*, that (i) any rights assigned hereunder shall apply only in respect of the Registrable Certificates that are transferred and not in respect of any other securities that the transferee or assignee may hold and (ii) any Registrable Certificates that are transferred may cease to constitute Registrable Certificates following such Transfer in accordance with Section 2(e)(B).

11. Earnings Report; Conference Call. No later than forty-five (45) days following the end of each fiscal quarter or seventy-five (75) days following the end of each fiscal year of the Trust, the Trust shall hold a conference call for Certificateholders, to discuss such reports (including a customary Q&A session). No later than one (1) Business Day prior to such conference call, the Trust shall issue a customary press release announcing the Trust’s financial and operating results for the relevant period and announcing the time and date and either including information necessary to access the conference call or directing Certificateholders, prospective investors, broker-dealers and securities analysts to contact the appropriate person at the Trust to obtain such information.

12. Cooperation in OTC Quotation. Until and unless the Trust Certificates are listed on a national securities exchange, the Trust shall use its reasonable best efforts to cause the Trust Certificates to be quoted on the OTCQB market as promptly as practicable and shall thereafter use its reasonable best efforts to maintain such quotation. Upon the written request of one or more Eligible Certificateholders, the Trust shall use commercially reasonable best efforts to cause the Trust Certificates to be quoted on the OTCQX market and shall thereafter use commercially reasonable best efforts to maintain such quotation.

13. Cooperation in Third Party Sales.

(a) At any time and from time to time on or following the date that is thirty (30) days following the date hereof, each Eligible Certificateholder may, by a notice sent to the Trust pursuant to Section 16(g) (a “**Cooperation Request Notice**”), inform the Trust regarding a proposed Transfer by such Eligible Certificateholder and requesting the assistance described in this Section 13. Each Cooperation Request Notice shall specify the amount of Certificates proposed to be transferred; *provided, however*, that the Trust will not be required to provide the

assistance described in this Section 13 unless (i) the number of Trust Certificates requested to be transferred equals at least (x) 9% of all Trust Certificates at such time and (ii) the Trust Certificates requested to be transferred have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$50 million. The Trust agrees, following receipt of a Cooperation Request Notice, subject to applicable law, and further subject to the demonstration to the Trust's reasonable satisfaction that such Eligible Certificateholder seeks to Transfer Certificates evidencing Fractional Undivided Interests aggregating not less than 9% in interest in the Trust, to provide such Eligible Certificateholder, the potential transferee and their respective legal counsel, financial advisors, auditors, brokers and other authorized representatives (i) reasonable access upon reasonable notice and request and during normal business hours to (A) the books and records, financial and operating data and such other information of the Trust as may reasonably be requested in connection with such Transfer in order to allow the Eligible Certificateholder, the potential transferee and their respective representatives (each as engaged for the purposes of the relevant transaction) to conduct a reasonable and customary due diligence review; and (B) appropriate representatives of the Trust, including the executive officer and a senior financial officer and the Manager for the purpose of such potential transferee participating in due diligence sessions, business update presentations and other similar undertakings with such third party potential transferee, including participating in any roadshow or other investor presentation sales force presentation or other customary marketing effort, necessary to expedite or facilitate the sale of such Trust Certificates, so long as such access does not interfere unreasonably with the business or operations of the Trust, the Manager or their subsidiaries, and (ii) such other cooperation as is reasonably necessary or advisable to such Eligible Certificateholder in either (A) the preparation of a customary offering document with respect to the Trust and (B) the preparation of any definitive documents including, if proposed in good faith by any underwriter assisting such Eligible Certificateholder in connection with a proposed Transfer, a lockup agreement for each participating Eligible Certificate for a customary period not to exceed one hundred eighty (180) days in the case of the initial Transfer (so long as there has not been an Underwritten Offering pursuant to Section 4(b), in which case the lock up period shall be ninety (90) days) or ninety (90) days in the case of any other Transfer pursuant to this Section 13, *provided* that such definitive documents are in customary form and reasonably acceptable to the Majority Participating Eligible Certificateholders (if any) and, in the case of each lockup agreement, substantially identical for all of the Certificateholders participating in such Transfer pursuant to Section 13(f), in each case to facilitate the proposed Transfer and *provided further*, that any indemnity obligation shall be several and not joint for each Eligible Certificateholder. As a condition to receiving any information pursuant to this Section 13, any such potential Transferee shall execute an appropriate confidentiality agreement on terms satisfactory to the Trust, which terms shall include an obligation for the Trust to cleanse any material non-public information that may be provided to such potential Transferee. For the avoidance of doubt, such material non-public information shall consist solely of the information to which existing Certificateholders are otherwise entitled under the Trust Agreement. For the further avoidance of doubt, the rights of the Eligible Certificateholders set forth in this Section 13 are personal to them. Notwithstanding anything to the contrary contained herein, this Agreement shall not require the Trust (i) to take any action which would unreasonably disrupt the conduct of its business in the ordinary course or (ii) to extend any such cooperation or any confidential information to any potential transferee that is a Disallowed Transferee.

(b) A Cooperation Request Notice shall specify (i) the then-current name and address of such Eligible Certificateholder or Eligible Certificateholders, (ii) the aggregate number of Registrable Certificates requested to be included in a proposed Transfer, (iii) the total number of Registrable Certificates then beneficially owned by such Eligible Certificateholder or Eligible Certificateholders, and (iv) the intended means of Transfer.

(c) Notwithstanding the receipt of a Cooperation Request Notice, the Trust shall have no obligation to provide the cooperation with third party sales described in the foregoing Section 13(a) if the Trust shall have provided such cooperation to one or more Eligible Certificateholders on two (2) occasions in the ninety (90) day period or six (6) occasions in the three hundred sixty (360) day period preceding the receipt of such Cooperation Request Notice.

(d) The Eligible Certificateholder delivering the Cooperating Request Notice, or the Majority Participating Eligible Certificateholders if additional Eligible Certificateholders request the Trust's cooperation pursuant to Section 13(e) below, shall select, engage and negotiate the terms of engagement (including any underwriting discounts and similar commissions or fees) of one or more Underwriters, if any, that may be engaged to assist the Trust in complying with its obligations under this Section 13 with the consent of the Trust, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) Except as otherwise provided in Section 7 hereof, each Eligible Certificateholder shall pay any material expenses incurred by the Trust in connection with its cooperation pursuant to the foregoing Section 13(a).

(f) Within seven (7) days after receiving a Cooperation Request Notice, unless otherwise directed by the Eligible Certificateholder or Eligible Certificateholders who delivered the Cooperation Request Notice to utilize a longer period, the Trust shall give written notice of such request to all other Certificateholders of Registrable Certificates holding at least 0.5% of the outstanding Registrable Certificates and shall include in such cooperation assistance all such Registrable Certificates held by such holders with respect to which the Trust has received written requests for inclusion therein within fifteen (15) days after the giving of such notice.

(g) If the investment bank, if any, facilitating the Transfer contemplated by the Cooperation Request Notice provided pursuant to Section 13(a) advises the Certificateholders that the total amount of Registrable Certificates permitted to be included in such cooperation assistance is such as to materially adversely affect the success of the proposed Transfer, the number of Registrable Certificates to be included in the transaction effectuating such Transfer will be reduced as follows: *first*, the Trust shall reduce or eliminate the securities of the Trust to be included by any Person other than the Eligible Certificateholder or Eligible Certificateholders that delivered the initial Cooperation Request Notice; *second*, the Trust shall reduce the number of Registrable Certificates to be included by Eligible Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Eligible Certificateholders to be included in the transaction effectuating such Transfer; and *third*, the Trust shall reduce the number of Registrable Certificates to be included by all other Certificateholders on a pro rata basis based on the total number of Registrable Certificates

requested by such Certificateholders to be included in the transaction effectuating such Transfer.

(h) The Eligible Certificateholder or Eligible Certificateholders delivering a Cooperation Request Notice may, at any time prior to the settlement of the bona fide sale transaction contemplated in such notice, revoke their request for the Trust's cooperation. If, pursuant to the preceding sentence, either (i) the Cooperation Request Notice in respect of the entire number of Certificates requested to be transferred is revoked or (ii) all Eligible Certificateholders have revoked their Cooperation Request Notice, then the Eligible Certificateholder or Eligible Certificateholders who revoke such request shall reimburse the Trust for all reasonable and documented out-of-pocket expenses incurred by each of the Trust and the Manager in providing the cooperation described in Sections 13(a)(i) and (ii).

(i) Trust will pay the reasonable fees and disbursements of Counsel to the Majority Participating Eligible Certificateholders in connection with the preparation, filing or amendment of a customary offering document or definitive documents in connection with any third-party sale pursuant to this Section 13.

14. Grace Periods - Cooperation.

(a) Notwithstanding anything to the contrary herein—

(A) the Trust shall be entitled to refrain from providing the cooperation assistance requested by an Eligible Certificateholder or Eligible Certificateholders pursuant to Section 13 if in the good faith judgment of the Trustee, such cooperation would reasonably be expected to materially affect in an adverse manner or materially interfere with any material transaction under consideration by the Trust or would require the disclosure of information that has not been, and is not otherwise required to be, disclosed to the public and the premature disclosure of which would materially affect the Trust in an adverse manner, in the reasonable judgment of the Trustee; and

(B) so long as there is no duty to disclose under applicable law, the Trust may delay the disclosure of material non-public information concerning the Trust if the disclosure of such information at the time would, in the good faith judgment of the Trustee, adversely affect the Trust (the period of a postponement or suspension as described in clause (A) and/or a delay described in this clause (B), a “**Cooperation Grace Period**”).

(b) The Trust shall promptly (i) notify the Eligible Certificateholder or Eligible Certificateholder proposing to transfer Registrable Certificates in writing of the existence of the event or material non-public information giving rise to a Cooperation Grace Period (*provided* that the Trust shall not, and shall direct the Manager to not, disclose the content of such material non-public information to any Certificateholder, without the express consent of such Certificateholder), and the date on which such Cooperation Grace Period will begin, (ii) use reasonable best efforts to terminate a Cooperation Grace Period as promptly as practicable and (iii) notify the Eligible Certificateholder in writing of the date on which the Cooperation Grace Period ends.

(c) The duration of any one Cooperation Grace Period shall not exceed thirty (30) days, and the aggregate of all Cooperation Grace Periods in total during any 365-day period shall not exceed forty-five (45) days. For purposes of determining the length of a Cooperation Grace Period, the Cooperation Grace Period shall be deemed to begin on and include the date the Certificateholders receive the notice referred to in clause (i) of Section 14(b) and shall end on and include the later of the date the Certificateholders receive the notice referred to in clause (iii) of Section 14(b) and the date referred to in such notice.

15. Cooperation in Blue Sky Registration. Trust shall, with the cooperation of the Manager, (i) register or qualify all Trust Certificates under such other securities or Blue Sky laws of such states or other jurisdictions of the United States of America as any Eligible Certificateholder (where an exemption is not available) covered by such offering document shall reasonably request in writing, (ii) keep such registration or qualification in effect for so long as such Trust Certificates remain outstanding and (iii) take any other action that may be necessary or reasonably advisable to enable such Eligible Certificateholder to consummate the disposition in such jurisdictions of the securities to be sold by such Eligible Certificateholder, except that the Trust shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this Section 14 be obligated to be so qualified, to subject itself to taxation in such jurisdiction where it would not otherwise be subject to taxation or to consent to general service of process in any such jurisdiction where it is not then so subject

16. Further Assurances. The Trust shall execute all such further instruments and documents and take all such further action as any other party hereto may reasonably require in order to effectuate the terms and purposes of this Agreement.

17. Miscellaneous.

(a) Remedies. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(b) Compliance. Each Certificateholder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Certificates pursuant to any Registration Statement and shall sell the Registrable Certificates only in accordance with a method of distribution described in each Registration Statement.

