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BOOK 71 PAGE 673  
STATE MS.-DE SOTO CO.  
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MAY 31 4 10 PM '96

Horn Lake, MS

BK 71 PG 673  
W.E. DAVIS CH. CLK.

### SUPPLEMENT TO DECLARATION OF TRUST

THIS SUPPLEMENT TO DECLARATION OF TRUST (this "Supplement") dated as of the 14<sup>th</sup> day of May, 1996, is executed by STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company ("Trustee"), and is hereby added, effective as of the date hereof, to that certain Declaration of Trust dated as of October 11, 1995 (the "Declaration of Trust"). This Supplement shall be included in and shall be a part of the Declaration of Trust for all purposes. Terms used but not otherwise defined herein shall have the meanings given to such terms in the Declaration of Trust.

Trustee represents and warrants and acknowledges and agrees as follows:

- (a) Attached hereto as Exhibit "A" and incorporated herein by this reference is a true, correct and complete copy of the Declaration of Trust.
- (b) This Supplement is being executed by Trustee in connection with the acquisition by Trustee of certain real property located in the City of Horn Lake, DeSoto County, Mississippi, and more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Mississippi Property").
- (c) In accordance with Section 81-5-43 of the Mississippi Code of 1972, as amended, Trustee hereby appoints the Secretary of State of Mississippi to serve as Trustee's agent for service of process with respect to any suit or proceeding filed or pending in Mississippi against Trustee and arising out of Trustee's ownership of the Mississippi Property pursuant to the Declaration of Trust. Trustee further acknowledges and agrees that any service of process made upon the Secretary of State of Mississippi pursuant to the terms hereof shall be deemed to be service upon Trustee and shall have the same force and effect as if such service were made directly upon Trustee.
- (d) The Holders of the Instruments have waived the requirement that Trustee post a bond for the performance of its duties and obligations under the Declaration of Trust pursuant to Section 81-5-43 of the Mississippi Code of 1972, as amended.
- (e) The Declaration of Trust is not intended nor designed to establish either an investment trust or a business trust under the applicable laws or statutes of any state, including, without limitation, a trust formed pursuant to Section 182 of the General Laws of Massachusetts,

as amended, and Sections 79-7-1 et seq. and Sections 79-15-101 et seq. of the Mississippi Code of 1972, as amended.

IN WITNESS WHEREOF, Trustee has caused this Supplement to be duly executed by one of its duly authorized officers as of the day and year first above written.

TRUSTEE:

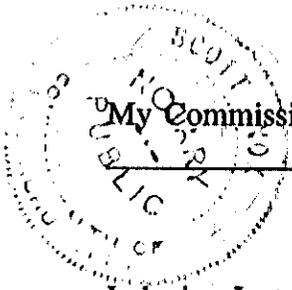
STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company, as Trustee

By: Arthur J. MacDonald  
Arthur J. MacDonald  
Assistant Vice President

COMMONWEALTH OF MASSACHUSETTS §  
COUNTY OF SUFFOLK §

Personally appeared before me, the undersigned authority in and for the said county and state, on this 15 day of May, 1996, within my jurisdiction, the within named ARTHUR J. MACDONALD, who acknowledged that he is Assistant Vice President of STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, and that for and on behalf of the said trust company and as its act and deed in its capacity as Trustee under that certain Declaration of Trust dated as of October 11, 1995, he executed the above and foregoing instrument, after first having been duly authorized by said trust company so to do.

Scott Knox  
Notary Public



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

SCOTT KNOX  
Notary Public  
My Commission Expires July 12, 2002

Indexing Instruction:

**STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,**

as Trustee

**DECLARATION OF TRUST**

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**SERIES A TRUST NOTES**

**SERIES B TRUST NOTES**

**SERIES C TRUST CERTIFICATES**

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Dated as of October 11, 1995

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**Heilig-Meyers Transaction**

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**DECLARATION OF TRUST**

**THIS DECLARATION OF TRUST** dated as of October 11, 1995 (herein, as the same may be amended or supplemented from time to time, called the "Declaration of Trust"), is executed by STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company ("Trust Company"), having an address at Two International Place, Fourth Floor, Boston, Massachusetts 02110, Attn: Corporate Trust Department (Trust Company, in its capacity as the Trustee hereunder, together with each successor as such Trustee hereunder, is herein called the "Trustee").

**Preliminary Statement**

A. Of even date herewith Trust Company, in its individual capacity and as Trustee, Citicorp Leasing, Inc., a Delaware corporation ("CLI") (as the initial "Purchaser" and "Instrument Holder", and as administrative "Agent" for itself and future Purchasers and Instrument Holders), and Hellig-Meyers Furniture Company, a North Carolina corporation ("Lessee"), have entered into a Transaction Agreement (hereinafter defined) pursuant to which CLI and any other Purchasers that may become a party thereto have agreed to purchase A-Notes, B-Notes and Certificates from Trustee in an aggregate principal or stated amount of \$25,000,000.00 to permit Trustee from time to time to acquire various properties to be leased to Lessee. All terms used in this Declaration of Trust and not defined herein shall have the meanings assigned to them in the Transaction Agreement.

B. Under the terms of the Transaction Agreement the Purchasers are obligated to advance funds to Agent, on behalf of the Trustee, from time to time, subject to the conditions set out in the Transaction Agreement, to provide Trustee with funds to acquire improved or unimproved Parcels and to make advances in respect of the cost of construction of New Improvements (as defined in the Lease) on the Parcels from time to time by Lessee.

C. The A-Notes, the B-Notes and the Certificates issued by Trustee hereunder pursuant to the Transaction Agreement, and the Holders of such Instruments, shall be entitled to the benefit of this Declaration of Trust, the Series A Trust Estate, the Series B Trust Estate and the Series C Trust Estate, respectively, established hereunder.

D. While initially CLI is the sole "Purchaser" and "Instrument Holder" under the Transaction Agreement, it is contemplated that, pursuant to the terms of the Transaction Agreement, CLI may assign all or a portion of the Notes or Certificates purchased by CLI to other banks or financial institutions, which assignees shall become "Instrument Holders" for all purposes of this Declaration of Trust.

ARTICLE I

BOOK

71 PAGE 680

Defined Terms

Section 1.01. Defined Terms. When used in this Declaration of Trust, each term defined in this Article I shall have the meanings indicated:

"Additional Rent" shall have the meaning assigned to it in the Lease; provided, however, that for purposes of this Agreement any amounts of Net Rent, Offer Purchase Price, and/or Contingent Rent Payments (as such terms are defined in the Lease) shall be distributed as specifically set out herein.

"Advance" and "Advances" shall have the meanings provided therefor in the Transaction Agreement.

"Agent" means the Administrative Agent for the Instrument Holders and Purchasers appointed from time to time under the Transaction Agreement. CLI is the initial Agent appointed under the Transaction Agreement.

"A-Note" means any of, and "A-Notes" means all of, the Series A Trust Notes, due on the Maturity Date, issued and, unless otherwise specified or the context otherwise requires, outstanding hereunder. On the date hereof a single A-Note in the initial principal amount of up to \$21,250,000.00 has been issued by Trustee to CLI. Unless the amount of the A-Note Commitment is hereafter increased (in which case additional A-Notes representing such increased A-Note Commitment shall be issued to the Purchaser[s] thereof), the only A-Notes to be hereafter issued by the Trustee will be A-Notes issued pursuant to the terms hereof to replace, in whole or in part, the A-Note issued to CLI of even date herewith.

"A-Note Commitment" shall have the meaning provided therefor in the Transaction Agreement.

"Applicable Rate" shall have the meaning provided therefor in the Lease.

"Approved Purposes" shall have the meaning provided therefor in the Transaction Agreement.

"Assignment Agreement" shall have the meaning provided therefor in the Transaction Agreement.

"B-Note" means any of, and "B-Notes" means all of, the Series B Trust Notes, due on the Maturity Date, issued and, unless otherwise specified or the context otherwise requires, outstanding hereunder. On the date hereof a single B-Note in the initial principal amount of up to \$3,000,000.00 has been issued by Trustee to CLI. Unless the

amount of the B-Note Commitment is hereafter increased (in which case additional B-Notes representing such increased B-Note Commitment shall be issued to the Purchaser[s] thereof), the only B-Notes to be hereafter issued by the Trustee will be B-Notes issued pursuant to the terms hereof to replace, in whole or in part, the B-Note issued to CLI of even date herewith.

**"B-Note Commitment"** shall have the meaning provided therefor in the Transaction Agreement.

**"Business Day"** means every day on which banks in the Cities of New York, New York, Boston, Massachusetts, and Richmond, Virginia, are open for business and are not required to be closed.

**"Certificate"** means any of, and **"Certificates"** means all of, the Series C Trust Certificates, due on the Maturity Date, issued and, unless otherwise specified or the context otherwise requires, outstanding hereunder. On the date hereof a single Certificate in the initial stated amount of up to \$750,000.00 has been issued by Trustee to CLI. Unless the amount of the Certificate Commitment is hereafter increased (in which case additional Certificates representing such increased Certificate Commitment shall be issued to the Purchaser[s] thereof), the only Certificates to be hereafter issued by the Trustee will be Certificates issued pursuant to the terms hereof to replace, in whole or in part, the Certificate issued to CLI of even date herewith.

**"Certificate Commitment"** shall have the meaning provided therefor in the Transaction Agreement.

**"Certificate Holder"** means any of, and **"Certificate Holders"** means all of, the Holders from time to time of the Certificates.

**"Certificate Rate"** shall have the meaning provided therefor in the Transaction Agreement.

**"Commitment"** shall have the meaning provided therefor in the Transaction Agreement.

**"Contingent Rent Payments"** shall have the meaning provided therefor in the Lease.

**"Corporate Trust Office"** means the office of the Trustee at which its corporate trust department is located at the time in question, which office is, on the date of delivery of this Declaration of Trust, located at Two International Place, Fourth Floor, Boston, Massachusetts 02110.

"counsel" means any legal counsel reasonably satisfactory to the Trustee, which counsel may also be counsel to the Trustee or counsel to one or more of the Purchasers or Instrument Holders.

"day" means a calendar day.

"Default Rate" shall have the meaning provided therefor in the Transaction Agreement.

"Early Termination Fee" shall have the meaning provided therefor in the Lease.

"Event of Default" shall have the meaning provided therefor in the Lease.

"Fee Letter" shall have the meaning provided therefor in the Transaction Agreement.

"Highest Lawful Rate" shall have the meaning provided therefor in the Transaction Agreement.

"Increased Costs" shall have the meaning assigned to it in Exhibit A of the Lease.

"Instrument" means any of, and "Instruments" means all of, collectively, the Notes and the Certificates.

"Instrument Holder" or "Holder" when used with respect to any Instrument(s), means the Person whose name appears on the Register as the registered owner of such Instrument(s).

"Lease" means the Master Deed of Lease dated as of the date hereof between Trustee, as lessor, and Lessee, as lessee, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Lease Guarantor" means Heilig-Meyers Company, a Virginia corporation, and its successors.

"Lease Guarantee" means that certain Lease Guarantee of even date herewith executed by Lease Guarantor guaranteeing the obligations of the Lessee under the Lease, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Lessee" means Heilig-Meyers Furniture Company, a North Carolina corporation, as Lessee under the Lease, its successors and permitted assigns.

"Lessee's Equipment" shall have the meaning provided therefor in the Lease.

**"Lessor"** means the Trustee as lessor under the Lease and its permitted successors.

**"Majority Holders"** shall have the meaning provided therefor in the Transaction Agreement.

**"Majority Purchasers"** shall have the meaning provided therefor in the Transaction Agreement.

**"Master Schedule"** means the Master Schedule of advances and payments on each Instrument maintained by the Agent, which Master Schedule shall also set forth the amount of the unfunded Commitment of each Purchaser as to each series of Instruments.

**"Maturity Date"** means December 1, 2000.

**"Net Proceeds"** shall have the meaning assigned to it in the Lease.

**"Net Rent"** shall have the meaning assigned to it in the Lease.

**"New Certificate"** shall have the meaning provided therefor in Section 3.08(b).

**"New Instrument"** means a New Certificate or a New Note, as applicable.

**"New Note"** shall have the meaning provided therefor in Section 3.08(b).

**"Note"** means any of, and **"Notes"** means all of, collectively, the A-Notes and the B-Notes outstanding under this Declaration of Trust.