(c) Discontinued Disposition. By its acquisition of Registrable Certificates, each Certificateholder agrees that, upon receipt of a notice from the Trust of the occurrence of a Grace Period or any event of the kind described in Section 6(h), such Certificateholder will forthwith discontinue disposition of such Registrable Certificates under a Registration Statement until it is

advised in writing (the “*Advice*”) by the Trust that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Trust may provide appropriate stop orders to enforce the provisions of this paragraph.

(d) Preservation of Rights. The Trust shall not grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder unless any such more favorable rights are concurrently added to the rights granted hereunder.

(e) No Inconsistent Agreements. The Trust shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Certificateholders in this Agreement.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, or waived unless the same shall be in writing and signed by the Trust and Certificateholders holding at least a majority of the then outstanding Registrable Certificates; *provided, however*, that any party may give a waiver as to itself; *provided further, however*, that no amendment, modification, supplement, or waiver that (i) disproportionately and adversely affects, alters, or changes the interests of any Certificateholder or its Affiliates under this Agreement shall be effective against such Certificateholder without the prior written consent of such Certificateholder and (ii) alters or changes the definition of “Eligible Certificateholder”, the definition of “Majority Participating Eligible Certificateholders”, or the threshold number of Certificateholders required to participate in any action or provide any direction pursuant to Sections 4(a), 4(b), 4(f), 6(n), 6(g), 13(a) or 13(d) of this Agreement may be effected without the prior written consent of any Certificateholder adversely affected by such change; *provided further, however*, that the definition of “Certificateholders” in Section 1 may not be amended, modified or supplemented, or waived unless in writing and signed by all the signatories to this Agreement; and *provided further*, that the waiver of any provision with respect to any Registration Statement or offering may be given by Certificateholders holding at least a majority of the then outstanding Registrable Certificates entitled to participate in such offering or, if such offering shall have been commenced, having elected to participate in such offering. No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

(g) Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be sent by certified or regular mail, by private national courier service (return receipt requested, postage prepaid), by personal delivery, by electronic mail or by facsimile transmission. Such notice or communication shall be deemed given (i) if mailed, two (2) days after the date of mailing, (ii) if sent by national courier service, one

Business Day after being sent, (iii) if delivered personally, when so delivered, (iv) if sent by electronic mail, on the Business Day such electronic mail is transmitted, or (v) if sent by facsimile transmission, on the Business Day such facsimile is transmitted, in each case as follows:

(A) If to the Trust:

GLAS Trust Company LLC, as trustee
3 Second Street, Suite 206
Jersey City, NJ 07311
Fax: 212-202-6246
Email: ClientServices.Americas@glas.agency

with a copy (which shall not constitute notice) to:

Milbank LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067-3019
Attn: Casey Fleck
Jonathon Jackson
E-mail: cfleck@milbank.com
jjackson@milbank.com

(B) If to the Manager:

Hilco JCP LLC
5 Revere Drive, Suite 410
Northbrook, Illinois 60062
Fax: [●]
Attn: Neil Aaronson
Larry Finger
E-mail: naaronson@hilcoglobal.com
lfinger@hilcoglobal.com

(C) If to the Certificateholders (or to any of them), at their addresses as they appear in the records of the Trust or the records of the transfer agent or registrar, if any, for the Trust Certificates.

If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the State of New York or the jurisdiction in which the Trust's principal office is located, the time period shall automatically be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any trustee in bankruptcy). In addition, and whether or not any express assignment

shall have been made, the provisions of this Agreement which are for the benefit of the Certificateholders of Registrable Certificates (or any portion thereof) as such shall be for the benefit of and enforceable by any subsequent Certificateholder of any Registrable Certificates (or of such portion thereof); *provided*, that such subsequent Certificateholder of Registrable Certificates shall be required to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Trust attached as Exhibit A hereto, agreeing to be bound by its terms. No assignment or delegation of this Agreement by the Trust, or any of the Trust's rights, interests or obligations hereunder, shall be effective against any Certificateholder without the prior written consent of such Certificateholder.

(i) Execution and Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

(j) Delivery by Facsimile. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(k) Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of New York. Each of the parties to this Agreement consents and agrees that any action to enforce this Agreement or any dispute, whether such dispute arises in law or equity, arising out of or relating to this Agreement, shall be brought exclusively in the United States District Court for the Southern District of New York or any New York State Court sitting in New York City. The parties hereto consent and agree to submit to the exclusive jurisdiction of such courts. Each of the parties to this Agreement waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party and such party's property is immune from any legal process issued by such courts or (ii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereby agree that mailing of process or other papers in connection with any such action or proceeding to an address provided in writing by the recipient of such mailing, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service in the manner herein provided.

(l) Waiver of Jury Trial. Each of the parties to this Agreement hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 17(l) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(m) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(n) Selling Certificateholders Become Party to this Agreement. By asserting or participating in the benefits of registration of Registrable Certificates pursuant to this Agreement, each Certificateholder agrees that it will be deemed a party to this Agreement and be bound by each of its terms.

(o) Descriptive Headings; Interpretation; No Strict Construction. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and, if applicable, hereof. The words “include”, “includes” or “including” in this Agreement shall be deemed to be followed by “without limitation”. The use of the words “or,” “either” or “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All references to laws, rules, regulations and forms in this Agreement shall be deemed to be references to such laws, rules, regulations and forms, as amended from time to time or, to the extent replaced, the comparable successor thereto in effect at the time. All

references to agencies, self-regulatory organizations or governmental entities in this Agreement shall be deemed to be references to the comparable successors thereto from time to time.

(p) Entire Agreement. This Agreement and any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(q) Termination. The obligations of the Trust and of any Certificateholder, other than those obligations contained in Section 8 and this Section 17, shall terminate with respect to the Trust and such Certificateholder as soon as such Certificateholder no longer beneficially owns any Registrable Certificates.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**COPPER PROPERTY CTL PASS
THROUGH TRUST**

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first written above.

COPPER BIDCO LLC,

by GLAS Trust Company LLC, solely in its capacity as trustee,
on behalf of the Certificateholders

By: _____

Name:

Title:

EXHIBIT A
FORM OF JOINDER AGREEMENT

[●], 202[●]

COPPER PROPERTY CTL PASS-THOUGH TRUST
c/o GLAS Trust Company LLC, as trustee
3 Second Street, Suite 206
Jersey City, NJ 07311

Reference is hereby made to that certain registration rights and resale cooperation agreement (the “**Agreement**”), dated [●], 2021, by and between Copper Property CTL Pass Through Trust, a New York common law trust (the “**Trust**”) and Copper Bidco LLC, a Delaware limited liability company (“**Bidco**”) on behalf of the Certificateholders from time to time. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Joinder. Each of the undersigned hereby acknowledges that it has received a copy of the Agreement and acknowledges and agrees with the Trust that by its execution and delivery hereof it shall (i) join and become a party to the Agreement; (ii) be bound by all covenants, agreements, representations, warranties and acknowledgements applicable to such party as set forth in and in accordance with the terms of the Agreement; and (iii) perform all obligations and duties as required of it in accordance with the Agreement.

2. Counterparts. This Agreement may be signed in one or more counterparts (which may be delivered in original form or facsimile or “pdf” file thereof), each of which shall constitute an original when so executed and all of which together shall constitute one and the same agreement. Delivery of an executed joinder agreement by one party to any other party may be made by facsimile, electronic mail (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) or other transmission method, and the parties hereto agree that any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

3. Amendments. No amendment or waiver of any provision of this Joinder Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties thereto.

4. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

5. APPLICABLE LAW. THIS JOINDER AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS JOINDER AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the undersigned has caused this joinder agreement to be duly executed and delivered as of the date set forth above.

[JOINING PARTY]

By: _____
Name:
Title

Acknowledged and accepted as of the date first above written:

COPPER PROPERTY CTL PASS THROUGH TRUST

by GLAS Trust Company LLC, solely in its capacity as trustee

By: _____
Name:
Title:

Exhibit F: Form of Excepted Holder Certification

[Attached]

EXCEPTED HOLDER CERTIFICATION

Copper Property CTL Pass Through Trust
GLAS Trust Company LLC, as Trustee
3 Second Street, Suite 206
Jersey City, NJ 07311
Fax: 212-202-6246
Email: ClientServices.Americas@glas.agency

Reference is hereby made to the Amended and Restated Pass Through Trust Agreement by and between COPPER BIDCO LLC and GLAS TRUST COMPANY LLC, as trustee, dated as of January 30, 2021 (the “**Trust Agreement**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Trust Agreement.

As of [●] (the “**Effective Date**”), [Name of Certificateholder] (the “**Excepted Holder**”):

- (i) owns, actually or Constructively, [●] Certificates; and
- (ii) represents that it does not own, and will not own, actually or Constructively, [a Relevant Equity Interest in any Tenant listed on Exhibit A]¹.

The Excepted Holder agrees to provide in a timely manner any information as the Trustee or the Manager may reasonably request in order to determine the accuracy of this certification or the effect, if any, that such Excepted Holder's Ownership of Trust Interests would have on the Trust's status as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a “business entity” (rather than a grantor trust) for U.S. federal income tax purposes. The Trustee and Manager hereby agree that: (i) they will not use any information received hereunder for any purpose other than in connection with such determinations; and (ii) they will treat as confidential and not disclose to any person any of the information received hereunder except to the extent in furtherance of making such determinations.

The parties hereto acknowledge that Exhibit A reflects Schedule III as of the Effective Date, and that following the Effective Date the most up-to-date Schedule III will be available on the Investor Website.

The Excepted Holder agrees to notify the Trustee promptly after it obtains actual knowledge that it has become a Prohibited Owner or that any representation contained herein is no longer accurate.

The Excepted Holder understands and acknowledges that: (i) the Trustee and the Manager are relying on this certification in order to protect the Trust's status as a partnership other than a publicly traded partnership taxable as a corporation under Section 7704 of the Code in the event the Trust is recharacterized as a “business entity” (rather than a grantor trust) for U.S. federal income tax purposes; (ii) any breach of its representations, warranties and covenants set forth in this certification will result in the automatic revocation of the Excepted Holder's status as an “Excepted Holder” under the Trust Agreement (and, accordingly, may result in the transfer of the Excepted Holder's interests in the Trust to a Charitable Trust in accordance with Section 4.05 of the Trust Agreement); and (iii) this certification shall automatically terminate and have no further effect at such time the Excepted Holder no longer Owns at least 4.9% of the Trust Interests.

¹ Or in excess of the specified percentage of the aggregate outstanding Relevant Equity Interests in such Tenant to which the Trustee has consented.

EXCEPTED HOLDER
[Name of Certificateholder]

By: _____
Name: _____
Title: _____

Notices:

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____
Fax: _____

With a copy to:

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____
Fax: _____

ACCEPTED AND AGREED
GLAS TRUST COMPANY, LLC, as Trustee

By: _____
Name:
Title:

ACCEPTED AND AGREED
Hilco JCP, LLC, as Manager

By: _____
Name:
Title:

EXHIBIT A

[SCHEDULE III AS IN EFFECT ON THE EFFECTIVE DATE]

Exhibit G: Form of Management Agreement

[Attached]

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement"), dated this 30th day of January, 2021 (the "Effective Date"), is made and entered into by and between Copper Property CTL Pass Through Trust (the "Trust"), a New York common law trust, with offices at c/o GLAS Trust Company, LLC (the "Trustee"), 3 Second Street, Suite 206 Jersey City, NJ 07311, and Hilco JCP LLC (an affiliate of Hilco Real Estate LLC), a limited liability company ("Manager") with offices at 5 Revere Drive, Suite 206 Northbrook, Illinois, 60062. Each of the Trust and Manager may be referred to herein as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, the Trust was established and exists solely for the purpose of, collecting, holding, administering, distributing, and liquidating the Trust Assets for the benefit of the Certificateholders in accordance with the terms of the Trust Agreement and is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the Code, et seq.

WHEREAS, the Trust owns one hundred percent (100%) of the equity interests of (a) CTL Propco LLC, a Delaware limited liability company, and CTL Propco LP, a Delaware limited partnership (collectively, the "Retail Owners"), and (b) CTL Propco II LLC, a Delaware limited liability company, and CTL Propco II LP, a Delaware limited partnership (collectively, the "DC Owners" and, together with the Retail Owners, collectively, the "Owners")

WHEREAS, the Retail Owners own those certain one hundred sixty (160) retail properties (the "Retail Properties") more particularly described in the Retail Master Lease (as hereinafter defined), and lease such Retail Properties to Penney Tenant I LLC ("Retail Tenant") pursuant to that certain Retail Master Lease, dated as of December 7, 2020, between Retail Owners (as successor by assignment to J. C. Penney Corporation, Inc., a Delaware corporation, J. C Penney Properties, LLC, a Delaware limited liability company, and JCPenney Puerto Rico, Inc., a Puerto Rico corporation), as landlord, and Retail Tenant, as tenant (as amended, the "Retail Master Lease")

WHEREAS, the DC Owners own those certain (6) distribution centers (the "DC Properties" and, together with the Retail Properties, collectively, the "Properties") more particularly described in the DC Master Lease (as hereinafter defined), and lease such DC Properties to Penney Tenant II LLC ("DC Tenant" and, together with Retail Tenant, individually and/or collectively, "Tenant") pursuant to that certain DC Master Lease, dated as of December 7, 2020, between DC Owners (as successor by assignment to J. C. Penney Corporation, Inc., a Delaware corporation and J. C Penney Properties, LLC, a Delaware limited liability company), as landlord, and DC Tenant, as tenant (as amended, the "DC Master Lease" and, together with the Retail Master Lease, individually and/or collectively, the "Master Lease").

WHEREAS, the Trust wishes to engage Manager to provide the Services (as defined below) related to the Properties, and Manager wishes to provide such Services, in each case, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, Manager and the Trust hereby agree as follows:

Agreement

1. DEFINITIONS

In this Agreement, capitalized terms shall have the meanings set forth herein and listed in Schedule 2 or, if not set forth herein, in the Trust Agreement.

2. SERVICES

2.1 Scope of Services. During the Term of this Agreement, the Manager shall perform those certain services set forth on Schedule 1 attached hereto or otherwise set forth in this Agreement and such other services related to the management of the business and affairs of the Trust as may be mutually agreed among the Parties in writing from time to time (the “Services”). In furtherance of the foregoing and subject to the limitations set forth in this Agreement (specifically including Section 2.5 hereof), during the Term of this Agreement:

- a. Manager will provide a management team along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust hereunder (the “Personnel”), including individuals who shall serve as the principal executive officer (the “Executive Officer”) and principal financial officer (the “Financial Officer”) and together with the Executive Officer, the “Officers”) of the Trust solely in connection with SEC reporting requirements and for no other purpose, to provide the management services hereunder. The Personnel shall devote such of their time to the management of the Trust as is reasonably necessary and appropriate. Manager shall not be obligated to dedicate any of its personnel, including, without limitation, the Personnel and Officers, exclusively to the Trust, but will agree to dedicate such personnel to the extent required to perform the Services in accordance with the Performance Standard.
- b. In connection with Manager’s provision of the Services, the Trustee hereby appoints Manager as the manager and representative for the Services during the Term, except to the extent that the Manager elects, in its discretion and subject to the terms of this Agreement (including, without limitation, Section 11), to cause the duties of the Manager as set forth herein to be provided by third parties and/or its Affiliates. The scope of the Services shall not be changed without prior written consent of the Manager and the Trust. For the avoidance of doubt, the scope of Services shall not be considered changed or amended for any act or service not specifically enumerated on Schedule 1 but which has been requested by the Trustee.
- c. Manager shall have discretion and authority pursuant to this Agreement to perform the Services in accordance with the Performance Standard and in such manner as Manager reasonably considers appropriate to comply with such Performance Standard, subject to the terms and restrictions contained in this Agreement, as amended from time to time. In furtherance of the foregoing, the Trustee hereby designates and appoints the Officers or their designees, and each of them, as an agent and attorney-in-fact of the Trust, with full power and authority and without further approval of the Trustee, for purposes of accomplishing on the Trust’s behalf any of the matters expressly contemplated herein. Further, the Officers, or either of them or their designees, may execute, in the name and on behalf of the Trust all such documents and take all such other actions which such Person reasonably considers necessary or advisable to carry out the duties of Manager hereunder.

- d. The Manager may retain, subject to Section 11 hereof, such persons and firms as the Manager reasonably deems necessary or advisable in connection with the performance of the Services.
- e. Manager shall act on behalf of the Trust in arranging for the sale or other disposition of the Properties, disbursing and collecting the Trust's funds, paying the debts and fulfilling the obligations of the Trust (but only to the extent the Trust has working capital to pay and fulfil same on deposit in the Manager's Reserve Account) and supervising the performance of professionals engaged by or on behalf of the Trust other than attorneys and third-party advisors engaged by or on behalf of the Trust related to any corporate and governance matters of the Trust in each case upon the terms and subject to the conditions in the Trust Agreement.
- f. The Manager shall: (i) reasonably cooperate with the Trustee and the Certificateholders (to the extent applicable) with respect to the negotiation, execution, consummation and incurrence of any Permitted Indebtedness or any sale of the Trust Certificates (including pursuant to the Registration Rights and Resale Cooperation Agreement) and any agreements related thereto (including any engagement letters for any structuring agent, arranger, underwriter, initial purchaser or similar agent); (ii) reasonably cooperate with the Trustee and/or any structuring agent, arranger, underwriter, initial purchaser or similar agent of any Permitted Indebtedness or order to obtain a rating of such Permitted Indebtedness; (iii) reasonably cooperate with the Trustee and/or any such structuring agent, arranger, underwriter, initial purchaser or similar agent in preparing any offering memorandum, private placement memorandum, confidential information memorandum, investor presentations, lender presentations or similar materials; (iv) reasonably cooperate with Trustee to cause Trust to enter into such documents and take such other actions reasonably necessary in connection with the foregoing.
- g. Manager shall prepare an initial budget for the Trust and the Trust Assets on or prior to the date hereof, to be approved by BidCo, and subsequent annual budgets (the initial budget and subsequent annual budgets, together, the "Annual Budgets")
- h. Manager shall carry out the Services hereunder in accordance with the Annual Budgets, subject to Section 4.2(c).
- i. Manager shall perform the Services in accordance with the Performance Standard.

2.2 Place of Performance. Manager and the Officers shall provide the Services, as applicable, at Manager's offices or such other locations as designated by Manager in its sole and absolute discretion, and shall only be required to perform the Services at the Properties to the extent necessary and required to fulfill the Services. Notwithstanding anything herein, the Trustee acknowledges and agrees that, if and to the extent there are any third-party property managers and contractors at the Properties (collectively, the "Property Level Contractors") and, as part of Manager's obligation to perform the Services, Manager is required to oversee the day-to-day operations of the Property Level Contractors, the Trustee acknowledges and agrees that (i) the Manager Parties (as defined below) shall in no way be deemed to be, or shall be, the employer of the Property Level Contractors or their employees or the Trust or its employees, (ii) the Manager Parties shall in no way be deemed to be, nor shall they be, employees or agents of the Property Level Contractors or the Trust or its employees and (iii) the Manager Parties shall not in any way be responsible for providing any direction operation or financial oversight or supervision at any physical location of the Properties.

2.3 Trustee's Cooperation. In order to properly perform the Services and fulfill its obligations hereunder, each of Manager and the Officers will rely on the timely cooperation of the Trustee (to the extent the Trustee is able to perform such tasks without direction from Certificateholders or has obtained the approval or direction of the requisite Certificateholders) and other professional advisors, including, without limitation, making available to each of Manager and the Officers relevant data, information and records and performing any tasks or responsibilities reasonably requested of the Trustee (to the extent the Trustee is able to perform such tasks without direction from Certificateholders or has obtained the approval or direction of the requisite Certificateholders) by either of Manager or the Officers in connection with the Services. The Trustee will provide Manager, the Personnel, the Approved Subcontractors and the Officers with full access to all books, records and (to the extent advisable for the proper performance of the Services), as well as to all accountants and attorneys retained by either of Manager or the Officers with respect to the Services. The Trustee acknowledges and agrees that neither Manager nor any of the Officers shall have any responsibility or liability for any delays, additional costs or other deficiencies caused by the Trustee's failure to comply with this Section 2.3. Further, to the extent permitted by applicable law, each of Manager and Officers (i) shall assume the accuracy and completeness of all information submitted by or on behalf of the Trustee (including any of its officers, employees, or representatives) to Manager or any of the Officers for analysis and which will form the basis of Manager's or such Officers' conclusions, as applicable, without any obligation of either of Manager or any of the Officers to verify the accuracy or completeness of such information and (ii) shall not be liable or responsible for any Services provided to the extent based on inaccurate or incomplete information provided or accepted by or on behalf of the Trust.

2.4 Payment of Accounts. The Trustee shall cause bank accounts to be established as contemplated by the Trust Agreement (any such account, a "Company Account"). Manager shall direct that any and all amounts due and owing pursuant to the Master Leases or otherwise collected in connection with the Properties (including in connection with a sale of any Property) be paid directly to the designated Company Account identified by the Trustee or as contemplated by Section 5.02 of the Trust Agreement. The Trustee acknowledges and agrees that, other than the expenses set forth in Section 4.2(a) below, any and all amounts due and owing hereunder, including, without limitation, in Sections 4.1, 4.2(b) and 4.3 shall be paid out of the Manager's Reserve Account, it being acknowledged and agreed by the Trustee that Manager shall not be obligated to pay for any matters hereunder or otherwise in connection with the Services other than as contemplated by Section 4.2(a) nor shall Manager be required to continue performing the Services hereunder to the extent the Trustee, on behalf of the Trust, has failed to fund its obligations hereunder, following written notice to the Trustee by the Manager of such funding obligations, and such failure continues for a period of ten (10) business days after written notice of such failure has been delivered to the Trustee by the Manager.

2.5 Limitations on Authority. In addition to any and all other limitations on the authority of the Manager set forth herein, the Manager shall not be authorized without the prior written consent of the Trustee (on behalf of the Trust) (which consent may be withheld or granted in its sole and absolute discretion and may be subject to direction of Certificateholders as appropriate or applicable) to: (a) take any action that would constitute a default under any document evidencing Permitted Indebtedness, any Master Lease or other material agreement (copies of which are in the possession of or have been provided to the Manager), law, or regulation affecting the Properties, (b) enter into any PSA except as permitted under the Trust Agreement, (c) agree to sell any of the Properties except to the extent that such sale is an Agreed Sale or constitutes a Strategic Disposition Transaction, (d) sell any of the Properties for consideration other than cash, (e) borrow money or execute any promissory note on behalf of the Trust or any of the Owners or encumbering any of the Properties, or (f) enter into any other leases (other than the Severed Leases expressly permitted pursuant to the terms of the Master Leases (with such modifications as are approved by Trustee (acting at the direction of the Certificateholders as appropriate or applicable), or counsel to the Trust)), master leases, or other material agreements affecting the Properties.

3. COVENANTS. The Manager shall reasonably cooperate with the Trustee's efforts to satisfy the following covenants set forth in Article VI of the Trust Agreement: Sections 6.06, 6.09(b), 6.09(c), 6.09(j), 6.09(k) and 6.09(l).

4. FEES AND EXPENSES.

4.1 Consideration. The Trust shall pay to Manager, in consideration of the Services, an annual base management fee (the "Base Fee") and the asset management fee (the "AM Fees") as set forth in Schedule 3 (collectively the "Consideration"). Manager shall be solely responsible for the compensation of any Approved Subcontractors and Personnel who may provide any Services pursuant to this Agreement.

4.2 Expenses.

(a) Expenses of Manager. Except as otherwise expressly provided herein or in any Annual Budget, Manager shall bear the expenses set forth in clauses (i) through (iii) below incurred in connection with the performance of its duties under this Agreement. Any other expenses incurred by Manager or the Officers in connection with the Services or the performance of each of their respective duties hereunder and not expressly set forth in this Section 4.2(a) shall be promptly reimbursed by the Trust to Manager within five (5) business days after receipt of a written request (together with reasonably detailed invoices) for such reimbursement by the Manager to the Trustee.