**"Note Rate"** shall have the meaning provided therefor in the Transaction Agreement.

**"Noteholder"** means any of, and **"Noteholders"** means all of, the Holders from time to time of the Notes.

**"Offer Purchase Price"** shall have the meaning assigned to it in the Lease.

**"Old Certificate"** shall have the meaning provided therefor in Section 3.08(b).

**"Old Instrument"** means an Old Certificate or an Old Note, as applicable.

**"Old Note"** shall have the meaning provided therefor in Section 3.08(b).

**"outstanding"** means, with reference to Instruments, as of any particular time, all Instruments (or, where the context otherwise indicates, all of a particular series of

Instruments) theretofore issued pursuant to this Declaration of Trust and under which Advances have been made except:

(a) Instruments theretofore canceled by the Trustee or surrendered to the Trustee for cancellation.

(b) Instruments theretofore paid in full or required to be prepaid in whole within thirty (30) days thereafter, provided that, in the case of Instruments so to be prepaid, moneys sufficient for such prepayment thereof shall theretofore have been deposited with, or shall then be held by, the Trustee in accordance with the provisions of this Declaration of Trust and notice of such prepayments shall have been given or provision therefor satisfactory to the Trustee shall have been made; and

(c) Instruments for which other Instruments shall theretofore have been issued pursuant to Section 3.08;

and except also that, for the purpose of determining whether the Holders of the requisite principal amount of Notes or requisite stated amount of Certificates have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Declaration of Trust, Instruments registered in the name of the Lessee or a nominee or Affiliates of the Lessee shall be disregarded and deemed not to be outstanding, but for all other purposes, such Notes and Certificates held by Lessee or a nominee of Lessee shall be deemed outstanding.

"Payment Date" has the meaning set forth in the Lease.

"Permitted Investments" means: (i) interest-bearing deposit accounts (which may be represented by short-term certificates of deposit, time deposit open account agreements or other short-term deposit instruments) in national or state banks, including the Trustee, having (A) a combined capital and surplus of not less than \$100,000,000; (B) whose deposits are insured by the Federal Deposit Insurance Corporation; and (C) whose Senior Unsecured Debt is rated as "A-2" or better (or the then equivalent thereof) by Moody's or "A" or better (or the then equivalent thereof) by S&P; (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, (iii) short-term commercial paper rated "A-1" (or the then equivalent thereof) by S&P and "P-1" (or the then equivalent thereof) by Moody's; or (iv) such other investments as may be approved by the Agent and, with respect to the investment of any funds in which the Lessee has an interest, the Lessee.

"premium" means, in reference to amounts due in respect of the Instruments, the share allocable to such Instrument of any Early Termination Fee payable by Lessee under the Lease at the time in question.

"Person" or "person" shall have the meaning assigned to it in the Transaction Agreement.

"Proceeding" or "proceeding" means any judicial or quasi-judicial action, suit or proceeding in equity or at law or otherwise.

"Register" means the register or registers maintained by the Agent in accordance with Section 3.06 for the registration and registration of transfer of the Notes or Certificates.

"Reserve Costs" shall have the meaning assigned to it in Exhibit A of the Lease.

"Sale Proceeds" means the gross amount, net of any closing costs or net closing proration deductions, received by Trustee from the sale of the Property or a relevant portion thereof conducted pursuant to Article VII hereof.

"Series" or "series" means, in reference to the Instruments, the Instruments of the same type, regardless of date of issue (*i.e.*, all A-Notes, whenever issued, shall constitute a single series of Instruments; all B-Notes shall constitute a single series of Instruments; and all Certificates shall constitute a single series of Instruments).

"Series A Trust Estate" shall mean a *pari passu* interest with the B-Notes in the Trust Estate, with the following exceptions:

- (a) the B-Notes shall have the prior right to the Sales Proceeds; and
- (b) the A-Notes shall have the prior right to the Contingent Rent Payments,

"Series B Trust Estate" shall mean a *pari passu* interest with the A-Notes in the Trust Estate with the following exceptions:

- (a) the B-Notes shall have a prior right to Sales Proceeds; and
- (b) the A-Notes shall have the prior right to the Contingent Rent Payments.

"Series C Trust Estate" shall mean an interest in the Trust Estate subordinated to the Series A Trust Estate and Series B Trust Estate except that the Certificates shall have a *pari passu* interest (based on the total claims asserted for such payments) with the Notes in the Trust Estate in all indemnity payments received by the Trustee under the Transaction Documents.

"Spread" shall have the meaning provided therefor in the Transaction Agreement.

**"Transaction Agreement"** means the Transaction Agreement dated as of the date hereof among the Lessee, the Trust Company, in its individual capacity and as Trustee, and CLI (as the initial Purchaser, the initial Instrument Holder and as the initial Agent thereunder), as the same may be amended, restated, supplemented or otherwise modified from time to time.

**"Transaction Document"** and **"Transaction Documents"** shall have the meaning provided therefor in the Transaction Agreement.

**"Trigger Event"** shall have the meaning provided therefor in the Lease Guarantee.

**"Trust Company"** means State Street Bank and Trust Company, a Massachusetts trust company, and its permitted successors, in its individual capacity and not as Trustee.

**"Trustee"** means State Street Bank and Trust Company, a Massachusetts trust company, and its permitted successors, not in its individual capacity but as trustee in the trusts hereunder, collectively, or any of them, as the case may be.

**"Trust Estate"** means the following property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby granted, conveyed, assigned, pledged over and confirmed, or intended, agreed or covenanted so to be, to the Trustee:

- (a) the Property and any contracts, instruments or documents entered into in connection therewith or relating thereto, but expressly excluding Lessee's Equipment;
- (b) the Lease, including all right of the Trustee, as Lessor under the Lease to receive the payments of Net Rent, Additional Rent, Contingent Rent Payments, and/or Offer Purchase Price, Sale Proceeds and the rights of the Trustee under the Lease Guarantee;
- (c) the rights of Trustee under the Transaction Agreement;
- (d) Net Proceeds (as defined in the Lease), subject to the terms of the Lease; and
- (e) all other documents, moneys and other property which may from time to time pursuant to any Transaction Document be delivered to or come into the possession of the Trustee and be intended to be pledged to and held for the benefit of the Holders from time to time of the Instruments.

The Trust Estate does not include any trustee's fees payable to the Trust Company pursuant to the Fee Letter or other payments to which the Trust Company, in its individual capacity, is entitled as provided for in the Transaction Documents.

## Declaration of Trust

Section 2.01. Declaration of Trust. The Trustee hereby declares that it does and will hold the Trust Estate upon the trusts herein set forth, subject to, and in accordance with, the terms hereof, for the use and benefit of the Holders of the Instruments without preference, priority or distinction of any thereof over any other by reason of difference in the time of issuance or otherwise, except for the specific payment preferences and priorities set forth herein with respect to the various series of Instruments. This Declaration of Trust imposes a trust on the Trust Estate for the benefit of the interest of each Holder in the Trust Estate evidenced by the Instruments.

Section 2.02. Authority of Trustee. The Holders of the Instruments hereby authorize and direct the Trustee to take the following actions:

(a) Execute and deliver each of the Transaction Documents to which the Trustee is a party and any other agreements and instruments incidental thereto which the Holders of the Instruments deem necessary or appropriate to consummate the transactions contemplated by the Transaction Documents;

(b) To take all actions required to be taken, and refrain from taking such actions required not to be taken, and perform all duties required to be performed, by the Trustee pursuant to the terms of the Transaction Documents; and

(c) To take such further action as is not specifically provided for herein or to refrain from taking such action in accordance with the written instructions of the Majority Holders pursuant to Section 4.04 hereof.

## ARTICLE III

## The Instruments

Section 3.01. The Instruments. The Instruments shall be issuable in three series, two of which shall be designated as "Trust Notes" and one of which shall be designated as "Trust Certificates," as more particularly detailed in this Article III.

Section 3.02. Terms of Notes.

(a) The Notes shall be issuable in two series and shall be designated as "Series A Trust Notes" and "Series B Trust Notes" and shall be limited in aggregate principal amount to \$21,250,000.00, with respect to the A-Notes, and \$3,000,000.00, with respect to the B-Notes. Each Note shall be issued pursuant to either Section 3.04 or 3.08, and shall comply with the

applicable provisions of this Article III. Each A-Note shall be issuable in denominations of \$4,250,000.00 or greater, and each B-Note shall be issued in denominations of \$600,000.00 or greater. Any Note may have such letters, numbers and other marks of identification and such legends or endorsements thereon as the Trustee may determine and as are not inconsistent with the provisions of this Declaration of Trust.

**[Remainder of page intentionally left blank.]**

(b) The A-Notes shall each be substantially in the following form:

[Form of A-Note]

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,  
not in its individual capacity but solely  
as Trustee Under the Declaration of  
Trust Dated as of \_\_\_\_\_, 1995

Series A Trust Note, due \_\_\_\_\_,  
(Heilig-Meyers Leased Property)

No. \_\_\_\_\_

STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company ("Trust Company"), not in its individual capacity but solely as Trustee (herein in its capacity as such Trustee, called the "Trustee"), under that certain Declaration of Trust dated as of \_\_\_\_\_, 1995 (herein as the same may be amended, restated, supplemented or otherwise modified from time to time called the "Declaration of Trust", the defined terms therein not otherwise defined herein being herein used with the same meanings), hereby promises to pay to \_\_\_\_\_ or registered assigns permitted under the hereinafter defined Transaction Agreement (the "Holder"), on the Maturity Date the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and to pay interest on the unpaid and outstanding principal amount hereof from the date of the first Advance hereunder to maturity at the Note Rate applicable hereto (as defined in, and adjusted from time as provided in, that certain Transaction Agreement dated as of \_\_\_\_\_, 1995, by and among the Trust Company in its individual capacity and as Trustee, Heilig-Meyers Furniture Company, as Lessee, and Citicorp Leasing, Inc., as initial Purchaser, Holder and Agent [as amended, restated, supplemented or otherwise modified from time to time, the "Transaction Agreement"]) and, unless prohibited by applicable Law, to pay interest on any overdue principal, premium and interest, at the Default Rate (or at the highest rate permitted by applicable Law, whichever is less), in each case computed on the basis of a 360-day year (except in the case of calculations at the Highest Lawful Rate, which shall be computed on the basis of a 365-day or 366-day [as applicable] year), for the actual number of days elapsed. Such principal, premium, if any, and interest shall be payable in the following manner:

Interest accrued and unpaid on this Note shall be computed and shall be payable in arrears on each Payment Date of each calendar year, commencing with the Payment Date next succeeding the dated of the first Advance hereunder, and on the Maturity Date.

This Note is subject to prepayment in the manner, to the extent, under the circumstances and at the price provided for in the Declaration of Trust.

All Advances and all repayments of the principal hereof and interest hereon shall be recorded by the Holder hereof on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof, or on such other schedule as shall be in accordance with the Holder's then applicable procedures, which schedule shall be attached hereto and made a part hereof; provided, however, that the failure of the Holder to make such notation or any error in such notation shall not affect the obligations of the Trustee under this Note, the Declaration of Trust, or any other Transaction Document. The Agent for the Holder of this Note is, under the Transaction Agreement, responsible for maintaining a master schedule (the "Master Schedule") of Advances and payments that reduce the outstanding amount of this Note. The information regarding the status of this Note on the Master Schedule maintained by Agent shall, in the absence of manifest error, be binding and conclusive regarding the amount of Advances and payments hereon. In connection with any transfer of this Note, all Advances and all repayments through the date of such transfer shall be endorsed on the attached schedule, which schedule shall be confirmed by the Agent based upon the Master Schedule.

Upon the occurrence and during the continuance of an Event of Default or a Trigger Event, the principal hereof and the interest accrued and unpaid hereon may be declared to be due and payable forthwith as provided in the Declaration of Trust.

This Note is one of the "Series A Trust Notes" issued and to be issued under the Declaration of Trust. This Note is and the Series A Trust Notes are to be equally and ratably secured by the Series A Trust Estate established by the Declaration of Trust. Reference is hereby made to the Declaration of Trust for a description of the property held in trust thereunder or intended to be held in trust thereunder, the provisions upon which the A-Notes are to be issued and secured, the nature and extent of the property held for the benefit of the A-Notes and the rights of the Holders of the A-Notes and the Trustee in respect of such property and otherwise. The provisions of the Declaration of Trust and the Transaction Agreement and the rights of the Holders of the A-Notes may be changed and modified only to the extent permitted by and as provided in the Declaration of Trust.

This Note and any interest herein may only be transferred or exchanged in accordance with the terms, conditions and restrictions set forth in the Declaration of Trust and the Transaction Agreement. Prior to due presentment of this Note for registration of transfer, the Trustee may deem and treat the person in whose name this Note is registered on the Register maintained by the Agent as the absolute owner hereof (whether or not this Note shall be overdue) for the purpose of receiving payment and for all other purposes, and the Trustee shall not be affected by any notice to the contrary. In accordance with the provisions of the Declaration of Trust, the transfer of this Note must be registered with the Agent, and this Note may be exchanged for other Notes of authorized denominations.

No provision of this Note or of the Declaration of Trust shall require the payment or permit the collection of interest in excess of the maximum permitted by Law. If any excess of interest in such respect is herein or in the Declaration of Trust provided for, or shall be adjudicated to be so provided for herein or in the Declaration of Trust, no person shall be

obliged to pay such interest in excess of the maximum permitted by Law, and the right to demand the payment of any such excess shall be and hereby is waived and this provision shall control any provision of Declaration of Trust, the Notes, the Transaction Agreement or any other Transaction Document, which is inconsistent with this Note. The provisions of Section 10.08 of the Declaration of Trust are incorporated herein by this reference.

THIS NOTE IS ISSUED BY TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE UNDER THE DECLARATION OF TRUST REFERRED TO HEREIN. THE NOTES ARE PAYABLE ONLY FROM THE SERIES A TRUST ESTATE, AS PROVIDED IN THE DECLARATION OF TRUST, AND THE INCOME AND PROCEEDS THEREFROM AND DO NOT CONSTITUTE A DEBT OR OBLIGATION OF TRUST COMPANY.

THIS NOTE SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, BUT EXCLUDING ALL CONFLICT-OF-LAW RULES OF SUCH COMMONWEALTH.

By acceptance of this Note, the holder hereof expressly acknowledges and assents to all the terms and provisions of the Declaration of Trust, the Transaction Agreement and the other Transaction Documents and becomes a party thereto as fully to all intents and purposes as though such Holder had signed the same.

IN WITNESS WHEREOF, Trust Company, not in its individual capacity but solely as Trustee, has caused this Note to be duly executed by one of its duly authorized officers.

Dated: \_\_\_\_\_, 19\_\_.

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,  
not in its individual capacity but solely  
as Trustee under the Declaration of Trust  
dated as of \_\_\_\_\_, 1995

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

Advances and Payments

<u>Date</u>	<u>Amount of Advances</u>	<u>Amount of Principal Repaid</u>	<u>Unpaid Principal Balance</u>	<u>Notation Made By</u>
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(c) The B-Notes shall each be substantially in the following form:

[Form of B-Note]

STATE STREET BANK AND TRUST COMPANY,  
 a Massachusetts trust company,  
 not in its individual capacity but solely  
 as Trustee Under the Declaration of  
 Trust Dated as of \_\_\_\_\_, 1995

Series B Trust Note, due \_\_\_\_\_,  
 (Heilig-Meyers Leased Property)

No. \_\_\_\_\_

STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company ("Trust Company"), not in its individual capacity but solely as Trustee (herein in its capacity as such Trustee, called the "Trustee"), under that certain Declaration of Trust dated as of \_\_\_\_\_, 1995 (herein as the same may be amended, restated, supplemented or otherwise modified from time to time called the "Declaration of Trust", the defined terms therein not otherwise defined herein being herein used with the same meanings), hereby promises to pay to \_\_\_\_\_ or registered assigns permitted under the hereinafter defined Transaction Agreement (the "Holder"), on the Maturity Date the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and to pay interest on the unpaid and outstanding principal amount hereof from the date of the first Advance hereunder to maturity at the Note Rate applicable hereto (as defined in, and adjusted from time as provided in, that certain Transaction Agreement dated as of \_\_\_\_\_, 1995, by and among the Trust Company in its individual capacity and as Trustee, Heilig-Meyers Furniture Company, as Lessee, and Citicorp Leasing, Inc., as initial Purchaser, Holder and Agent [as amended, restated, supplemented or otherwise modified from time to time, the "Transaction Agreement"]) and, unless prohibited by applicable Law, to pay interest on any overdue principal, premium and interest, at the Default Rate (or at the highest rate permitted by applicable Law, whichever is less), in each case computed on the basis of a 360-day year (except in the case of calculations at the Highest Lawful Rate, which shall be computed on the basis of a 365-day or 366-day [as applicable] year), for the actual number of days elapsed. Such principal, premium, if any, and interest shall be payable in the following manner:

Interest accrued and unpaid on this Note shall be computed and shall be payable in arrears on each Payment Date of each calendar year, commencing with the Payment Date next succeeding the dated of the first Advance hereunder, and on the Maturity Date.

This Note is subject to prepayment in the manner, to the extent, under the circumstances and at the price provided for in the Declaration of Trust.

All Advances and all repayments of the principal hereof and interest hereon shall be recorded by the Holder hereof on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof, or on such other schedule as shall be in accordance with the Holder's then applicable procedures, which schedule shall be attached hereto and made a part hereof; provided, however, that the failure of the Holder to make such notation or any error in such notation shall not affect the obligations of the Trustee under this Note, the Declaration of Trust, or any other Transaction Document. The Agent for the Holder of this Note is, under the Transaction Agreement, responsible for maintaining a master schedule (the "Master Schedule") of Advances and payments that reduce the outstanding amount of this Note. The information regarding the status of this Note on the Master Schedule maintained by Agent shall, in the absence of manifest error, be binding and conclusive regarding the amount of Advances and payments hereon. In connection with any transfer of this Note, all Advances and all repayments through the date of such transfer shall be endorsed on the attached schedule, which schedule shall be confirmed by the Agent based upon the Master Schedule.

Upon the occurrence and during the continuance of an Event of Default or a Trigger Event, the principal hereof and the interest accrued and unpaid hereon may be declared to be due and payable forthwith as provided in the Declaration of Trust.

This Note is one of the "Series B Trust Notes" issued and to be issued under the Declaration of Trust. This Note is and the Series B Trust Notes are to be equally and ratably secured by the Series B Trust Estate established by the Declaration of Trust. Reference is hereby made to the Declaration of Trust for a description of the property held in trust thereunder or intended to be held in trust thereunder, the provisions upon which the B-Notes are to be issued and secured, the nature and extent of the property held for the benefit of the B-Notes and the rights of the Holders of the B-Notes and the Trustee in respect of such property and otherwise. The provisions of the Declaration of Trust and the Transaction Agreement and the rights of the Holders of the B-Notes may be changed and modified only to the extent permitted by and as provided in the Declaration of Trust.

This Note and any interest herein may only be transferred or exchanged in accordance with the terms, conditions and restrictions set forth in the Declaration of Trust and the Transaction Agreement. Prior to due presentment of this Note for registration of transfer, the Trustee may deem and treat the person in whose name this Note is registered on the Register maintained by the Agent as the absolute owner hereof (whether or not this Note shall be overdue) for the purpose of receiving payment and for all other purposes, and the Trustee shall not be affected by any notice to the contrary. In accordance with the provisions of the Declaration of Trust, the transfer of this Note must be registered with the Agent, and this Note may be exchanged for other Notes of authorized denominations.

No provision of this Note or of the Declaration of Trust shall require the payment or permit the collection of interest in excess of the maximum permitted by Law. If any excess of interest in such respect is herein or in the Declaration of Trust provided for, or shall be adjudicated to be so provided for herein or in the Declaration of Trust, no person shall be

obliged to pay such interest in excess of the maximum permitted by Law, and the right to demand the payment of any such excess shall be and hereby is waived and this provision shall control any provision of Declaration of Trust, the Notes, the Transaction Agreement or any other Transaction Document which is inconsistent with this Note. The provisions of Section 10.08 of the Declaration of Trust are incorporated herein by this reference.

THIS NOTE IS ISSUED BY TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE UNDER THE DECLARATION OF TRUST REFERRED TO HEREIN. THE NOTES ARE PAYABLE ONLY FROM THE SERIES B TRUST ESTATE, AS PROVIDED IN THE DECLARATION OF TRUST, AND THE INCOME AND PROCEEDS THEREFROM AND DO NOT CONSTITUTE A DEBT OR OBLIGATION OF TRUST COMPANY.

THIS NOTE SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, BUT EXCLUDING ALL CONFLICT-OF-LAW RULES OF SUCH COMMONWEALTH.

By acceptance of this Note, the holder hereof expressly acknowledges and assents to all the terms and provisions of the Declaration of Trust, the Transaction Agreement and the other Transaction Documents and becomes a party thereto as fully to all intents and purposes as though such Holder had signed the same.

IN WITNESS WHEREOF, Trust Company, not in its individual capacity but solely as Trustee, has caused this Note to be duly executed by one of its duly authorized officers.

Dated: \_\_\_\_\_, 19\_\_.

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,  
not in its individual capacity but solely  
as Trustee under the Declaration of Trust  
dated as of \_\_\_\_\_, 19\_\_

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

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Advances and Payments

<u>Date</u>	<u>Amount of Advances</u>	<u>Amount of Principal Repaid</u>	<u>Unpaid Principal Balance</u>	<u>Notation Made By</u>
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**Section 3.03. Terms of Certificates.**

(a) The Certificates shall be issuable in one series and shall be designated as "Series C Trust Certificates" and shall be limited in aggregate stated amount to \$750,000.00. Each Certificate shall be issued pursuant to either Section 3.04 or 3.08, and shall comply with the applicable provisions of this Article III. Each Certificate shall be issuable in denominations of \$150,000.00 or greater. Any Certificate may have such letters, numbers and other marks of identification and such legends or endorsements thereon as the Trustee may determine and as are not inconsistent with the provisions of this Declaration of Trust.

**[Remainder of page intentionally left blank]**

(b) The Certificates shall each be substantially in the following form:

[Form of Certificate]

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,  
not in its individual capacity but solely  
as Trustee Under the Declaration of  
Trust Dated as of \_\_\_\_\_, 1995

Series C Trust Certificate  
(Heilig-Meyers Leased Property)

No. \_\_\_\_\_

STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company ("Trust Company"), not in its individual capacity but solely as Trustee (herein in its capacity as such Trustee, called the "Trustee"), under that certain Declaration of Trust dated as of \_\_\_\_\_, 1995 (herein as the same may be amended, restated, supplemented or otherwise modified from time to time called the "Declaration of Trust"; the defined terms therein not otherwise defined herein being herein used with the same meanings) hereby promises to pay to \_\_\_\_\_ or registered assigns permitted under the hereinafter defined Transaction Agreement (the "Holder") upon the expiration or termination (for any reason) of the Lease, as hereinafter provided, the stated amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Stated Amount") and to pay a current yield on so much of the Stated Amount as may be unpaid and outstanding from the date of the first Advance hereunder to maturity at the Certificate Rate applicable hereto (as defined in, and adjusted from time as provided in, that certain Transaction Agreement dated \_\_\_\_\_, 1995, by and among the Trust Company in its individual capacity and as Trustee, Heilig-Meyers Furniture Company, as Lessee, and Citicorp Leasing, Inc., as initial Purchaser, Holder and Agent [as amended, restated, supplemented or otherwise modified from time to time, the "Transaction Agreement"]), and, unless prohibited by applicable Law, to pay current yield on any overdue Stated Amount and current yield, at the Default Rate (or at the highest rate permitted by applicable Law, whichever is less), in each case computed on the basis of a 360-day year (except in the case of calculations at the Highest Lawful Rate, which shall be computed on the basis of a 365-day or 366-day [as applicable] year), for the actual number of days elapsed. Such Stated Amount, and current yield thereon, shall be payable in the following manner:

Current yield accrued and unpaid on this Certificate shall be computed and shall be payable in arrears on each Payment Date of each calendar year, commencing with the Payment Date next succeeding the date of the first Advance hereunder, and on the Maturity Date.