- (i) salary (including bonus and other wages), or employment expenses (including payroll taxes and any costs of insurance) of the Personnel (but not travel and other expenses incurred in connection with providing the Services);
- (ii) rent, telephone, utilities, office furniture, equipment and machinery (including computers, to the extent utilized) and other office expenses of Manager in connection with this Agreement, except to the extent such expenses relate solely to an office maintained by the Trustee separate from the office of Manager or the Officers; and
- (iii) miscellaneous administrative expenses relating to performance by Manager and the Officers of their respective obligations hereunder.

(b) Expenses of the Trust. Except as expressly otherwise provided in this Agreement and subject to the requirement set forth in Section 4.3 below, the Trust shall pay all of its expenses, and, without limiting the generality of the foregoing, it is specifically agreed that the following expenses of the Trust shall be (x) paid by the Trustee, on behalf of the Trust, and shall not be paid by Manager or (y) subject to the limitations set forth below, paid by the Manager and reimbursed by the Trustee, on behalf of the Trust, within five (5) business days following a written request for any such reimbursement provided by the Manager to the Trustee:

- (i) travel and other expenses of the Personnel and Officers incurred in connection with the Services (other than salary or employment expenses);
- (ii) the cost of borrowed money;
- (iii) taxes on income and taxes and assessments on real and personal property, if any, and all other taxes applicable to the Trust or the Properties;
- (iv) legal, auditing, accounting, underwriting, brokerage, listing, reporting, registration and other fees, and printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, trading, registration and listing of the Trust or any securities on the stock exchange, including transfer agent's, registrar's and indenture trustee's fees and charges;

- (v) expenses of organizing, restructuring, reorganizing or liquidating the Trust, including winding down, revising, amending, converting or modifying the Trust's organizational documents;
- (vi) fees and travel and other expenses paid to the Trustee and officers of the Trust (but not in their capacities as officers or employees of Manager) and fees and travel and other expenses paid to advisors, contractors, mortgage servicers, consultants, and other agents and independent contractors employed by or on behalf of the Trust;
- (vii) documented expenses directly connected with the investigation, disposition or ownership of the Properties or other real estate interests or other property (including third party property diligence costs, appraisal reporting, insurance premiums, legal services, brokerage and sales commissions, maintenance, repair, improvement and local management of property), other than expenses with respect thereto of employees of Manager, to the extent that such expenses are to be borne by Manager pursuant to Section 4.2(a) above;
- (viii) all insurance costs incurred in connection with the Trust (including director, trustee and/or officer liability insurance) or in connection with any director, trustee and/or officer indemnity agreement to which the Trust is a party;
- (ix) documented expenses for all third-party contracts entered into by or on behalf of Manager and as set forth in the applicable Annual Budget (or otherwise approved in writing by the Trustee), including, without limitation, those entered into with the Subcontractors; *provided* that any such-third-party contracts not provided for in the applicable Annual Budget or otherwise approved in writing by Trustee shall be subject to Section 4.2(c) below;
- (x) expenses connected with payments of dividends or interest or contributions in cash or any other form made or caused to be made by the Trustee to holders of securities of the Trust;
- (xi) all expenses connected with communications to holders of securities of the Trust and other bookkeeping and clerical work necessary to maintaining relations with holders of securities, including the cost of any transfer agent, the cost of preparing, printing, posting, distributing and mailing certificates for securities and proxy solicitation materials and reports to holders of the Trust's securities;
- (xii) legal, accounting and auditing fees and expenses in addition to those described in subsection (iii) above;
- (xiii) filing and recording fees for regulatory or governmental filings, approvals and notices to the extent not otherwise covered by any of the foregoing items of this Section 4.2(b);
- (xiv) software licensing fees and other fees and costs associated with proprietary software and programs used separately by the Trust; and
- (xv) all other costs and expenses of the Trust, including those set out in the Annual Budgets, other than those to be specifically borne by Manager pursuant to Section 4.2(a) above.

(c) If, during any calendar year, the aggregate total expenses of the Trust exceed (or are projected in good faith by the Manager to exceed) 120% of the aggregate total expenses of the Trust set forth in the then current Annual Budget, then the Manager shall, within ten (10) Business Days, provide an updated Annual Budget to the Trustee.

4.3 Invoices and Payment. Manager shall provide an invoice for, all reimbursable expenses, billed no more frequently than monthly, but no later than forty-five (45) days after receipt of an invoice by Manager, the Personnel and/or the Officers of any such reimbursable expenses. Each invoice shall be accompanied by reasonable back-up documentation of the charges contained therein including receipts or paid invoices for any reimbursable expenses to be reimbursed.

4.4 Full Payment. Payment of the Consideration and reimbursement of the reimbursable

expenses hereunder shall constitute full and entire compensation for Services under this Agreement.

5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence as of the Effective Date and shall continue for a period of twenty-four (24) months thereafter; *provided*, however, that such twenty-four (24) month period shall be automatically extended in successive six (6) month increments until the termination of the Trust Agreement in accordance with its terms (the “Term”).

5.2 Termination. This Agreement may be terminated as follows:

- (a) By the Trustee (acting at the direction of the Majority Certificateholders for a termination pursuant to clause (v) below and otherwise pursuant to the Trust Agreement):
 - (i) immediately upon written notice thereof to Manager, in the event of any action or omission by the Manager or the Officers that constitutes fraud, willful material misrepresentation, willful misconduct, material breach of this Agreement (including any breach of the Performance Standard), willful misapplication or misappropriation of funds or gross negligence and, to the extent such action or omission constitutes a material breach of this Agreement and is otherwise curable (it being understood and agreed that any monetary breach of this Agreement shall be deemed not to be curable), which is not cured by the Manager or the Officers within thirty (30) days after the Manager or the Officers are provided written notice thereof; *provided* that if the Manager or the Officers cure any such material breach of this Agreement within the foregoing cure period, this Agreement will not so terminate and the applicable notice of termination shall be deemed to have been rescinded;
 - (ii) immediately and automatically, in the event of a liquidation or dissolution of the Manager;
 - (iii) immediately upon written notice thereof to Manager, in the event the Manager commences a voluntary case or proceeding under any bankruptcy law, consents to the commencement of any bankruptcy or insolvency case or proceeding against it, or files a petition or answer or consent seeking reorganization or relief against it, consents to the entry of a decree or order for relief against it in an involuntary case or proceeding under any bankruptcy law, consents to the filing of any such petition or to the appointment of or taking possession by a custodian of the Manager or for all or substantially all of its property, or makes an assignment for the benefit of creditors or admits in writing of its inability to pay its debts generally as they become due or takes any corporate action in furtherance of any such action;
 - (iv) immediately upon written notice thereof to Manager, in the event that a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against the Manager in any involuntary case or proceeding under any bankruptcy law, or adjudges the Manager bankrupt or insolvent, or approves as properly filed a petition seeking

reorganization, arrangement, adjustment or composition of or in respect of the Manager, or appoints a custodian of the Manager or for all or substantially all of its property, or orders the winding up or liquidation of the Manager, and any such decree or order for relief or any such other decree or order continues unstayed and in effect for a period of ninety (90) consecutive days; or

- (v) for any reason or no reason at any time after the Effective Date by providing not less than ninety (90) days' prior written notice thereof to Manager; *provided* that, except with respect to a termination pursuant to Sections 5.2(a)(i)-(iv), Manager shall be entitled to the sum, to the extent applicable, of: (i) all fees payable pursuant to Section 4; (ii) any accrued fees and expenses as of such termination date; (iii) with respect to Agreed Sales that are closed not more than one hundred eighty (180) days following the termination date, in the event that one or more definitive letters of intent or PSAs with respect to such Agreed Sales shall have been executed by the relevant parties prior to the termination date, the AM Fees Manager would have been entitled to receive in connection with such Agreed Sales but for its termination hereunder; and (iv) if terminated at any time prior to the last day of the fourteenth (14th) month following the Effective Date, the aggregate Base Fee for each remaining month in such fourteen-month period, notwithstanding such earlier termination.

(b) By Manager for any reason or no reason by providing not less than one hundred eighty (180) days' prior written notice thereof to the Trustee; in which event Manager shall be entitled to all fees payable pursuant to Section 4 until such termination becomes effective.

(c) Automatically as to each party hereto upon the final dissolution of the Trust following the sale of all Properties.

5.3 Effect of Expiration/Termination. Upon the expiration or earlier termination of this Agreement:

(a) The Parties shall have no further rights or obligations under this Agreement, except as specifically set forth herein, and the Trustee's obligation to pay any Consideration and to reimburse any Approved Expenses accruing from and after the date of such termination shall cease;

(b) The Trustee, on behalf of the Trust, shall be responsible for paying any Consideration and reimbursing any Approved Expenses incurred or accruing prior to the date of the expiration or termination of this Agreement; and

(c) Manager shall return, or cause to be returned, all Confidential Information, and any other property of the Trust, in its actual possession or control; *provided*, that (i) neither Manager nor the Officers shall have any obligation to return or destroy information (including copies, extracts and other reproductions) retained in standard archival or computer back-up systems or pursuant to its or its representatives' normal document or e-mail retention practices, (ii) Manager and the Officers may retain information to the extent required (based upon the advice of counsel) by legal requirements or by any governmental or regulatory authority, and (iii) Manager's accountants or attorneys may retain information pursuant to their professional

obligations. Any information retained by the receiving party or its representatives as described in clauses (i), (ii) and (iii) shall be maintained as confidential and shall be subject to the terms and conditions of this agreement.

5.4 Post-Termination Transition Services. Notwithstanding anything in this Section 5 to the contrary, for a period of not less than one hundred eighty (180) days following any termination of this Agreement by the Trustee pursuant to Section 5.2(a), Manager shall be required to provide reasonable and customary assistance and transition services to any replacement manager(s) engaged by the Trust, which cooperation shall include, without limitation, reasonable access to (i) any information in the possession of the Manager Parties in respect of the Trust and (ii) the Officers and Personnel (collectively, the “Transition Services”). In connection with any Transition Services requested, the Trustee, on behalf of the Trust, shall pay to Manager an amount equal to \$75,000 per month until such time as the Trustee notifies Manager that such Transition Services are no longer required.

7. INDEPENDENT CONTRACTOR

The Trustee, on behalf of the Trust, acknowledges and agrees that (i) Manager will act as an independent contractor hereunder, and its responsibility is solely owed to the Trust and contractual in nature, and Manager does not owe the Trust, or any other person or entity (including, without limitation, any Certificateholders or holders of Trust Interests, affiliates, creditors or employees of the Trust), any fiduciary or similar duty as a result of its engagement hereunder or otherwise, (ii) the Manager Parties will not be liable for any losses, claims, damages or liabilities arising out of the actions taken, omissions of or advice given by other parties who are providing services to the Trust, (iii) Manager may provide tools or online document repository spaces to facilitate the Services, that such products or services are provided by third party vendors and that the Trust uses those products or services at its own risk, (iv) Manager is not an advisor as to legal, tax, accounting or regulatory matters in any jurisdiction, (v) the Trustee has consulted, and will consult, as appropriate, with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of this Agreement and the matters contemplated hereby, and that the Manager Parties shall have no responsibility or liability with respect thereto, (vi) the Trustee, on behalf of the Trust is capable of evaluating the merits and risks of this Agreement and accepts the terms, conditions, and risks herein and the transactions and fees contemplated hereunder, (vii) neither the Trustee nor its agents, employees or representatives shall represent themselves in any way as agents or employees of Manager nor shall any of the foregoing have any power to legally bind the Manager Parties to any third party and (viii) neither the Manager nor any Manager Parties or Personnel be deemed employees of the Trust or, except for the Officers (solely to the extent and pursuant to the express terms hereof), officers of the Trust.

8. TAXES

Manager shall be solely responsible for the payment of all federal, state and local taxes (including federal, state and local self-employment taxes) that are in any way connected with its performance of the Services, as applicable; *provided*, however that in no event shall the foregoing be construed as requiring Manager to pay any real estate, ad valorem or other similar taxes assessed on the Properties or any portion thereof (“Real Estate Taxes”), which Real Estate Taxes shall be the sole responsibility of the applicable Tenants under the Master Leases; provided, however, that from and after (i) the Partial Property Termination Date with respect to any Tenant Option Property (as such terms are defined in the Master Lease) or (ii) any other date, with respect to any Property, as of which the applicable Tenant is no longer paying the applicable Real Estate Taxes (whether as a result of the termination of the applicable Master Lease, a default thereunder or otherwise), Manager shall arrange for the payment, on behalf of the Trust, of such Real Estate Taxes, subject to the Trust’s right to reimbursement thereof in accordance with its Master Lease. In each case where an amount in respect of tax is payable by the Trust in respect of a service

provided by the Manager, the Manager shall furnish in a timely manner a valid sales (or other) tax receipt or invoice to the Trustee in the form and manner required by applicable law to allow the Trust to recover such tax to the extent allowable under such law.

9. NO JOINT VENTURE

The Trustee, on behalf of the Trust, and Manager acknowledge and agree that the Trust and Manager are not partners or joint venturers with each other and neither the terms of this Agreement nor the fact that the Trust and Manager may have joint interests in any one or more investments, ownership in each other or other interests in any one or more entities or may have common officers or employees or a tenancy relationship shall be construed so as to make them such partners or joint venturers or impose any liability as such on either of them

10. ASSIGNMENT; DELEGATION

Except with respect to the employment of the Personnel, Officers and Subcontractors engaged or delegated to by Manager in connection with the Services, Manager shall not assign this Agreement, or delegate or enter into any subcontract for the performance of any of its obligations under this Agreement, including any portion of the Services, in whole or in part. Any purported assignment in violation of this provision shall be void and of no effect.

11. THIRD PARTY SERVICES; AFFILIATE SERVICES

The Manager may retain, or may seek to have the Trust retain, for and on behalf, and at the sole cost and expense, of the Trust, the services of such persons, third-party service providers and third-party service firms selected by Manager (each, a “Third-Party Firm”) as the Manager reasonably deems necessary or advisable; *provided*, that: (i) any such services may only be provided by Affiliates of the Manager to the extent that (A) such services are on arms’ length terms and at competitive market rates in relation to terms that are then customary for agreements regarding the provision of such services to companies that have assets similar in type, quality and value to the assets of the Trust; (B) the Trustee (acting with the approval of the Majority Certificateholders (as defined in the Trust Agreement)) has approved the retention of such Affiliate; and (C) the Manager shall remain fully liable for any failure by such Affiliates to perform the Manager’s obligations under this Agreement as if such services were performed by the Manager itself; (ii) (x) to the extent that any such Services are delegated to a Third-Party Firm as contemplated by the initial Annual Budget, such expenses shall be at the sole cost and expense of the Trust, and Manager has the right to delegate any such Services to any Third-Party Firm providing substantially similar services and (y) if in the future a requirement for services of a kind not contemplated in the initial Annual Budget arises and such services are not customarily and usually performed by prudent institutional commercial property and asset managers in administering portfolios of commercial properties or historically performed by the Manager, then the Manager may retain for and on behalf, and at the sole cost and expense, of the Trust, the services of a Third-Party Firm; and (iii) whether such Third-Party Firms are Affiliates or third parties, the Services shall include Manager’s supervision of such service providers. In performing its duties under this Section 11, the Manager shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by the Manager at the Trust’s sole cost and expense; *provided, however*, that Manager shall not be permitted to hire any Third-Party Firm if the reasonable costs and expenses of such Third-Party Firm are not included on the applicable Annual Budget.

12. LIMITATION OF LIABILITY; INDEMNIFICATION

12.1 Limitation of Liability. Manager assumes no responsibility other than to render the Services in accordance with the Performance Standard and shall not be responsible for any action of the Trustee in following or declining to follow any advice or recommendation of Manager other than with respect to the Excluded Losses.

12.2 Indemnification.

(a) The Trust shall indemnify and hold harmless Manager and its officers, members, employees and directors, and each of their respective successors and assigns (collectively, the “Manager Parties”), to the fullest extent lawful, from and against any and all claims, liabilities, losses, actions, suits, proceedings, third party subpoenas, damages, out-of-pocket costs and expenses (an “Action”) (including, without limitation, full reimbursement of all reasonable and documented out-of-pocket fees and expenses of one counsel in investigating, preparing or defending against any such Action and in enforcing the terms of this Agreement, as incurred, related to or arising out of or in connection with the Services, the Properties or any portion thereof or this Agreement, whether or not resulting from the Manager Parties’ negligence (“Losses”)); *provided*, that the Trust shall not be responsible for or indemnify or hold harmless any Manager Parties from or against any Excluded Losses. “Excluded Losses” shall mean any Action or Losses that arise out of or are based on any action or failure to act by Manager to the extent such Action or Losses are determined, by a final non-appealable judgment by a court of competent jurisdiction, to have resulted or arisen from Manager’s bad faith, gross negligence or willful misconduct.

(b) the Manager shall, to the fullest extent lawful, reimburse, indemnify and hold the Trust (or any Subsidiary), the Trustee and its and their stockholders, directors and officers and each other Person, if any, controlling the Trust (each, a “Trust Party” and together with the Manager Parties, each, an “Indemnitee”), harmless of and from any Action or Losses in respect of or arising from the Manager’s bad faith, willful misconduct or gross negligence, as determined by a final adjudication.

12.3 Procedure. If any action or proceeding in respect of which indemnity may be sought in accordance with Section 12.2 is brought or asserted against any Indemnitee, such Indemnitee shall promptly notify the party against whom such indemnity is claimed (the “Indemnitor”) in writing (but the failure to give such notice shall not affect the Indemnitor’s obligations hereunder or otherwise unless the Indemnitor demonstrates that the defense of such action or proceeding was materially prejudiced by such failure), and the Indemnitor shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnitee and the payment of all defense costs and expenses. Each Indemnitee shall have the right to employ separate counsel in any such action or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be borne by the Indemnitee unless (i) the Indemnitor has agreed in writing to pay such fees and expenses, (ii) the Indemnitor shall have failed to assume the defense of such action or proceeding within ten business days after the Indemnitee gives written notice of such action or proceeding, or (iii) the named parties to any such action or proceeding include both the Indemnitee and the Indemnitor or an affiliate thereof such that joint representation would be inappropriate (in which case, if the Indemnitee notifies the Indemnitor that it elects to employ separate counsel at the expense of the Indemnitor, the Indemnitor shall not have the right to assume the defense of such action or proceeding on behalf of the Indemnitee; however, the Indemnitor shall not, in connection with any one such action or proceeding, be liable for the fees and expenses of more than one separate firm of attorneys, together with local counsel at any time for all Indemnitees, which firm shall be designated by the Indemnitee). If the Indemnitor assumes the defense of such an action, (a) no compromise or settlement thereof may be effected by the Indemnitor without the Indemnitee’s consent (which shall not be unreasonably withheld or delayed) unless (x) there is no finding

or admission of any violation of law or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnitee (y) the sole relief provided is monetary damages that are paid in full by the Indemnitor and (b) the Indemnitor shall have no liability with respect to any compromise or settlement thereof effected without its consent (which shall not be unreasonably withheld) and (z) such compromise or settlement includes an express unconditional release of such Indemnitee from all Losses arising out of such Action. If notice is given to the Indemnitor of the commencement of any action and it does not, within ten (10) business days after the Indemnitee's notice is given, give notice to the Indemnitee of its election to assume the defense thereof, the Indemnitor shall be bound by any determination made in such action or any compromise or settlement thereof effected by the Indemnitee.

12.4 Contribution. If, for any reason the indemnification in Section 12.2 is judicially determined to be unavailable to any such Indemnitee for any reason or insufficient to hold any such Indemnitee harmless, each Indemnitor agrees to contribute to any such Losses in such proportion as is appropriate to reflect the relative benefits received or proposed to be received by it, on the one hand, and by such Indemnitee, on the other, from the matters (whether or not consummated) contemplated by the Agreement or, if allocation on that basis is not permitted under applicable law, in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor, on the one hand, and Indemnitee, on the other, but also the relative fault of the Indemnitor and the Indemnitee, as well as any other relevant equitable considerations. Notwithstanding the provisions hereof, the aggregate contribution of all Manager Parties to all Losses shall not exceed the amount of fees actually received by Manager with respect to the services rendered pursuant to this Agreement. Relative benefits to the Trust, on the one hand, and to Manager, on the other hand, shall be deemed to be in the same proportion as (i) the total value received by the Trust from the matters contemplated by the Agreement bears to (ii) all fees actually received by Manager in connection with the Agreement.

12.5 Other Activities. Subject to Section 13 herein and the Manager acting in accordance with the Performance Standard in rendering the Services, nothing in this Agreement shall prevent any of the Manager Parties from engaging in other activities or businesses, including those that compete with the Trust, or from rendering services of any kind to any other person or entity, including any that may compete with the Trust, including investment in, or advisory service to others investing in, any type of real estate or real estate related investment, including investments which meet the principal investment objectives of the Trust (collectively, the "Investment and RE Matters"). The Trustee acknowledges and agrees that it is not entitled to preferential treatment in receiving information, recommendations and other services from Manager. The Trustee further acknowledges that certain conflicts may exist with regard to the allocation of Investment and RE Matters and for the time and attention of the Manager Parties in connection therewith and agrees that the Manager Parties may resolve such conflicts in good faith and in their fair and reasonable discretion.

12.6 Potential Opportunities. If any of the Manager Parties acquire knowledge of a potential business opportunity related to the Investment and RE Matters, and provided that the Manager Parties at all times act accordance with the Performance Standard, the Trust renounces any potential interest or expectation in, or right to be offered or to participate in, such business opportunity to the maximum extent permitted by applicable law. Accordingly, to the maximum extent permitted by applicable law (i) the Manager Parties are not required to present, communicate or offer any business opportunity to the Trust and (ii) the Manager Parties, on each of their own behalves, shall have the right to hold, exploit, direct, recommend, offer, sell, assign or otherwise transfer any such business opportunity to any person or entity other than the Trust. The foregoing shall not constitute or be construed or interpreted as a breach by Manager of any duties to the Trust under this Agreement, or an act or omission of any of the Manager Parties, as applicable, constituting bad faith, fraud, intentional misconduct or knowing disregard of the duties of Manager under this Agreement. Notwithstanding the foregoing, in no event shall Manager or any of its Affiliates or Representatives be permitted to represent the counterparty in any transaction,

arrangement or agreement with the Trust including, without limitation, in connection with the Property Documents (as defined in the Master Leases). The Manager shall not purchase any Property or acquire any Permitted Indebtedness of the Trust.

12.7 Survival. The agreements in this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. CONFIDENTIALITY

13.1 Confidentiality Obligations. All non-public information (“Confidential Information”) obtained by the Trustee or the Trust on the one hand or the Manager, Officers and any Personnel on the other hand, or their respective Affiliates of any of the foregoing (collectively, “Representatives”), pursuant to, or in connection with any obligations (including performance of the Services) under, this Agreement, whether oral or written, shall be regarded as strictly confidential unless disclosure thereof (including disclosure of this Agreement) is required pursuant to applicable law or as otherwise provided in Section 13.5.

13.2 Definition of Confidential Information. “Confidential Information” includes, but is not limited to, all plans, drawings, renderings, studies, reports, analyses, records, agreements, sales and marketing materials, and other materials and documents including any derivative works with respect to any of the foregoing, and the information contained therein, provided or shown to the Party wishing to disclose such materials (the “Disclosing Party”) or its agents or employees by the other Party (the “Non-Disclosing Party”) or its agents or employees, or otherwise produced by the Trustee or the Manager in the course of providing the Services hereunder;

13.3 Non-Disclosure Obligation. In consideration of the disclosure of the Confidential Information, the Parties agree to receive and hold the Confidential Information in strict confidence, to advise their Representatives of the confidential nature of the information and direct them to maintain such information in strict confidence and, except as contemplated herein, never to disclose, disseminate, publish, reproduce or otherwise use the Confidential Information in any manner whatsoever, except as specifically authorized in writing by the Non-Disclosing Party. Each of the Parties also agrees not to analyze, sell, show or give the Confidential Information or documents relating thereto to any third party, and will not disclose the results of tests conducted using the Confidential Information.