This Certificate is subject to retirement in the manner, to the extent, under the circumstances and at the price provided for in the Declaration of Trust.

All Advances and all repayments of the stated amount hereof and yield hereon shall be recorded by the Holder hereof on the schedule attached hereto, or on a continuation of such schedule attached to and made a part hereof, or on such other schedule as shall be in accordance with the Holder's then applicable procedures, which schedule shall be attached hereto and made a part hereof; provided, however, that the failure of the Holder to make such notation or any error in such notation shall not affect the obligations of the Trustee under this Certificate, the Declaration of Trust, or any other Transaction Document. The Agent for the Holder of this Certificate is, under the Transaction Agreement, responsible for maintaining a master schedule (the "Master Schedule") of Advances and payments that reduce the outstanding amount of this Certificate. The information regarding the status of this Certificate on the Master Schedule maintained by Agent shall, in the absence of manifest error, be binding and conclusive regarding the amount of Advances and payments hereon. In connection with any transfer of this Certificate, all Advances and all repayments shall be endorsed on the attached schedule, which schedule shall be confirmed by the Agent based upon the Master Schedule.

Upon the occurrence and during the continuance of an Event of Default or a Trigger Event, the Stated Amount hereof and the current yield accrued and unpaid hereon, may be declared to be due and payable forthwith as provided in the Declaration of Trust.

This Certificate is one of the "Series C Trust Certificates" issued and to be issued under the Declaration of Trust. This Certificate is and the Series C Trust Certificates are to be equally and ratably secured by the Series C Trust Estate established by the Declaration of Trust. Reference is hereby made to the Declaration of Trust for a description of the property held in trust thereunder or intended to be held in trust thereunder, the provisions upon which the Certificates are to be issued and secured, the nature and extent of the property held for the benefit of the Certificates and the rights of the Holders of the Certificates and the Trustee in respect of such property and otherwise. By acceptance of this Certificate, the Holder hereof expressly acknowledges and agrees (i) that the rights of the Holder of this Certificate to payment of the yield on this Certificate are subject, subordinate and inferior to payment in full of all interest due to the Holders of the A-Notes and the B-Notes and such yield is payable out of Net Rent Payments by the Lessee only to the extent of funds remaining after all interest payments due on the A-Notes and B-Notes are paid in full, and (ii) except in the case a purchase of less than all of the Property by Lessee, the right of the Holder of this Certificate to repayment of the stated amount hereof is subject, subordinate and inferior to payment in full of all amounts of principal due to the Holders of the A-Notes and B-Notes issued pursuant to the Declaration of Trust. The provisions of the Declaration of Trust and the Transaction Agreement and the rights of the Holders of the Certificates may be changed and modified only to the extent permitted by and as provided in the Declaration of Trust and the Transaction Agreement.

This Certificate and any interest herein may only be transferred or exchanged in accordance with the terms, conditions and restrictions set forth in the Declaration of Trust and the Transaction Agreement. Prior to due presentment of this Certificate for registration of transfer the Trustee may deem and treat the person in whose name this Certificate is registered on the Register maintained by the Agent as the absolute owner hereof for the purpose of receiving payment and for all other purposes, and the Trustee shall not be affected by any notice

to the contrary. In accordance with the provisions of the Declaration of Trust, the transfer of this Certificate must be registered with the Agent, and this Certificate may be exchanged for other Certificates of authorized denominations.

No provision of this Certificate or of the Declaration of Trust shall require the payment or permit the collection of current yield in excess of the maximum permitted by Law. If any excess of current yield in such respect is herein or in the Declaration of Trust provided for, or shall be adjudicated to be so provided for herein or in the Declaration of Trust, no person shall be obliged to pay such interest in excess of the maximum permitted by Law, and the right to demand the payment of any such excess shall be and hereby is waived and this provision shall control any provision of the Declaration of Trust, the Certificates, the Transaction Agreement or any other Transaction Document which is inconsistent with this Certificate. The provisions of Section 10.08 of the Declaration of Trust are incorporated herein by this reference.

**THIS CERTIFICATE IS ISSUED BY TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE UNDER THE DECLARATION OF TRUST REFERRED TO HEREIN. THE CERTIFICATES ARE PAYABLE ONLY FROM THE SERIES C TRUST ESTATE, AS PROVIDED IN THE DECLARATION OF TRUST, AND THE INCOME AND PROCEEDS THEREFROM AND DO NOT CONSTITUTE A DEBT OR OBLIGATION OF TRUST COMPANY.**

**THIS CERTIFICATE SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, BUT EXCLUDING ALL CONFLICT-OF-LAW RULES OF SUCH COMMONWEALTH.**

By acceptance of this Certificate, the Holder hereof expressly acknowledges and assents to all the terms and provisions of the Declaration of Trust, the Transaction Agreement and the other Transaction Documents and becomes a party thereto as fully to all intents and purposes as though such Holder had signed the same.

IN WITNESS WHEREOF, Trust Company, not in its individual capacity but solely as Trustee, has caused this Certificate to be duly executed by one of its duly authorized officers.

Dated: \_\_\_\_\_, 19\_\_.

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company,  
not in its individual capacity but solely  
as Trustee under the Declaration of Trust  
dated as of \_\_\_\_\_, 1995.

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

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Advances and Payments

<u>Date</u>	<u>Amount of Advances</u>	<u>Amount Repaid</u>	<u>Outstanding Balance</u>	<u>Notation Made By</u>
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**Section 3.04. Issuance of Notes and Certificates and Funding of Advances.**

(a) Trustee is hereby authorized to issue to CLI, as the initial Purchaser, Notes and Certificates representing the full amount of its A-Note Commitment, its B-Note Commitment and its Certificate Commitment. At such time as an additional Person becomes a Purchaser as permitted under the Transaction Agreement, the Trustee shall be authorized to issue to such Purchaser Notes and Certificates (subject to the aggregate dollar limitations set forth in this Declaration of Trust) reflecting the A-Note Commitment, B-Note Commitment and Certificate Commitment of such Purchaser. In each case the Instruments shall be issued by Trustee providing for payments based on the Note Rate or Certificate Rate applicable to such Instrument as provided for in the Transaction Agreement.

(b) From time to time as Purchasers are obligated to make Advances to Agent on behalf of the Trustee under the Transaction Agreement, the Trustee (acting through the Agent) shall use such Advances for the Approved Purposes in the manner provided for in the Transaction Agreement. The portion of each Advance funded under the A-Notes shall be an aggregate principal amount equal to 85% of the Advance in question, the portion of each Advance funded under the B-Notes shall be an aggregate principal amount equal to 12% of the Advance in question, and the portion of each Advance funded under the Certificates shall be an aggregate principal amount equal to 3% of the Advance in question.

(c) Notwithstanding anything herein or in any of the other Transaction Documents to the contrary, no Person shall become a Purchaser except in accordance with the terms, conditions and restrictions set forth in the Transaction Agreement.

**Section 3.05. Payments.**

(a) The principal of, premium, if any, and interest on the Notes and the stated amount of, premium, if any, and current yield on the Certificates, as applicable, shall be payable as provided in Article IV of the Transaction Agreement in lawful money of the United States of America. Trustee shall not be obligated to make any payment to any Instrument Holder in respect of Break Costs, Reserve Costs, or Increased Costs until Trustee has received payment thereof from the Lessee.

(b) Any Holder wishing to require payment of Break Costs, Reserve Costs, or Increased Costs shall determine the amount of such Break Costs, Reserve Costs, or Increased Costs and promptly notify the Trustee of such requirement, which notification shall, as to Increased Costs, be accompanied by a certificate with respect thereto as required pursuant to Exhibit "A" to the Lease. Upon receipt of such notice from any Holder, the Trustee shall immediately give notice of the same to the Lessee.

**Section 3.06. Register.** The Trustee shall maintain, or cause the Agent to maintain, a sufficient register or registers for the registration and registration of transfer of Instruments, which shall be designated the Register. The Instruments, the names and addresses of the

Holders of the Instruments, the principal and stated amounts of the Instruments held by such Holders, the transfers of the Instruments and the names and addresses of the transferees of the Instruments shall be registered in the Register under such reasonable regulations as the Trustee may prescribe. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error.

Section 3.07. Execution. The Instruments shall each be signed on behalf of the Trustee by one of its duly authorized officers. In case any officer who shall have signed any Instrument shall cease to be such officer before such Instrument shall have been delivered by the Trustee, such Instrument may nevertheless be delivered with the same effect as though such person had not ceased to be such officer of the Trustee.

Section 3.08. Transfers and Exchanges.

(a) Subject to the restrictions set forth herein and in the Transaction Agreement, Instruments may be transferred or exchanged only on the Register upon the following conditions: (i) any Note or Notes may, upon surrender to the Trustee, be transferred or exchanged for one or more Notes of the same tenor and series and aggregate principal amount as requested by the registered Holder thereof; and (ii) any Certificate or Certificates may, upon surrender to the Trustee, be transferred or exchanged for one or more Certificates of the same tenor and aggregate stated amount as requested by the registered Holder thereof; provided, that in the case of a requested transfer, the Instrument or Instruments to be transferred shall be accompanied by an Assignment Agreement and evidence of the transfer's compliance with Section 4.02 of the Transaction Agreement; provided, further, that in the case of a requested exchange or transfer of a mutilated, lost, destroyed or stolen Instrument, surrender shall be required only if mutilated, and the registered Holder shall furnish the Trustee and the Lessee with such indemnification and such evidence of ownership and of mutilation, loss, destruction or theft as the Trustee or the Lessee may reasonably require.

(b) The Trustee shall consult with Agent as to the matters set forth in clauses (x) and (y) of this Section 3.08(b) and shall, after such consultation, mark on each such new Note or Certificate (herein, in this Section 3.08[b] called, respectively, a "New Note" or "New Certificate") issued pursuant to Section 3.08(a) in exchange or in substitution for or in lieu of an outstanding Note or Certificate (herein, this Section 3.08[b] called, respectively, an "Old Note" or "Old Certificate") (x) the date to which interest or current yield has been paid on the Old Note(s) or Old Certificate(s), as the case may be, and (y) the amount of all payments and prepayments or retirements of principal or stated amount, as the case may be, previously made on the Old Note(s) or Old Certificate(s), which are allocable to such New Notes or New Certificates. Interest and current yield shall be deemed to have been paid on such New Note or New Certificate, as the case may be, to the date to which interest or current yield shall have been paid on the Old Note(s), Old Certificate(s) and all payments and prepayments or retirements of principal or stated amount, as the case may be, marked on such New Notes or New Certificates shall be deemed to have been made thereon.

(c) Upon the issuance of a New Note or New Certificate pursuant to Section 3.08(a), the Trustee may require the payment of a sum to reimburse it, or to provide it with funds, for the payment of any transfer Tax or similar governmental charge paid or payable by the Trustee in connection with such exchange. It is expressly acknowledged that all such charges and Taxes shall be for the account of the recipient of any such New Note or New Certificate and not for the account of Lessee.

(d) Each New Note issued in exchange or in substitution for an Old Note(s) pursuant to Section 3.08(a) shall be a valid obligation evidencing the same interest as such Old Note(s) or the portion thereof allocable to such New Note, and each New Certificate issued in exchange or in substitution for an Old Certificate(s) pursuant to Section 3.08(a) shall be a valid obligation evidencing the same interest as such Old Certificate(s) or the portion thereof allocable to such New Certificate, and each and every New Note and New Certificate shall be entitled to the benefits and security of this Declaration of Trust to the same extent.

(e) Except as otherwise provided in Section 4.01 of the Transaction Agreement, each New Instrument shall bear interest or yield at the same rate as the interest rate or yield, as applicable, on the Old Instrument being replaced thereby.

(f) Notwithstanding anything herein or in any of the other Transaction Documents to the contrary, any transfer or exchange of any Instrument or any interest therein shall be subject to the terms, conditions and restrictions set forth herein and in the Transaction Agreement, including without limitation the provisions in Sections 3.02 and 3.03 hereof and Section 4.02 of the Transaction Agreement.

Section 3.09. Record Holder. Prior to due presentment for registration of transfer of any Instrument, as the case may be, the Trustee may deem and treat the Holder of such Instrument as shown by the Register maintained by the Agent on behalf of the Trustee as the absolute owner thereof for the purpose of receiving any payment in respect thereof and for all other purposes, and the Trustee shall not be affected by any notice to the contrary.

Section 3.10. Surrender. All Instruments surrendered to the Trustee for payment in full or for exchange or for registration of transfer shall be promptly canceled and no Instruments shall be issued in exchange or substitution therefor except as expressly permitted hereby.

Section 3.11. Binding Effect. The Holder of each Instrument issued, whether issued as part of the original issue or as a result of a transfer or exchange pursuant to Section 3.08 hereof, by accepting such Instrument, shall be bound by, and shall be a beneficiary of, Declaration of Trust to the same extent as if such Holder had joined in the execution hereof.

## Possession, Use And Release

**Section 4.01. Trustee to Receive Moneys.** The Trustee shall receive and collect all moneys referred to in Article V and all other moneys and property paid or payable to or received or receivable by the Trustee under or pursuant to the provisions of or otherwise in respect of any instrument or other property included in the Trust Estate or under or pursuant to the provisions of this Declaration of Trust. The Trustee shall give written notice in accordance with the notice requirements of the Lease to the Lessee upon any failure of the Lessee to pay moneys representing payments of Net Rent under the Lease when due or, to the extent the Trustee has actual knowledge of any Offer Purchase Price, Contingent Rent Payment, and/or Additional Rent being due and payable under the Lease, the failure of Lessee to pay any such Offer Purchase Price, Contingent Rent Payment and/or Additional Rent under the Lease, and in any such event Trustee may demand and enforce payment thereof as provided in the Lease or other agreements, and may take such other action as the Trustee shall deem necessary or advisable in connection therewith; provided, however, that the foregoing authority shall not be deemed or construed to limit or vitiate Trustee's obligations to the Holders of the Instruments hereunder and under the Transaction Agreement. All such moneys received by the Trustee shall be held by the Trustee as part of the Trust Estate and, unless otherwise provided, applied as provided in Article V of this Declaration of Trust. The Trustee may delegate its responsibilities under this Section 4.01 to the Agent for the Instrument Holders, which Agent shall have been appointed pursuant to Section 6.01 of the Transaction Agreement.

**Section 4.02. Trustee Not Obligated to Accept Other Property.** The Trustee shall not be obliged at any time to accept any property other than the Trust Estate or to cause or permit the transfer of such other property to be made to the Trustee if the Trustee shall determine in good faith that such action would subject the Trustee to the risk of any personal liability or expense. The Trustee shall not be under any duty to examine or pass upon the validity or genuineness of, or the title to, any instrument or other property at any time included in the Trust Estate, and the Trustee shall be entitled to assume that any such instrument or other property is valid and genuine and is owned by the purported owner thereof and that the conveyance, assignment and other transfer thereof to the Trustee is valid, binding and enforceable in accordance with its terms. The Trustee shall have no duty to ascertain or inquire as to the performance or observance of any terms of the Transaction Documents by the Lessee, except as expressly required by this Declaration of Trust or the Transaction Documents. The Trustee shall hold, deal with, apply and release the Trust Estate or any portion thereof or interest therein in accordance with the provisions of this Declaration of Trust.

**Section 4.03. Action by Trustee in Case of Certain Events of Defaults.** In case default shall be made in the payment of any Net Rent, Offer Purchase Price, Contingent Rent Payment and/or Additional Rent under the Lease or of any other moneys due under or pursuant to the provisions of or otherwise in respect of, or in the due performance of any provision of, the Lease or the Transaction Agreement or of any other instrument included in the Trust Estate, then

and in every such case (without prejudice to any right to claim an Event of Default or Trigger Event or to assert any right consequent thereon), the Trustee may (and upon the request of the Majority Holders of the A-Notes, B-Notes or Certificates then outstanding, or if such default affects a portion of the Trust Estate related to more than one series of Instruments the request of the Majority Holders of all such series of Instruments affected, and upon receipt of indemnity reasonably satisfactory to it, shall) give any necessary notices or grace periods and if such default matures into an Event of Default or Trigger Event, thereafter cause proper proceedings to be instituted and prosecuted in a court of competent jurisdiction, or take any other action to enforce such payment, collect the amounts due and/or enforce the performance of such provisions, subject to the terms of the Lease.

**Section 4.04. Action by Trustee Upon Request of Holders of Instruments.** Subject to the applicable requirements, if any, of Section 9.02 hereof, and subject to Section 7.07 hereof relating to communications with the Trustee through the Agent, the Trustee shall, upon the request of the Majority Holders of A-Notes, B-Notes or Certificates then outstanding, give its consent to, or take, any action so requested or change under, in or in respect of the applicable Series A, Series B or Series C Trust Estate, any instrument or other property included in the applicable Trust Estate, or any property subject or intended to be subject to any instrument included in the applicable Trust Estate; provided, however, that if any such consent, action or change would affect a portion of the Trust Estate related to more than one series of Instruments, the request of Majority Holders of all such series affected shall be required. If the Trustee is required to take any action in its discretion pursuant to the Lease, the Trustee shall request direction for such action from the Agent pursuant to this Section 4.04, and the Trustee shall comply with such direction. The Trustee may decline to follow any such request or direction if (i) the Trustee shall receive an opinion of counsel to the effect that such consent or such action or change may not lawfully be made or taken, or (ii) the Trustee shall determine in good faith that such consent or such action or change would subject the Trustee to the risk of any personal liability or any expense, unless (in cases not involving criminal liability) any of the Holders of the Instruments can and do indemnify and hold the Trustee harmless, in form and amount reasonably satisfactory to the Trustee, from and against such liability or expense.

**Section 4.05. Trustee Entitled to Receive Opinion of Counsel.** The Trustee shall, before taking any action under this Article IV, be entitled to receive (a) reasonable prior notice of the action to be taken and of the form of the instruments involved, and (b) if Trustee in good faith believes that the requested action may result in criminal liability to the Trustee or material impairment of the Trust Estate, an opinion of counsel, in form and substance reasonably satisfactory to the Trustee, stating the legal effect of such action, the steps necessary to be taken to consummate such action and that such action will not materially impair the security for the Instruments or the rights of the Holders of the Instruments in contravention of the provisions hereof. In lieu of any opinion of counsel the Trustee may rely upon a direction from the Agent unless the Trustee reasonably believes that there is a threat of criminal liability to the Trustee or material impairment of the Trust Estate. Any such opinion shall be full protection to the Trustee in reliance thereon. In the case of any instrument or instruments supplemental to any or all instruments included in the Trust Estate and in the case of any releases and related

instruments, the Trustee shall be entitled to receive and rely upon a direction from the Agent as conclusive evidence that such supplemental instrument or instruments or releases and related instruments may be entered into or consented to by the parties thereto (and by any person whose consent thereto or execution thereof is required) pursuant to and in compliance with the requirements of this Declaration of Trust.

Section 4.06. Conveyances. In the event of the proper purchase of the Property or an applicable portion thereof by any Person at any time, including, without limitation, purchase by the Lessee as a result of the exercise of any purchase option provided for in the Lease, and upon receipt of the purchase price therefor, the Trustee shall execute any deed or other appropriate conveyance documents, as well as any release or any other such instrument required by the provisions of this Declaration of Trust or any instrument included in the Trust Estate with respect to the transaction in question; provided that the Trustee shall have first received all moneys required under this Declaration of Trust or such related instrument. In no event shall any purchaser in good faith of any portion of the Trust Estate purported to be conveyed or released by the Trustee as provided in this Article IV be bound to ascertain the authority of the Trustee to execute any such conveyance instruments or release, or to inquire as to the satisfaction of any conditions precedent to the exercise of such authority, or to see to the application of the purchase price therefor.

Section 4.07. Permitted Investments. If the Trustee shall have received (a) funds which it cannot immediately apply or disburse, due to circumstances out of its control or (b) funds (other than funds representing payments of Net Rent, Contingent Rent Payments, Additional Rent, or the Offer Purchase Price) for which it has no immediate obligation to apply or disburse the same to any Person (including, but not limited to, the Agent for the account of Holders of the Instruments) immediately upon the receipt of the same, then, pending any required disbursement or application of the same, the Trustee may (and upon the request of the Agent or, in the case of funds to which Lessee may have rights, the Lessee, shall) invest such funds in Permitted Investments of an appropriate maturity so as to ensure their availability, without penalty, when such funds can be applied or disbursed or when such funds may be required for disbursement or application, as the case may be, and the Trustee shall apply the interest accrued on such funds in the same manner in which the funds so deposited are required to be applied or disbursed.

## ARTICLE V

### Application of Moneys

Section 5.01. Net Rent and Additional Rent Under the Lease. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, moneys received by the Trustee pursuant to the Lease, representing payments of Net Rent, and interest on any overdue installment, if any, at the Default Rate, shall be applied, first, to the payment of interest accrued and unpaid on the A-Notes and B-Notes,

together with interest on any overdue amount or amounts thereof at the Default Rate (to the extent permitted by Law), ratably in respect of their claims; second, the excess, if any, to the payment of current yield accrued and unpaid on the Certificates, together with current yield on any overdue amount or amounts thereof at the Default Rate (to the extent permitted by Law), ratably in respect of their claims; and, third, the excess, if any, shall be returned to the Lessee.

**Section 5.02. Purchase Under Lease.**

(a) Except as provided in Article VII hereof in respect of actions upon the occurrence and continuance of an Event of Default or Trigger Event, moneys received by the Trustee under the Lease as payment by the Lessee of the Offer Purchase Price for Trustee's interest in the entire Property pursuant to the Lease shall be applied, first, to the payment of all of the outstanding Notes at 100% of their outstanding principal amount, together with interest accrued and unpaid thereon to the date of payment and, if applicable, any premium applicable thereto in respect of an early payment, as provided in clause (c) below, ratably in respect of their claims; second, to the retirement of all of the outstanding Certificates at 100% of their stated amount, together with current yield accrued and unpaid thereon to the date of payment, and, if applicable, any premium applicable thereto in respect of an early payment, as provided in clause (c) below, ratably in respect of their claims; third, the excess, if any, to the payment of any and all other amounts due and owing under the Transaction Documents to or for the benefit of the Holders of the Instruments and, if applicable, any premium applicable thereto in respect of an early payment, as provided in clause (c) below; and fourth, the excess, if any, shall be returned to the Lessee. Upon any such purchase of the entire Property, the Instruments, together with interest and current yield accrued and unpaid thereon to the date of payment and, if applicable, any premium applicable thereto in respect of an early payment, as provided in clause (c) below, shall immediately become due and payable.

(b) Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, moneys received by the Trustee under the Lease as payment by the Lessee of the Offer Purchase Price for Trustee's interest in one or more Parcels that constitute less than the entire Property then covered by the Lease shall be applied, first, to the payment of accrued interest on that portion of the principal balance of the Notes and accrued and unpaid yield on that portion of the principal balance of the Certificates to be retired in connection with such payment (being an aggregate amount equal to the Acquisition Price specified in the Lease for the Parcels in question), second, to the payment of outstanding principal amounts of the A-Notes and B-Notes, and outstanding stated amounts of Certificates proportionately (i.e. 85% to the A-Notes, 12% to the B-Notes, and 3% to the Certificates), and third, if applicable, to the payment of any premium applicable to such payment in respect of any Early Termination Fee paid by Lessee, as provided in clause (c) below. Amounts allocated to any series of Instruments shall be allocated proportionately among the Holders of all Instruments within such series.

(c) In any circumstance where Lessee is required to pay an Early Termination Fee under the Lease in connection with the purchase of all or a portion of the Property, the

Early Termination Fee paid by Lessee shall be allocated among and paid to the Instrument Holders pro rata in accordance with the amounts of principal (in the case of the Notes) or stated amount (in the case of the Certificates) payable to such Instrument Holder as a result of such purchase.