13.4 Security Procedures. Each Party agrees to limit the dissemination of the Confidential Information within its own organization only to those officers, employees, contractors, attorneys and consultants who need to have access to the Confidential Information solely in connection with such Party’s obligations hereunder.

13.5 Exclusions. The foregoing undertakings of confidentiality and non-disclosure shall not apply to Confidential Information that (a) prior to or after the date hereof was or becomes generally known to the public other than by reason of the Disclosing Party’s breach or deemed breach of the foregoing confidentiality undertakings, (b) is disclosed by the Disclosing Party pursuant to a requirement of law, provided that the Disclosing Party shall have complied with Section 13.6, (c) is disclosed in connection with any governmental or regulatory filings by the Trust or presentations to investors in the Trust (subject to compliance with Regulation FD), (d) is disclosed following the Disclosing Party receiving express written permission from the Non-Disclosing Party and (e) is disclosed pursuant to Section 13.6.

13.6 Disclosures Required by Law. If the Disclosing Party becomes legally obligated to disclose any Confidential Information, the Disclosing Party shall give the Non-Disclosing Party prompt

and timely notice of such fact so that the Non-Disclosing Party may obtain a protective order or other appropriate remedy concerning any such disclosure or waive otherwise waive the Disclosing Party's compliance with the provisions of this Section 13. The Disclosing Party shall cooperate fully with the Non-Disclosing Party in connection with the Non-Disclosing Party's efforts to obtain a protective order or other appropriate remedy. In the event Non-Disclosing Party is unable to obtain a protective order or other appropriate remedy with respect to the Confidential Information or has not responded to the Disclosing Party's notice within ten (10) days after receipt thereof and the Disclosing Party has otherwise complied with its obligations under this Section 13.6, the Disclosing Party shall not be liable for the disclosure of Confidential Information legally required to be disclosed and not subject to a protective order or other appropriate remedy. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Manager is required to disclose Confidential Information, the Manager may disclose only that portion of such information that is legally required without liability hereunder; *provided, that* the Manager agrees to exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information.

13.7 Return of Confidential Information. Except as otherwise provided in Section 5.3(c), each Party agrees that upon the earlier to occur of (i) the conclusion of the provision of the Services, or (ii) the earlier termination of this Agreement, each Party will promptly deliver to the other all Confidential Information in its possession generated or prepared by the other Party, without retaining any copy thereof; provided, that a Non-Disclosing Party may retain copies of Confidential Information, subject to this Agreement, in accordance with its internal record retention policies and procedures for legal, compliance or regulatory purposes.

13.8 Remedies. Each Party acknowledges that the Confidential Information is proprietary and confidential, and that the Non-Disclosing Party will suffer irreparable injury in the event of the use, delivery or disclosure of the Confidential Information, other than as expressly permitted herein, and there may be no adequate remedy at law for such violation. The Disclosing Party agrees that in the event of any unauthorized use, delivery or disclosure or threatened unauthorized use, delivery or disclosure of the Confidential Information, the Non-Disclosing Party, in addition to all other remedies it may have in law or equity, shall be entitled to seek a temporary restraining order and/or injunction, on an *ex parte* basis, prohibiting any further use, delivery or disclosure of the Confidential Information by the Disclosing Party.

13.9 Indemnification. The Disclosing Party agrees to indemnify, save and hold the Non-Disclosing Party, as applicable, harmless from and against any Claims that the Non-Disclosing Party may incur as a result of any knowing disclosure or knowing use of the Confidential Information not expressly permitted hereunder.

13.10 Information Policy. The Manager acknowledges that the United States securities laws: (i) restrict the Trust and the Manager from communicating any material non-public information about the Trust, its subsidiaries and the Properties ("MNPI") to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell Trust Interests (as defined in the Trust Agreement) or interests therein; (ii) prohibit selective disclosure of any MNPI, including, but not limited, to holders of Trust Interests; and (iii) restrict any Certificateholders who have received MNPI from purchasing or selling Trust Interests or interests therein. The Manager shall comply with the United States securities laws in connection with all information about the Trust, its subsidiaries and the Properties. The Manager shall not disclose MNPI to Certificateholders or their Affiliates, unless the Trustee (to the extent authorized under the Trust Agreement) has consented to such disclosure.

14. EXCULPATION. The Trustee agrees, on behalf of itself and the Trust, to look solely to Manager's interest in and to this Agreement (including the right to any fees hereunder) and any available

insurance proceeds and rights of recovery for the satisfaction of any claim now existing or hereafter arising or accruing against the Manager Parties and in no event shall the Manager Parties have any personal liability hereunder beyond the interest, if any, of Manager in and to this Agreement.

15. INSURANCE.

15.1 General Requirements. During the Term, Manager shall procure and maintain commercially reasonable types and limits of insurance covering Manager and the performance of the Services, subject to the terms, conditions and exclusions of such policies. Any Approved Subcontractor providing Services or entering onto the Property shall also be required to comply with the insurance requirements set forth in this Section 15. The insurer shall provide for at least thirty (30) days prior written notice to the Trustee in the event Manager and its insurer or insurers materially change, cancel or non-renew any insurance policy. The following insurance coverage is required:

15.2 Commercial General Liability Insurance. Commercial general liability insurance providing commercially reasonable limits for general aggregate and aggregate for products and completed operations. The Trustee may reasonably request higher liability limits or aggregate coverages at any time during the Term if in the Trustee's sole discretion, the risk warrants. The Trustee will give Manager reasonable notice of its request for higher liability limits or aggregate coverages and any agreed-upon change to the liability limits or aggregate coverages, and the Manager shall use commercially reasonable efforts to secure such coverage.

15.3 Professional Liability Insurance. Limit of Liability and deductible shall be commercially reasonable. The professional liability insurance shall cover wrongful acts, errors and omissions, including liability assumed under this Agreement, subject to the terms, conditions and exclusions of such policy. Manager may permit its insurer to write this coverage on a claims-made basis, provided that Manager shall use commercially reasonable efforts to maintain a "tail" or similar extended reporting period, in the event of the expiration of coverage, for occurrences arising out of the performance of the Services for a period of at least three (3) years after the expiration of the Term.

15.4 Workers' Compensation and Employer's Liability. Workers' Compensation limits shall be the statutory limits, and employers' liability insurance, with commercially reasonable limits for (1) Each Accident-Bodily Injury by Accident; (2) Each Employee-Bodily Injury by Disease; and (3) Policy Limit-Bodily Injury by Disease. Manager shall provide a waiver in favor of the Trustee for its workers' compensation coverage. Manager hereby waives all rights of recovery against the Trust, the Trustee and the other Manager Parties arising out of claims made under the workers' compensation or employers' liability insurance required to be maintained under this Agreement, and all such insurance shall include, by endorsement or otherwise, a waiver of subrogation in favor of the Trust, the Trustee and the other Manager Parties.

15.5 Master Lease Insurance Coverage. Manager shall, to the extent required in connection with the sale of any Property, use commercially reasonable efforts to: (i) facilitate the re-allocation of the BI Premium Cap under Section 11.1(c) of the Retail Master Lease for a BI Policy once a Property is sold and the related Property (or Properties) become severed Properties subject to a Severed Lease; and (ii) if a BI Policy is required by the applicable buyer (or its lender) and Manager recommends that the Trust, as seller, provide such coverage at its cost in connection with such sale, Manager shall (A) request from Tenant that Tenant obtain a quote for Tenant to procure such BI

Policy, and (B) use commercially reasonable efforts to obtain, on behalf of the Trust, one or more quotes from independent insurance brokers and/or insurers, to procure such BI Policy; and (iii) if an enhanced rating for an insurer providing insurance coverage to Tenant is required by the applicable buyer (or its lender) and Manager recommends that the Trust, as seller, provide such coverage at its cost (through a “wrap policy” or an independent insurance product then available in the market) in connection with such sale, Manager shall (A) request from Tenant that Tenant obtain a quote for Tenant to procure such enhanced rating or coverage, and (B) use commercially reasonable efforts to obtain, on behalf of the Trust, one or more quotes from independent insurance brokers and/or insurers, to procure such enhanced rating or coverage.

15.6 Maintain in Full Force. Manager shall deliver certificates of insurance, policy declarations pages, and additional insured endorsements providing proof of coverage to the Trustee as soon as reasonably practicable (including in respect of continuation of coverage upon renewal or replacement of an existing policy upon the written request of the Trustee). The Trustee reserves the right to require Manager to provide certified copies of the original policies of all insurance obtained in respect of the Trust at any time upon ten (10) days written notice to Manager subject to the Trustee’s agreement to keep such policies confidential.

15.7 Directors and Officers Liability. Limit of Liability and deductible shall be commercially reasonable. The Trustee, at the direction and with the assistance of the Manager, shall obtain and maintain director and officer liability insurance and shall add the Officers and Manager (together with any other Manager Parties reasonably requested by Manager) as additional insureds thereunder. Manager may permit its insurer to write this coverage on a claims-made basis, provided that Manager shall use commercially reasonable efforts maintain a “tail” or similar extended reporting period, in the event of the expiration of coverage for a period of at least six (6) years after the expiration of the Term.

16. SURVIVABILITY OF TERMS

In addition to those sections which expressly survive the expiration or termination of this Agreement, the following sections of this Agreement shall survive the expiration or termination of this Agreement: 5.3, 5.4, 12, 13, 14, 15.6, 16, 17, 19 and 20.

17. NOTICES

Except as set forth below, any notices and other communication required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered (a) in person with a signed delivery receipt, (b) by reputable overnight delivery service with proof of delivery; (c) by registered or certified mail, postage prepaid, return receipt requested, to the address of the respective party below, or (d) by email, with an original sent by any means described in (a), (b), or (c). Either party may, by notice to the other, change the names and addresses above given.

If to the Trust:

GLAS Trust Company LLC, as trustee
3 Second Street, Suite 206
Jersey City, NJ 07311
Email: ClientServices.Americas@glas.agency

with a copy to:

Milbank LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Attention: Casey Fleck
Email: CFleck@milbank.com

and to:

Milbank LLP
55 Hudson Yards
New York, New York 10001
Attention: Kevin O'Shea
Email: koshea@milbank.com & RENotice@milbank.com

If to Manager:

Hilco JCP, LLC
5 Revere Drive, Suite 206
Northbrook, Illinois, 60062
Attention: Neil Aaronson and Larry Finger
Email: naaronson@hilcoglobal.com & lfinger@hilcoglobal.com

18. PUBLICITY

Except as expressly provided for in this Agreement, and including, for avoidance of doubt, as believed necessary or appropriate to perform the Services, each Party may not, without the prior written consent of the other Party, which may be granted or withheld in such Party's sole absolute discretion (and in the case of the Trustee, without direction by Certificateholders as it may deem necessary or appropriate) (a) make any public pronouncements, issue any press releases or otherwise furnish information regarding this Agreement or the transactions contemplated to any third party other than its attorneys, consultants, accountants, Personnel or Subcontractors (in the event Manager is the disclosing Party) or any other such parties on a need to know basis or (b) include references to the Trust, the Trustee or Manager, as applicable, in any marketing or promotional materials. Notwithstanding the foregoing, with respect to any public pronouncements or public disclosures required by applicable law, Manager shall have the opportunity to review any such pronouncements or disclosures and provide comments to same not less than five (5) business days before the public dissemination thereof and, provided the Trustee complies with this sentence, Manager's consent shall not be unreasonably granted or withheld.

19. REPRESENTATIONS AND WARRANTIES

19.1 By Manager. Manager represents and warrants that:

(a) Manager is a Delaware limited liability company in good standing under the laws of the State of Delaware, with full power and authority to enter into and fully perform its obligations under this Agreement and in any other jurisdiction in which it conducts any business so as to require such qualification;

(b) Manager has obtained all necessary licenses and approvals required under all applicable federal, state or local laws, rules and regulations and any other applicable requirements of any government or agency or instrumentality thereof, as such may be amended, modified or supplemented from time to time, necessary to perform the Services hereunder;

(c) Manager has full power and authority to enter into and perform this Agreement and has not granted any rights pertaining to the subject matter hereof to any third party in a manner that prevents Manager from performing the Services hereunder;

(d) Neither this Agreement nor anything required to be done hereunder by Manager violates or shall violate any partnership agreement, contract, or other document to which Manager is a party or by which Manager is otherwise bound;

(e) There are no actions or proceedings against, or, to Manager's knowledge, investigations of, the Manager before any court, administrative or other tribunal (i) that would prohibit its entering into this Agreement or assert the invalidity of this Agreement, (ii) seeking to prevent the consummation of the transactions contemplated by this Agreement or (iii) that prohibit or would materially adversely affect the performance by the Manager of its obligations under, or the validity or enforceability of, this Agreement;

(f) The execution and delivery of this Agreement by Manager have been duly authorized, and this Agreement constitutes the valid, binding, and enforceable obligation of Manager;

(g) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Manager of, or compliance by the Manager with, this Agreement or the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the date of this Agreement;

(h) Neither Manager nor any of its Affiliates shall, directly or indirectly, purchase or acquire in any manner any of the Properties;

(i) Neither Manager nor any of its Affiliates shall, directly or indirectly, act as a lender or a source of financing in any manner (including with respect to any Permitted Indebtedness to the Trust);

(j) Neither Manager nor its Affiliates shall, and shall use their good faith efforts to cause their representatives to not, use the Confidential Information for any purpose except in connection with its performance of the Services hereunder;

(k) To the extent that a vote of the Certificateholders is required for any reason pursuant to the Trust Agreement, Manager shall cooperate with Trustee to effectuate such vote; and

19.2 By the Trust. The Trustee, on behalf of the Trust, represents and warrants that:

(a) the Trustee is a limited liability company organized and existing and in good standing under the laws of the State of New Hampshire;

(b) the Trustee has full power, authority and legal right to execute and deliver this Agreement and has taken all necessary action to authorize the execution and delivery by it of this Agreement;

(c) the execution and delivery by the Trustee of this Agreement: (i) will not violate any provision of any United States federal law or the law of the state of the United States where it is located governing the banking and trust powers of the Trustee or any order, writ, judgment, or decree of any court, arbitrator or governmental authority applicable to the Trustee or any of its assets; (ii) will not violate any provision of the articles of incorporation or by-laws of the Trustee or any terms of the Trust Agreement; and (iii) will not violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any lien on any properties included in the Trust Assets pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which it is a party, which violation, default or lien could reasonably be expected to have an adverse effect on the Trustee's performance or ability to perform its duties hereunder or thereunder or on the transactions contemplated herein or therein.

(d) There is no litigation pending nor, to the Trustee's knowledge, is any litigation threatened against the Trust to any of the matters which are the subject of this Agreement or which is reasonably likely to impact the Trust's ability to perform hereunder; and

(d) The execution and delivery of this Agreement by the Trustee on behalf of the Trust have been duly authorized and this Agreement constitutes the valid, binding, and enforceable obligation of the Trust.

20. MISCELLANEOUS

20.1 Entire Agreement; Amendment. This Agreement constitutes the full and complete agreement of the Parties with respect to the subject matter hereof. This Agreement may only be amended or waived in a writing signed by the Parties. In the event of any conflict between (a) the provisions of the body of this Agreement and (b) the provisions of any of the Schedules or Exhibits hereto, provisions of the body of this Agreement shall prevail and control the operation of this Agreement.

20.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, any successors of the Trust and Manager and neither shall be permitted to assign. This Agreement shall be binding upon, and inure to the benefit of, any successors of the Manager and Trust but shall not be assigned by the Manager or Trust without the prior written consent of the other party, which consent shall not be unreasonably withheld if the proposed assignee is an Affiliate of the Manager.

20.3 No Third Party Beneficiary. No Person other than the Parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement, including, without limitation, any trust beneficiaries.

20.4 Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall thereupon be deemed modified only to the extent necessary to render the same valid or excised from this Agreement, as the situation may require, and this Agreement shall be enforced and construed as if such provision had been included herein as so modified or had not been included herein, as the case may be.

20.5 Choice of Law, Consent to Jurisdiction. THIS AGREEMENT HAS BEEN DELIVERED IN THE STATE OF NEW YORK AND THIS AGREEMENT SHALL BE GOVERNED

BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Each of the parties hereto, to the extent it may do so under applicable law, for purposes hereof: (a) irrevocably submits itself to the exclusive jurisdiction of the courts of the State of New York sitting in the City of New York and to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement, the subject matter hereof or any of the transactions contemplated hereby brought by any party or parties hereto or thereto, or their successors or permitted assigns; (b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof or any of the transactions contemplated hereby may not be enforced in or by such courts; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 17, or at such other address of which the other parties shall have been notified pursuant thereto; and (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

20.6 Waiver of Jury Trial. EACH OF THE PARTIES PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT, ANY CERTIFICATE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS TRUST AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

20.7 Waiver and Delay. No waiver by either Party of any breach or series of breaches or defaults in performance by the other Party, and no failure, refusal or neglect of either Party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of either Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

20.8 Titles for Convenience; Interpretation. Titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants, or conditions of this Agreement. In this Agreement, unless the context otherwise requires, (i) words used in the singular or in the plural include both the plural and singular, (ii) references to this Agreement and all expressions like "herein", "hereof" and "hereunder" shall be deemed to refer to this Agreement and all exhibits as amended from time to time, including as affected by any such amendment, (iii) "or", "either" and "any" are not exclusive, (iv) "including" and its variants mean "including, without limitation," and its variants, (v) references to "written," "in writing" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form, (vi) all pronouns and any variations thereof refer to the masculine, feminine or neuter as the context may require, (vii) "Sections" refer to Sections of this Agreement unless otherwise specified, and (viii) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if."

20.9 Attorneys' Fees. If any legal action is initiated by either of the Parties hereto, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees in addition to any other relief that may be awarded.

20.10 Non-Disparagement. Trustee shall not, and shall cause the Trust to not, disparage the Officers or the Manager Parties to any third party. Neither the Officers nor the Manager Parties shall disparage the Trustee or Trust. For purposes of this section, "disparage" shall mean any negative comments regarding any such party's business practices, investment-related decisions, personnel, integrity, fairness, satisfaction of obligations, or overall performance.

20.11 Damages. The Officers or the Manager Parties shall not be liable for consequential, speculative, remote or punitive damages, and the Trust hereby waives and releases any right to seek or collect any such consequential, speculative, remote or punitive damages against any of the foregoing.

20.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one instrument. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission (including DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[balance of page intentionally left blank – signature page to follow]

IN WITNESS WHEREOF, the Trust and Manager have duly executed this Management Agreement as of the Effective Date.

TRUST:

COPPER PROPERTY CTL PASS THROUGH TRUST,

by GLAS Trust Company LLC, solely in its capacity as Trustee.

By: _____
Name: _____
Title: _____

MANAGER:

HILCO JCP, LLC

By: _____
Name: _____
Title: _____

SCHEDULE 1

SCOPE OF SERVICES

Without limiting any of the services to be provided by Manager pursuant to the Trust Agreement or pursuant to the express terms of this Agreement, each of which are expressly incorporated by reference herein, Manager shall provide the Trust with the following services and any ancillary services related thereto, together with any such services as are reasonably requested by the Trustee or are otherwise necessary to accomplish and/or effectuate any of the Services described herein.

1. Real Estate & Trust Operations Management

a. Property Level Management

- i. Monitor tenant CAM/Real Estate Tax payments.
- ii. Review anticipated Cap Ex plans and expenditures.
- iii. Monitor tenant Cap Ex activities.
- iv. Monitor ground lease payments.
- v. Ground Lease Data Management and Reporting.
- vi. Maintain and monitor insurance
- vii. Repairs and maintenance with respect to Landlord and Tenant option properties after partial / full lease termination
- viii. Use diligent efforts to collect all rents and other income due to the Trust in accordance with the Master Leases or otherwise related to the Properties. All such funds will be deposited in the relevant Company Account within one (1) business day of Manager's receipt thereof.
- ix. Review of tenant's financial reporting.
- x. Delivery of all reports required for waterfall distributions.
- xi. Monitoring of tenant responses to material HVAC, Facilities, Elevator, Mechanical Operations issues.
- xii. Oversight of Onsite Security Plan and Operation.
- xiii. Delivery of all required reports to Trustee.
- xiv. Coordinate with Trust Auditor as necessary.
- xv. Create and distribute monthly report of information received from tenants.
- xvi. Tenant Status Report.
- xvii. Serve as Landlord notice party under the Master Leases.
- xviii. Promptly take all actions required by Landlord under the Master Leases.
- xix. Act as initial Leasing Agent and Property Manager (each as defined in the Trust Agreement).
- xx. Re-market and re-lease any Properties or portions thereof to the extent they are not subject to a Master Lease, a Severed Lease or other lease, including through the retention, to the extent reasonably required, and supervision of third-party leasing agents (subject to Section 11 of the Management Agreement)

b. Financial Reporting

- i. Develop, review and certify (CEO and CFO) all filings required to be made with the SEC pursuant to the Securities Act of 1933, as amended (the "Securities Act") or the Securities and Exchange Act of 1934, as amended, including annual

reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K.

- ii. Cooperate with and assist the Trustee in connection with (w) the preparation of a registration statement under the Securities Act, for the registered offer and sale of Trust Certificates (including as may be required pursuant to the Registration Rights and Resale Cooperation Agreement), (x) any third party sales pursuant to a Cooperation Request Notice (as defined in the Registration Rights and Resale Cooperation Agreement), (y) causing the Trust Certificates to be quoted on the OTCQB and/or OTCQX markets and (z), any registration or qualification of the Trust Certificates under the securities laws or Blue Sky laws of states or other jurisdictions of the United States of America, as may be requested, in each case pursuant to the Registration Rights and Resale Cooperation Agreement attached as Exhibit E to the Trust Agreement.
- iii. Execute all required accounting functions
- iv. Develop all materials for the Monthly / Quarterly Report in the forms attached to the Trust Agreement
- v. Provide all information necessary for the Trustee to prepare the Distribution Date Schedule

c. Investor Relations

- i. Draft and Issue Monthly and Quarterly (and as appropriate ad hoc) press releases and 8Ks
- ii. Quarterly Earnings calls
- iii. Develop Investor slide decks
- iv. Attend and coordinate investor meetings
- v. Develop and maintain Trust website with relevant investor materials.

d. Financial Management

- i. Create and distribute property sales and marketing status activity reports.

e. Property Condition Administration

- i. Review of Property Condition Report "PCR".

f. Environmental Administration

- i. Oversight and Admin of Material Environmental Remediation Recommendations.
- ii. Oversight of Environmental Remediation Firms engaged in Remediation.

g. Oversight and Support of key property counterparties

- i. Ground lessors.
- ii. REA counterparties.
- iii. Municipal counterparties.
- iv. Other property-related counterparties.
- v. Oversight and Support of Real Estate Tax Services.
- vi. Appeals and audit defense, where appropriate.

h. Constituent Status Calls

- i. Originate Weekly/Bi-weekly status meeting, best practices and priority issue calls with other trust advisors, counsel and representatives

2. Asset Management

a. Global Marketing Strategy and Asset Sale Administration

- i. Creation of global marketing strategy, structuring plan and sales process, including the direction and management of third-party brokers as appropriate.
- ii. Oversight of all marketing/property sales activity.
- iii. Develop and supervise asset sale grouping and timing strategies to optimize sale proceeds.
- iv. Develop strategies to address unusual tenant provisions in the Master Lease including go dark rights and substitution rights.