Section 5.03. Sales Proceeds. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, moneys received by the Trustee as payment of Sales Proceeds, (net of costs incurred by Trustee in connection therewith), shall be applied, to the extent available, in the following order of priority: first, to the payment of all outstanding B-Notes at 100% of their outstanding principal amount, together with interest accrued and unpaid thereon to the date of payment; second, to the payment of all outstanding A-Notes at 100% of their outstanding principal amount, together with interest accrued and unpaid thereon to the date of payment; third, to the retirement of all outstanding Certificates at 100% of their stated amount, together with current yield accrued and unpaid thereon to the date of payment, ratably in respect of their claims; fourth, to the payment of any and all other amounts due and owing under the Transaction Documents to or for the benefit of the Holders of the Instruments; and fifth, the excess, if any, shall be returned to the Lessee.

Section 5.04. Contingent Rent Payments. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event and subject to the rights of the Lessee in respect of such amounts as set out in Section 27 of the Lease, moneys received by the Trustee pursuant to the Lease representing the Contingent Rent Payments shall be applied to the extent available, in the following order of priority: first, to the payment of all outstanding A-Notes at 100% of their outstanding principal amount, together with interest accrued and unpaid thereon to the date of payment; second, to the payment of all outstanding B-Notes at 100% of their outstanding principal amount, together with interest accrued and unpaid hereon to the date of payment; third, to the retirement of all outstanding Certificates at 100% of their stated amount, together with current yield accrued and unpaid thereon to the date of payment, ratably in respect of their claims; fourth, to the payment of any and all other amounts due and owing under the Transaction Documents to or for the benefit of the Holders of the Instruments; and fifth, the excess, if any, shall be returned to the Lessee. Any interest on any overdue amounts of Contingent Rent Payments at the Default Rate (to the extent permitted by law) shall be allocated among and paid over pro rata to the Holders of the Instruments in the same ratio as the Contingent Rent Payment itself is allocated and paid.

Section 5.05. Awards, Compensation or Other Payments on Account of Casualty. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, and subject to the rights of the Lessee in respect of such amounts as set out in the Lease, moneys, if any, received by the Trustee pursuant to the Lease as Net Proceeds paid or payable to or received or receivable by the Trustee pursuant to the Lease shall be distributed in the same order as Sale Proceeds pursuant to Section 5.03 above; provided, however, that if the Lessee shall have given a Termination Notice and exercised its option to purchase thereunder, such moneys shall be held and applied as provided in Section 15 of the Lease. It is expressly acknowledged that the rights of the Lessee as set out in the Lease

relating to the use of the Net Proceeds are superior to the rights of the Holders to such sums, and only Net Proceeds not utilized (or permitted to be utilized) by Lessee shall be distributed by Trustee hereunder.

Section 5.06. Trustee's Fees. Any funds payable to the Trustee in respect of its services shall not be a part of the Trust Estate for any purpose.

Section 5.07. Late Charges. Any late charges on payments made by Lessee under the Lease shall be first applied to the payment of any reasonable expenses incurred by Trustee or Agent in connection with the late payment and the receipt of funds in connection therewith, with any remainder being allocated among the Instrument Holders in proportion to their interests in the principal, interest, or other amount to be paid with the payment itself.

Section 5.08. Other Payments. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, any Additional Rent payable to or received by Trustee (as Lessor) under the Lease and not otherwise specifically allocated in this Article V shall be applied, first, to the purposes for which such moneys were paid pursuant thereto; and, second, the excess, if any, shall be returned to the Lessee.

Section 5.09. Remaining Moneys. Except as provided in Article VII hereof relating to actions upon the occurrence and continuance of an Event of Default or Trigger Event, any and all moneys remaining after all payments of interest on and principal of the Notes, and all payments of current yield on and stated amount of the Certificates and all payments of other sums due to the parties entitled thereto under the Transaction Documents, have been made in accordance with this Article V, shall be paid to the Lessee.

## ARTICLE VI

### Prepayment of Notes and Retirement of Certificates

#### Section 6.01. General.

(a) No prepayment of any Notes or retirement of any Certificates may be made except to the extent and in the manner expressly permitted or required by this Declaration of Trust and except for any prepayment or retirement resulting from any payments made pursuant to the Lease. Prepayment and retirement of the Instruments in full prior to the maturity of the Instruments will be permitted upon the receipt of the Offer Purchase Price for all of the Property. Any prepayment or retirement in full of the Instruments required or permitted to be made by this Article VI shall be made in accordance with the provisions of this Article VI and shall be at 100% of the principal amount of the Notes and at 100% of the stated amount of the Certificates so prepaid, together with interest or current yield, as the case may be accrued and unpaid thereon to the prepayment or retirement date, plus any premium applicable to an early

payment pursuant to Section 5.02(c). Unless the Notes are to be prepaid (together with all accrued and unpaid interest thereon to the date of prepayment) in full simultaneously therewith, no retirement of the Certificates will be permitted if any of the Notes (or any amounts due thereunder) are then outstanding. Moneys which are due and payable on the Notes or the Certificates on the date fixed for any prepayment or retirement shall be paid prior to such prepayment or retirement.

(b) Nothing in the foregoing provision shall limit or restrict any partial prepayment or retirement of the Notes and Certificates in the case of a purchase by Lessee of one or more (but less than all) Parcels of the Property, or other early payment by Lessee, pursuant to the Lease. The proceeds of any such partial sale of the Property shall be allocated among the Instruments as provided in Section 5.02(b) above.

Section 6.02. Notice of Prepayment or Retirement: Termination of Interest on Prepayment Date. In case of any prepayment of any of the Notes or retirement of the Certificates, notice thereof shall be given by the Trustee, if the Trustee has notice thereof, to the Holders of the appropriate Instruments as soon as practicable after the Trustee has received notice of the intended repayment or retirement, but not more than sixty (60) days prior to the date fixed for such prepayment or retirement. Each such notice shall specify the date fixed for prepayment or retirement, the Instruments subject to prepayment or retirement and shall be accompanied by all documents relating to such prepayment or retirement. Interest on the Instruments subject to prepayment or retirement shall cease to accrue upon the date fixed for prepayment or retirement unless default shall be made in the payment of the price payable upon the prepayment or retirement thereof.

## ARTICLE VII

### Remedies

#### Section 7.01. Rights and Remedies.

(a) Within five (5) business days of receiving actual knowledge of the occurrence and continuance of an Event of Default or a Trigger Event, Trustee shall immediately notify Lessee and Agent, which notice to Agent shall request instructions regarding the actions or other remedies to be taken as a result thereof. Trustee shall comply with the instructions of the Majority Holders of the Instruments then outstanding in regard to such matters (such instructions to be provided to Trustee by Agent after consultation with the Holders), including, without limitation, if instructed to do so, instituting the purchase obligations of Lessee pursuant to Section 14 of the Lease.

(b) Upon the occurrence and continuance of an Event of Default or a Trigger Event, after deducting all amounts owing to the Trustee for compensation pursuant to the Fee Letter, reimbursement of reasonable expenses and indemnity, including, without limitation,

reasonable expenses for the services of all attorneys, servants and agents of the Trustee properly engaged and employed (including compensation and expenses in connection with any appeal, subject to the same limitations as above), the Trustee shall apply the moneys arising from any realization upon all or a portion of the Trust Estate (including, without limitation, the Offer Purchase Price if Lessee purchases the Property), first, to the payment of all accrued and unpaid amounts of interest on and principal of the Notes, pro rata within each series of Notes to the extent that either or both series thereof is then entitled to the benefit of such portion of the Trust Estate (all such moneys being treated in the same manner as Sale Proceeds); second, the excess, if any, to the payment of all accrued and unpaid amounts of current yield on and the stated amount of the Certificates pro rata to the extent that the Certificates are entitled to the benefit of such portion of the Trust Estate; third, the excess, if any, to the payment of all other amounts secured by the Trust Estate to the extent not previously paid; fourth, the excess, if any, to the payment of any and all other amounts due and owing under the Transaction Documents to or for the benefit of the Holders of the Instruments; and fifth, the excess, if any, to the Lessee.

(c) Upon the occurrence and continuance of an Event of Default or Trigger Event, and without limitation, at the request of the Majority Holders (such request to be provided to Trustee by Agent after consultation with the Holders), and receipt by the Trustee of indemnification in form and substance satisfactory to it, with or without entry, personally or by its agents or attorneys, the Trustee shall take all appropriate steps to protect and enforce any rights and remedies it or the Holders of the Instruments may have pursuant to the Instruments, this Declaration of Trust or any instrument included in the Trust Estate, by appropriate Proceedings (if necessary), including the sale of the Trust Estate; provided that any sale of the Property shall be made only after Lessee has failed or refused to purchase the Property where permitted or required to do so under the Lease. Without limitation, the Trustee may conduct any number of sales of portions of the Trust Estate, from time to time to the extent permitted by Law. Such right and duty to sell the Trust Estate shall not be exhausted by any one or more such sales as to any part of the Trust Estate remaining unsold, but shall continue unimpaired until all of the Trust Estate shall have been sold or the Instruments shall have been paid.

(d) It is expressly agreed that if an Event of Default occurs (including the expiration of the applicable grace and cure periods), then the subsequent performance of the defaulted obligation shall not be deemed to "cure" the Event of Default, and if a Trigger Event occurs the subsequent satisfaction of the financial covenants in question as of a later date shall not be deemed to "cure" the Trigger Event, unless in either applicable case the Trustee, with the consent of Agent (if the performance is due to the Trustee), or Agent (if the performance is due to the Agent, the Purchasers and/or the Holders), as applicable, agrees to accept such cure in writing, and absent such agreement the Event of Default or Trigger Event, as applicable, in question shall be deemed to "continue" for all purposes of this Declaration of Trust, the Transaction Agreement or any other Transaction Document. However, in the case of an Event of Default (but not a Trigger Event) the purchase by Lessee of an affected portion of the Property pursuant to Section 14(a)(v)(x) of the Lease where no Event of Default exists with respect to remaining portions of the Property shall be deemed to cure the Event of Default in

and indemnity, including, without limitation, reasonable expenses for the services of all attorneys, servants and agents of the Trustee properly engaged and employed (including compensation and expenses in connection with any appeal, subject to the same limitations as above), the Trustee shall apply the moneys arising from any realization upon all or a portion of the Trust Estate (including, without limitation, the Offer Purchase Price if Lessee purchases the Property), first, to the payment of all accrued and unpaid amounts of interest on and principal of the Notes, pro rata within each series of Notes to the extent that either or both series thereof is then entitled to the benefit of such portion of the Trust Estate (all such moneys being treated in the same manner as Sale Proceeds); second, the excess, if any, to the payment of all accrued and unpaid amounts of current yield on and the stated amount of the Certificates pro rata to the extent that the Certificates are entitled to the benefit of such portion of the Trust Estate; third, the excess, if any, to the payment of all other amounts secured by the Trust Estate to the extent not previously paid; fourth, the excess, if any, to the payment of any and all other amounts due and owing under the Transaction Documents to or for the benefit of the Holders of the Instruments; and fifth, the excess, if any, to the Lessee.

(c) Upon the occurrence and continuance of an Event of Default or Trigger Event, and without limitation, at the request of the Majority Holders (such request to be provided to Trustee by Agent after consultation with the Holders), and receipt by the Trustee of indemnification in form and substance satisfactory to it, with or without entry, personally or by its agents or attorneys, the Trustee shall take all appropriate steps to protect and enforce any rights and remedies it or the Holders of the Instruments may have pursuant to the Instruments, this Declaration of Trust or any instrument included in the Trust Estate, by appropriate Proceedings (if necessary), including the sale of the Trust Estate; provided that any sale of the Property shall be made only after Lessee has failed or refused to purchase the Property where permitted or required to do so under the Lease. Without limitation, the Trustee may conduct any number of sales of portions of the Trust Estate, from time to time to the extent permitted by Law. Such right and duty to sell the Trust Estate shall not be exhausted by any one or more such sales as to any part of the Trust Estate remaining unsold, but shall continue unimpaired until all of the Trust Estate shall have been sold or the Instruments shall have been paid.

(d) It is expressly agreed that if an Event of Default occurs (including the expiration of the applicable grace and cure periods), then the subsequent performance of the defaulted obligation shall not be deemed to "cure" the Event of Default, and if a Trigger Event occurs the subsequent satisfaction of the financial covenants in question as of a later date shall not be deemed to "cure" the Trigger Event, unless in either applicable case the Trustee, with the consent of Agent (if the performance is due to the Trustee), or Agent (if the performance is due to the Agent, the Purchasers and/or the Holders), as applicable, agrees to accept such cure in writing, and absent such agreement the Event of Default or Trigger Event, as applicable, in question shall be deemed to "continue" for all purposes of this Declaration of Trust, the Transaction Agreement or any other Transaction Document. However, in the case of an Event of Default (but not a Trigger Event) the purchase by Lessee of an affected portion of the Property pursuant to Section 14(a)(v)(x) of the Lease where no Event of Default exists with respect to remaining portions of the Property shall be deemed to cure the Event of Default in

question and the parties shall be restored to their former rights and positions under the Transaction Agreement and the other Transaction Documents.

**Section 7.02. Sale of Trust Estate.**

(a) **Postponement of Sale.** The Trustee may postpone any sale of all or any part of the Trust Estate under or by virtue of this Article (upon public announcement at the time and place of such sale or as may be required by law, in the case of any sale of the Trust Estate in a foreclosure proceeding) and from time to time thereafter may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement or as may be required by law.

(b) **Delivery by Trustee.** Upon the completion of any sale made by the Trustee under or by virtue of this Article, the Trustee shall execute and deliver to the purchaser good and sufficient deeds and other instruments conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights sold all without recourse to the Trustee.

(c) **Receipt.** The receipt of the Trustee for the purchase money paid as a result of a sale pursuant to this Article shall be a sufficient discharge therefor to any purchaser of the Trust Estate sold as aforesaid, and no such purchaser or its representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any purpose hereof, shall be answerable in any manner whatsoever for any loss, misapplication or non-application of any of such purchase money or shall be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(d) **Payment of Instruments Upon Sale.** In the event of any sale made under or by virtue of this Article (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of sale), the payment of accrued interest on and principal of all of the Notes and the payment of accrued current yield on and stated amount of all of the Certificates, if not previously due and payable, shall immediately become due and payable, anything in the Instruments or in this Declaration of Trust to the contrary notwithstanding.

(e) **Application of Moneys.** The moneys from any sale made under or by virtue of this Article, together with any other sums which then may be held by the Trustee as part of the Trust Estate or the proceeds thereof, whether under the provisions of this Article or otherwise, shall be applied as set forth in Section 7.01.

**Section 7.03. Suits by Trustee.** All rights of action under this Declaration of Trust or under any instrument included within the Trust Estate may be enforced by the Trustee without the possession of any of the Instruments and without the production thereof at any trial or other proceeding relative thereto. A copy of any Instrument, if properly certified by the Trustee to

be true and correct, shall constitute conclusive evidence of all matters that could be proven by production of the original of that Instrument in any trial or proceeding relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee (subject to the provisions of Article VIII hereof), and, subject to the right of the Trustee, any recovery of judgment shall be for the ratable benefit of the registered Holders of the Instruments pro rata within each series of Instruments to the extent such series is entitled to the benefits of such portion of the Trust Estate.

**Section 7.04. Waiver of Default.** The Trustee, upon the written request of the Majority Holders of the A-Notes, B-Notes or Certificates (such request to be delivered by Agent after consultation with the Holders) shall waive any default and its consequences, except a default (i) in the payment or prepayment of the principal or stated amount of any Instrument when and as the same shall become due and payable or (ii) depriving the Trustee or any registered Holder of any Instrument of a Lien upon or for the benefit of the Series A Trust Estate, the Series B Trust Estate or Series C Trust Estate, respectively; provided, that if any such waiver would effect a portion of the Trust Estate related to more than one series of Instruments, the written request of the Majority Holders of each such series (such request to be delivered by Agent after consultation with the applicable Holders) affected shall be required. In case of any such waiver or in case any Proceeding taken on account of any default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case, the Trustee, the registered Holders of the Instruments and all other parties to the Transaction Documents shall be restored to their former positions and rights hereunder respectively. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 7.05. Remedies Cumulative.** No remedy herein conferred upon or reserved to the Trustee or to the registered Holders of the Instruments is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of the Trustee or of any registered Holder of the Instruments to exercise any right or power accruing upon any Event of Default or Trigger Event shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or Trigger Event or an acquiescence therein and every power and remedy given by this Declaration of Trust to the Trustee or to the registered Holders of the Instruments may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the registered Holders of the Instruments. Each and every remedy herein conferred upon or reserved to the Trustee or to the registered Holders of the Instruments shall exist with respect to all or any portion of the Trust Estate and the exercise of any remedy with respect to any one portion of the Trust Estate shall not impair the exercise of such remedy or any other remedy or remedies with respect to the remainder of the Trust Estate.

**Section 7.06. Direction of Remedies.** Subject to the provisions of Sections 8.01(a), the Majority Holders of the A-Notes, B-Notes or Certificates shall have the right by an instrument in writing delivered to the Trustee through the Agent as provided in Section 7.07 below to direct the time, method and place of conducting any proceedings for any remedy available to the

Trustee with respect to this Declaration of Trust or of exercising any power or trust conferred upon the Trustee with respect to the Trust Estate; provided, however, that, unless otherwise provided, if any such proceeding or the exercise of any such power would affect a portion of the Trust Estate related to more than one series of Instruments, the direction of the Majority Holders of each such series affected shall be required. Unless the Trustee has received an indemnity in form and amount reasonably satisfactory to it from and against liability and expense, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceedings so directed would involve it in personal liability. Other than as set forth in Section 8.01(a) hereof, 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 any written instruction furnished to the Trustee by the Majority Holders of the A-Notes, B-Notes or Certificates, in response to a written application by the Trustee therefor. If no such instrument or instruction has been received from the Majority Holders of the A-Notes, B-Notes or Certificates then outstanding, the Trustee may take such action, if any, as the Trustee shall determine and the Trustee shall not be liable for any action it takes in good faith in the absence of such instruction.

Section 7.07. Reliance on Directions from Agent. Trustee shall not be required to deal directly with the Instrument Holders or Purchasers in the performance of its duties under this Agreement or under any of the other Transaction Documents, but rather shall deal with the Agent for the Instrument Holders and Purchasers from time to time appointed under the Transaction Agreement. All communications and directions of the Instrument Holders, the Majority Holders, the Purchasers, or the Majority Purchasers, as applicable, to Trustee in connection with the performance by Trustee of its duties under this Declaration of Trust or the other Transaction Documents shall be given solely through the Agent. Trustee shall be entitled to rely upon, and shall be protected in acting in accordance with, any direction, consent, approval, request, or other communication issued by the Agent which purports to be issued on behalf of the Instrument Holders or Majority Holders of the Instruments or any relevant series of the Instruments, or the Purchasers or Majority Purchasers, as applicable, as being the valid direction, consent, approval, or request of the Instrument Holders or the Majority Holders in question, as applicable, if such communication states that it is being issued by Agent at the instance of the relevant Instrument Holders or the Majority Holders. Trustee shall not be required to make any inquiry nor be provided with any evidence regarding the validity or propriety of any such communication, so long as Trustee has no actual knowledge of the falsity thereof.

Section 7.08. Suit by Holders. If an Event of Default or Trigger Event shall have occurred and be continuing and the Majority Holders of the A-Notes, B-Notes or Certificates, or, unless otherwise provided herein, if any such Event of Default or Trigger Event affects a portion of the Trust Estate related to more than one series of Instruments, the request of the Majority Holders of all such series of Instruments affected, shall have requested the Trustee to act with respect thereto and the Trustee shall have failed so to act within 15 days of such request, then and only then shall Agent, acting on behalf of the Instrument Holders, have the right to institute proceedings for the collection of any and all moneys due and payable against

the Trust Estate or to compel performance of obligations to the Trustee held under the Trust Estate.

## ARTICLE VIII

### Duties of the Trustee; Administration of the Trusts

#### Section 8.01. Scope of Trust.

(a) The Trustee shall have the full and complete right, power and authority at any and all times and from time to time, to do any and all things permitted to be done by it under the Transaction Documents to which it is a party or this Declaration of Trust which are not inconsistent with the express provisions of the Transaction Documents to which it is a party or this Declaration of Trust, which the Trustee may deem advisable in order to enforce the provisions of the Transaction Documents to which it is a party or of this Declaration of Trust or to take any action with respect to an Event of Default or Trigger Event, or to institute, appear in or defend any proceeding with respect thereto, or to protect the interests of the Holders of the Instruments in and to the Trust Estate; provided, that the Trustee shall be under no obligation to exercise any discretionary rights or powers vested in it hereunder or under the Transaction Documents or any other instrument included in the Trust Estate unless directed to do so by the Majority Holders of the aggregate of all series of Instruments affected thereby and no implied duties or obligations of the Trustee shall be read into this Declaration of Trust. Trust Company shall not be answerable or accountable in its individual capacity under any circumstances, except for its own bad faith, wilful misconduct or gross negligence, or, in the case of the application of funds contrary to the provisions hereof, for its own bad faith, wilful misconduct, or negligence, and in the case of any representation or warranty made by Trust Company in its individual capacity under the Transaction Agreement proving to have been incorrect in any material respect when made. The Trustee shall be under no obligation to take any action to protect, preserve or enforce any rights or interests in the Trust Estate or to take any action, whether on its own motion or on the request of any other person which, in its opinion, shall be likely to involve expense or liability, unless one or more of the Holders of the Instruments from time to time shall offer and furnish indemnity, in form and substance reasonably satisfactory to the Trustee, against liability and expense to the Trustee. In furtherance of the foregoing, if the Holders of the Instruments shall have directed the Trustee to take any such action or refrain from taking any action, the Holders of the Instruments hereby agree to indemnify and hold harmless Trust Company from any loss, liability or expense incurred by Trust Company in connection with following such direction and, in addition, to the extent not otherwise payable pursuant to the provisions of the Transaction Documents, to pay the reasonable compensation of the Trustee for the services performed or to be performed by it pursuant to such direction and any fees and disbursements of counsel or agents employed by the Trustee in connection therewith. Trust Company, in its individual or any other capacity, may become the Holder or pledgee of A-Notes, B-Notes or Certificates, with the same rights which it would have if it were not Trustee hereunder; provided, however, than in any such event Trust Company shall be fully

liable and responsible for its obligations in such capacity and the various indemnity, release, or exculpation provisions hereof for the benefit of Trust Company in its capacity as Trustee hereunder shall be inapplicable to the duties and obligations of Trust Company in its capacity as the Holder of an Instrument.

(b) The Trustee shall be entitled to compensation for its services pursuant to the Fee Letter, and to reimbursement for all reasonable and proper disbursements, including reasonable fees and expenses of counsel, incurred by Trustee pursuant to the Transaction Documents or in taking any action upon the occurrence and continuance of an Event of Default or a Trigger Event in instituting, appearing in or defending any Proceeding with respect thereto and for all other reasonable expenses incurred by it in the performance of its duties hereunder; provided, however, the Trustee shall not be entitled to compensation or reimbursement if such disbursements are necessary as a result of the Trustee's own bad faith, gross negligence, or wilful misconduct. For such compensation, disbursements, indemnity, expenses, and other payments the Trustee shall have a lien upon the Trust Estate under this Declaration of Trust prior to the rights of the Holders of the Instruments, but to the extent any such payments are made out of the Trust Estate or the aforesaid lien of the Trustee on the Trust Estate is exercised or enforced the Trust Estate and the Holders shall be subrogated to the rights or claims, if any, of the Trustee against the Lessee in respect of payments in question, which rights or claims may be enforced by Trustee or the Agent on behalf of the Holders.

(c) The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, note or other document or paper believed by it to be genuine and the Trustee shall not be obliged to make any investigation or inspection to verify the correctness or completeness of the facts stated in any of the foregoing papers or documents. In the administration of the trusts hereunder the Trustee may act directly or through its agents or attorneys, and, in the event the Trustee does not receive instructions or directions from the Agent as contemplated by Section 7.07 hereof or the Trustee deems such action to be reasonably necessary in connection with the performance of its duties hereunder, the Trustee may consult with counsel, appraisers, engineers, accountants, and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered, or omitted in good faith by Trustee in accordance with the advice of any thereof.