b. Third Party Broker Management and Supervision

- i. Assist with the selection process to locate a robust national network of well positioned, best in class brokers.
- ii. To quick start the sales process, download the global marketing strategy to the selected brokers.
- iii. Collaborate with selected broker(s) to establish an aggressive, targeted sales campaign utilizing Manager buyside contacts, as well as brokers' contact buyer lists.
- iv. Direct broker sales process, advising in strategic negotiation responses, and issue resolution.
- v. With the selected broker(s), create an overall marketing plan for the entire Property – in tranches and/or a single property basis – including price range consideration, marketing time projection, issue mitigation, and target buyer profile.
- vi. Oversee and approve all marketing collateral, advertising, social media, and public relations.
- vii. Coordinate with the selected broker(s) to create a reasonable yet aggressive negotiation strategy. Provide oversight and strategic response to real time negotiation points.
- viii. Provide a final sale recommendation report to the Trustee that details sale results, issue resolution results, and negotiation rationale.
- ix. Coordinate with the Trustee in obtaining, on a quarterly basis, a BOV for each Property that is a Trust Asset pursuant to the Trust Agreement.

c. Data Management

- i. Creation and administration of buyer Data Room required materials for immediate selected broker access:
 - 1. Site Plans
 - 2. Stacking Plans
 - 3. Property Photos
 - 4. PCR
 - 5. Property Level Financial Reports
 - 6. Corporate Financial Statements
 - 7. Phase 1 ESA
 - 8. Survey

d. Asset Sale Closing Management

- i. Closing Statement Review

- ii. Sale proceeds reconciliation
 - iii. Cash distribution management
 - iv. Creation of Monthly Settlement Statements
 - v. Assistance with negotiating and closing Property sales, including in connection with Strategic Disposition Transactions (as defined in the Trust Agreement)
- e. Constituent Status Calls**
- i. Originate Weekly/Bi-weekly status meeting, best practices and priority issue calls with other trust advisors, counsel and representatives
- f. Permitted Indebtedness / Equity Sales**
- i. Cooperate with the Trustee and the Certificateholders (to the extent applicable) with respect to the negotiation of the terms of, execution, consummation and incurrence of any Permitted Indebtedness or any sale of the Trust Certificates (pursuant to the Registration Rights and Resale Cooperation Agreement) on behalf of the Trust with any applicable lenders, noteholders, arrangers, underwriters, structuring agents, bookrunners or similar agents
 - ii. Engage legal counsel and other professional advisors to assist the negotiation, execution and incurrence of Permitted Indebtedness or in connection with any sale of the Trust Certificates pursuant to the Registration Rights and Resale Cooperation Agreement
 - iii. Assist the Trust in the execution of any documentation and satisfaction of any conditions precedent in connection with the Permitted Indebtedness and otherwise assist the closing and disbursement of any Permitted Indebtedness
- g. Master Lease Administration and Compliance**
- i. Enforce all rights and remedies of the Landlord (as such term is defined in each Master Lease) with respect to all properties then leased under the related Master Leases and ensure that Landlord is complying with all of its obligations under such Master Leases.
 - ii. Review all budgets and other matters submitted for the approval of the Landlord (as such term is defined in each Master Lease) and make recommendations to the Trustee for approval or denial of approval of such budgets and other matters.
 - iii. Review all financial information and financial and other reporting received from the Tenant (as such term is defined in each Master Lease) and the Lease Guarantors (as such term is defined in each Master Lease) under the Master Leases to verify that such information and reporting complies with the requirements of the Master Leases and, upon such verification, forward such information and reporting to the Trustee.
 - iv. Upon obtaining all property-by-property information (including, without limitation, Base Rent, EBITDA, EBITDAR-to-Rent and EBITDA margins) required to be provided by the Tenant and/or Lease Guarantors pursuant to the Reporting Package (as such term is defined in each Master Lease) for stratification by the Landlord under the Retail Master Lease, make recommendations to the Trustee for such stratifications in accordance with the requirements of the Retail Master Lease.
 - v. In connection with sales of properties by the Trust, (1) coordinate with the

Trustee in managing and responding to all First Offer Rights, ROFO Rights, Modified ROFO Rights and Marketing Inclusion Rights (as such defined terms are used in each of the Master Leases) applicable under the Master Leases; (2) review offers made by third parties and make recommendations to the Trust as to which offers to accept or reject; (3) once an offer has been accepted, working with counsel to the Trust, negotiate and finalize the form of purchase and sale agreement and the form of Severed Lease (as defined in each Master Lease); (4) close the sale transaction; and (5) manage the reduction of each Permitted No Consent Sublease and Go Dark Substitution basket under the Retail Master Lease resulting from such sales.

h. Other Services

- i. Oversee, supervise, assist and approve the work of the Trust's accountants, including all SEC filings including 10Qs, 10Ks and 8Ks and coordinate with the Trust's auditors related to the year-end audit.
- ii. Certification of SEC filings as principal financial officer, to the extent required by law.
- iii. Participation in investor relations activities (including participation in earnings calls and meetings with potential investors).
- iv. All necessary and reasonable assistance in connection with the Long-Term Plan.
- v. Maintain and update Schedule III of the Trust Agreement in coordination with the Trustee.
- vi. Identify those portions of the DC Properties that contain excess developable land parcels ("Excess Land Parcels") which can be sold to third party buyers; take all steps required to create separate tax lots and legally subdivide the Excess Land Parcels so that they can be sold as expeditiously as possible; market for sale and sell the Excess Land Parcels in substantially the same manner as the marketing and sale of other Properties.
- vii. (A) monitor compliance with Section 4.05 of the Trust Agreement, including by keeping an up-to-date (to the extent of its actual knowledge) list of all Tenants (including sub-tenants) and the Collections derived from each Tenant (including each sub-tenant); and (B) take any action it reasonably deems necessary to avoid or mitigate any adverse tax consequences to the Trust, the intended classification of the Trust for U.S. federal income tax purposes or the Trust Assets from any change in Tenant (including any sub-tenant).
- viii. Directly or through reliance on accountants or other professional advisors, monitor and determine on a monthly basis the applicable Assignee/Subtenant Attributable Rent Percentage (as defined in the Trust Agreement). If at any time the Assignee/Subtenant Attributable Rent Percentage for the preceding month is, or the Manager reasonably should expect that such percentage for the following month will be, greater than 3.5%, then, within 10 Business Days after Schedule III is next updated, the Manager shall (if so instructed by the Trustee), determine whether any Excepted Holder (as defined in the Trust Agreement) and its Affiliates own Relevant Equity Interests (as defined in the Trust Agreement) in any Tenant (including any subtenant) and, in such case, whether the Trust would be related to any such Tenant for purposes of Code section 856(d)(2)(B) such that rental income received by the Trust attributable to such Tenant would not be qualifying real property rents under Code section 7704(d)(3) and to determine the amount thereof.

SCHEDULE 2

DEFINITIONS

The following defined terms shall have the meanings set forth below and in the Agreement:

- a) "Affiliates" means with respect to a Person any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or is a director of such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 50% or more of the voting securities of such Person or to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, none of the Manager Parties shall be deemed an Affiliate of the Trust or Trustee nor shall the Trust or Trustee be deemed an Affiliate of any of the Manager Parties.
- b) "Agreement" has the meaning set forth in the Introductory Paragraph.
- c) "AM Fee" has the meaning set forth in Section 4.1.
- d) "Approved Subcontractor" has the meaning set forth in Section 11.1.
- e) "Base Fee" has the meaning set forth in Section 4.1.
- f) "Claims" or a "Claim" has the meaning set forth in Section 12.1.
- g) "Confidential Information" has the meaning set forth in Section 13.2.
- h) "Consideration" has the meaning set forth in Section 4.1.
- i) "DC Properties" has the meaning set forth in the Recitals.
- j) "Disclosing Party" has the meaning set forth in Section 13.1.
- k) "Effective Date" has the meaning set forth in the Introductory Paragraph.
- l) "Manager" has the meaning set forth in the Introductory Paragraph.
- m) "Manager Parties" has the meaning set forth in Section 12.1.
- n) "ISO" has the meaning set forth in Section 15.2.
- o) "JC Penney" has the meaning set forth in the Recitals.
- p) "JCP Executive Officer" has the meaning set forth in Section 2.1(a).
- q) "JCP Financial Officer" has the meaning set forth in Section 2.1(a).
- r) "Master Leases" has the meaning set forth in the Recitals.
- s) "Non-Disclosing Party" has the meaning set forth in Section 13.1.
- t) "Officers" has the meaning set forth in Section 2.1(a).
- u) "the Trust" has the meaning set forth in the Introductory Paragraph.
- v) "Party" and "Parties" has the meaning set forth in the Recitals.
- w) "Performance Standard" means the Manager shall use good faith efforts to: service and administer the Properties solely on behalf of the Trust for the benefit of the Certificateholders

and in accordance with applicable law, the terms of this Agreement, the terms of the Trust Agreement. With respect to the foregoing, the Manager shall perform the Services: (a) substantially the same manner in which and with substantially the same care, skill, prudence and diligence with which the Manager services and administers similar properties for itself and/or other third-party portfolios, giving due consideration to customary and usual standards of practice of prudent institutional commercial property and asset managers in administering portfolios of commercial properties for Lenders and owners; (b) use good faith efforts to maximize the recovery on the properties to the Certificateholders of the Trust on a net present value basis; (c) use good faith efforts to timely execute on all of the Manager's material obligations under the Management Agreement; and (d) in good faith, without regard to any conflicts that may arise with respect to (i) any relationship that the Manager or any affiliate thereof may have with JC Penney, any tenant under the Master Leases, or any of their respective affiliates, or (ii) the ownership or management for others of any other property or portfolios of properties by the Manager.

- x) "Person" means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.
- y) "Personnel" has the meaning set forth in Section 3.1.
- z) "Properties" has the meaning set forth in the Recitals.
- aa) "Property Level Contractors" has the meaning set forth in Section 2.2.
- bb) "Restricted IP" has the meaning set forth in Section 19.1.
- cc) "Retail Properties" has the meaning set forth in the Recitals.
- dd) "Services" has the meaning set forth in Section 2.1.
- ee) "Subcontractor" has the meaning set forth in Section 11.1.
- ff) "Term" has the meaning set forth in Section 5.1.
- gg) "Trust Agreement" means that certain Amended and Restated Trust Agreement, dated as of January 30, 2021 by and between Copper BidCo LLC and GLAS Trust Company LLC, as trustee.
- hh) "Work Product" has the meaning set forth in Section 14.

SCHEDULE 3

COMPENSATION

1. **Base Fee.** The Trust shall pay to Manager a base fee (the “Base Fee”) in an amount equal to the greater of: (i) 5.75% of the Lease Payments (as defined in the Trust Agreement but excluding the impact of any rent abatements under the Retail Master Lease or the DC Master Lease unless to the extent covered by business interruption or lost profits insurance) of the Properties per month; and (ii) \$333,000 per month. The Base Fee shall be paid to Manager monthly in arrears on the tenth (10th) day of each month during the Term.

2. **AM Fees.** The Trust agrees to pay to Manager, the AM Fees as set forth below:

(A) A closing fee (the “DC Closing Fee”) in an amount equal to \$50,000 per DC Property sold, payable on the 10th day of the month succeeding the month during which a DC Property (as defined in the Trust Agreement) is sold in accordance with the Management Agreement and the Trust Agreement; provided that any accrued but unpaid DC Closing Fees shall become due and payable on the termination date of the Management Agreement; and

(B) Any success fee as set forth in the parameters agreed by the Trustee on behalf of the Trust and the Manager.

Schedule I: Retail Properties

[Attached]

Schedule II: DC Properties

[Attached]

Schedule III: Tenants and Sub-Tenants

1. Simon Property Group L.P.;
2. Simon JCP Holdings LLC;
3. BPG Retail Holdings I LLC;
4. Copper Retail JV LLC;
5. Penney Holdings LLC;
6. Penney Intermediate Holdings LLC;
7. Penney Borrower LLC;
8. Penney OpCo LLC;
9. Penney Tenant Holdings LLC;
10. Penney Tenant I LLC; and
11. Penney Tenant II LLC.