(d) The recitals and preliminary statements in the Transaction Documents shall be taken as statements by the party or parties thereto (other than the Trustee), and shall not be considered as made by, or as imposing any obligation or liability upon, the Trustee, nor shall the Trustee be held responsible for the value of the Trust Estate or for the legality or validity of the Transaction Documents, any instrument included within the Trust Estate or any of the Instruments, any supplement to any thereof or any instrument of further assurance except that, as to each of thereof to which the Trustee is a party, that it is executed and delivered by the Trustee, and that the officer or officers executing and delivering the same have been duly authorized to do so on behalf of the Trustee and that the same are valid, binding and enforceable against Trust Company and Trustee (including, without limitation, Trustee acting in its capacity

as Lessor under the Lease). No representation or warranty respecting the rights or remedies of the Holders of the Instruments, the Trustee's right, title, interest, claim or demand in, to or under any instruments or other property included in the Trust Estate, the condition of the Trust Estate or the sufficiency of the security for the Instruments afforded by the Trust Estate, is made or implied by the Trustee's execution of this Declaration of Trust or the Trustee's execution and delivery of the Transaction Documents or of any Instrument.

(e) It shall not be the duty of the Trustee to see to any filing, registration, recording, re-filing, re-registration or re-recording of this Declaration of Trust, or any tax returns relating to the Trust Estate, or any instrument included in the Trust Estate, or any financing statement or continuation statement relating thereto or to the payment of any fees, charges or taxes in connection therewith or to give any notice thereof, or to see to the payment of or be under any duty in respect of any Tax or assessment or other governmental charge which may be levied or assessed on the Trust Estate or any portion thereof. The Trustee shall be under no obligation to see to the payment or discharge of any lien upon the Trust Estate, or to see to the payment of the principal of, premium, if any, or interest on any obligation secured by any such lien or to the delivery or transfer to it of any property released from any such lien, or to give notice to or make demand upon any person for the delivery of any such property. The Trustee nevertheless will, at its cost and expense, promptly take such action as may be necessary to duly discharge any liens on any part of the Trust Estate which result from claims against the Trustee in its individual capacity not related to the transactions contemplated by the Transaction Agreement and this Declaration of Trust.

(f) In accepting the trusts hereunder and the Trust Estate, and whether under this Declaration of Trust or some instrument supplemental hereto or any instrument included in the Trust Estate, the Trustee acts solely as Trustee hereunder and not in its individual capacity, and all persons, other than the registered Holders of the Instruments, as provided herein, having any claim against the Trustee arising by reason thereof shall look only to the Trust Estate for payment or satisfaction thereof. Whenever in this Declaration of Trust or in any Instrument issued hereunder the Trustee is obligated to distribute any sum of money to the registered Holders of the A-Notes, B-Notes, the Certificates or to any other person, it is understood that such obligations are undertaken by it in its capacity as Trustee hereunder, and not in its individual capacity, and that such payment and disbursement are to be made only from the income and proceeds of the Series A Trust Estate, the Series B Trust Estate or the Series C Trust Estate, respectively, and only to the extent that the Trustee has in its hands sufficient income or proceeds from the Series A Trust Estate, Series B Trust Estate or Series C Trust Estate, respectively, to make such payment or distribution.

(g) The Trustee shall not be required to take notice or be deemed to have notice or knowledge of any Event of Default or Trigger Event (except an Event of Default resulting from the payment of moneys to the Trustee which are required to be paid to the Trustee on or before a specified date or within a specified time after receipt by the Trustee of a notice or certificate which was in fact received), unless the Trustee shall receive from Agent,

Lessee, or a Holder of an Instrument notice stating that the same has occurred and is continuing, and specifying the same, and in the absence of such notice the Trustee may conclusively assume that the same does not exist, except as aforesaid. Within five (5) Business Days after obtaining actual knowledge of any Event of Default or Trigger Event, the Trustee shall give notice thereof and the status of any known efforts to cure the same to the registered Holders of the Instruments.

**Section 8.02. Resignation and Removal.**

(a) The Trustee may resign and be discharged of the trusts hereunder at any time, without cause, by giving at least ninety (90) days' notice of such resignation to Agent on behalf of each registered Holder of an Instrument, and to Lessee, such resignation to be effective on the date specified in such notice. In addition, the Trustee may be removed at any time without cause by an instrument or concurrent instruments signed by the Majority Holders of the Instruments, or by their attorneys-in-fact thereunto duly authorized, and delivered to each Holder of an Instrument and the Trustee. In case of the resignation or removal of the Trustee, or if the Trustee shall otherwise become incapable of acting or shall be taken under the control of any public officer or officers or of a receiver appointed by a court, then a successor or successors may be appointed by the Agent acting on behalf of the Majority Holders of the Instruments with the prior written consent of the Lessee, by an instrument or concurrent instruments signed by such registered Holders or by their attorneys-in-fact thereunto duly authorized (including, without limitation, the Agent), or if such Majority Holders shall fail to make such appointment prior to the date such resignation, removal or other incapacity is effective, any registered Holder of an Instrument may request a court of competent jurisdiction to appoint such successor to act until such time, if any, as a successor shall have been appointed as provided above. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by a successor Trustee appointed as above provided. In the event no successor Trustee is appointed as aforesaid within thirty (30) days, then the Lessee may appoint, by notice to the then acting Trustee and Agent, a successor trustee to serve until such time as a successor trustee is appointed in accordance with the foregoing procedures.

(b) Any successor Trustee shall execute, acknowledge and deliver to its predecessor and the registered Holders of the Instruments a supplement to this Declaration of Trust accepting such appointment hereunder, and thereupon such successor Trustee, without further act, shall become vested, upon the trusts hereby expressed, with all the property, rights, remedies, duties and trusts of such predecessor with like effect as if originally named herein as Trustee, but upon the written request of such successor Trustee, such predecessor shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts hereby expressed, all the property, rights, remedies and trusts of such predecessor Trustee and shall duly assign, transfer, deliver and pay over to the successor Trustee any moneys and other property in its possession hereunder.

(c) Any successor to the Trustee, however constituted, shall be a bank or trust company organized and existing under the laws of the United States of America or any state thereof and having capital funds as of the date of appointment of such successor (as shown by its most recent financial statement distributed to its shareholders) aggregating at least \$100,000,000, if there shall be such a bank or trust company willing and legally qualified to accept and perform the trusts hereunder and the duties mentioned herein upon reasonable or customary terms.

(d) Any person into which the Trustee may be merged or with which it may be consolidated, any corporation resulting from any merger or consolidation or conversion to which the Trustee shall be a party or any corporation to which all or substantially all of the corporate trust business of the Trustee may be transferred (whether by operation of law or otherwise), shall be the successor to the Trustee under this Declaration of Trust without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, however, that any such person meets the requirements set forth in Section 8.02 (c) hereof and promptly delivers written notice of such event to Agent and Lessee.

Section 8.03. Moneys Held in Trust. All moneys received, deposited or otherwise held by the Trustee under or pursuant to any provision of this Declaration of Trust and not then required to be distributed to the Holders or the Lessee pursuant to Article V hereof shall be held in trust for the purposes for which they were paid, but need not be segregated in any manner from any other moneys except to the extent required by law or the Transaction Documents, and may be deposited by the Trustee under such general conditions as may be prescribed by law in the general banking department of the Trustee, and the Trustee shall not be liable for any interest thereon, except to the extent such moneys are invested pursuant to Section 4.07 hereof or are required to be invested under the Transaction Documents. The Trustee shall promptly disburse all moneys received by the Trustee hereunder pursuant to the terms hereof.

Section 8.04. Appointment of Co-Trustees. At any time or times, in order to comply with any legal requirement in any jurisdiction, the Trustee may, with the prior written consent of the Agent and the Lessee and at the expense of the Lessee, appoint another bank or trust company or one or more other persons (including, without limitation, persons who are officers or employees of Trustee), either to act as co-trustee or co-trustees, jointly with the Trustee, or to act as separate trustee or trustees on behalf of the Holders of the Instruments, with such power and authority as may be necessary for the effectual operation of the provisions hereof and as may be specified in the instrument of appointment. The Trustee shall not be personally liable by reason of any act or omission of any other Trustee appointed under this Section 8.04 if the Lessee and the Agent on behalf of the Majority Holders have approved of the appointment of such other Trustee.

## ARTICLE IX

## Supplements and Amendments

Section 9.01. Without Consent. Subject to the consent of Lessee as provided in the Transaction Agreement, no consent of the Holders of the Instruments shall be required to enable the Trustee to enter into any supplement, amendment, waiver or consent required hereby for the purpose of curing any ambiguity, or to cure, correct or supplement any defective or inconsistent provision contained in the instrument or instruments to be supplemented. The Trustee may, but shall not be obligated to, enter into any such supplement which, in the opinion of the Trustee, affects the Trustee's own rights, duties or immunities hereunder or otherwise.

Section 9.02. With Consent. Subject to the consent of Lessee as provided in the Transaction Agreement, at any time, with the consent of the Majority Holders of each series of Instruments, the Trust Estate of which would be affected thereby, the Trustee from time to time may (i) enter into a supplement or supplements hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Declaration of Trust, (ii) enter into such amendments or supplements to the Transaction Documents to which it is a party as the other parties thereto may agree or (iii) execute and deliver a waiver or modification of the terms of any of the Transaction Documents; provided, however, that without the consent of each registered Holder of each series of Instruments the Trust Estate of which would be affected thereby no such supplement, amendment, waiver or modification shall (a) reduce the principal or stated amount of, or interest or current yield on, the Instruments or any fees or other amounts payable hereunder, (b) postpone any date fixed for any payment of principal of, or interest on, the Instruments or any fees or other amounts payable hereunder, (c) impair or affect the right of any Holder to receive payments or prepayments with respect to the Instruments registered in the name of such Holder, as therein and herein provided, or (d) permit the creation of any Lien on the Trust Estate equal or prior to the interest of the Trustee held in trust under this Declaration of Trust or deprive any Holder of the benefit of the Trust Estate, or (e) affect, alter or impair the nature, amount or timing of payments to be received by Trustee, or Trustee's right to receive payments in accordance with, the Transaction Documents; or (f) reduce the aforesaid percentages of interest of Instruments, the Holders of which are required to consent to any such supplement, amendment, waiver or modification. It shall not be necessary for the consent of the registered Holders of the Instruments under this Section 9.02 to approve the particular form of any proposed supplement, amendment, waiver or modification, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.03. Notice to Holders. Within five (5) Business Days after execution and delivery by the Trustee of any supplement, amendment, waiver or modification pursuant to this Article IX, the Trustee shall send a conformed copy of such supplement, amendment, waiver or modification to the Agent for prompt distribution to the respective registered Holders of the Instruments and to the Lessee. Any failure to so give a conformed copy of such supplement, amendment, waiver or modification shall not, however, in any way impair or affect the validity thereof.

## ARTICLE X

## Miscellaneous

Section 10.01. Satisfaction and Discharge. If and when the Instruments shall have become due and payable (whether by lapse of time or by acceleration or by prepayment), and there shall have been indefeasibly paid the full amount due on the Instruments for principal, stated amount, premium, if any, interest, and current yield and if there shall have been paid all other sums payable pursuant to the provisions of this Declaration of Trust and all Transaction Documents, then and in that case this Declaration of Trust and all agreements herein contained shall cease and terminate and, at the request of the Lessee, and at the cost and expense of the Lessee, the Trustee shall execute and deliver such instruments as shall be reasonably requested to satisfy and discharge the Declaration of Trust and convey the Property to the Lessee or such other Person as may be the purchaser thereof. At the time of the delivery by the Trustee of any such instrument of satisfaction, cancellation or discharge, the Trustee shall hold as custodian, for the benefit of any of the registered Holders of the Instruments which have not received payment for the Instruments registered in their names, the moneys on deposit with it for the payment of such Instruments.

Section 10.02. No Legal Title. No Holder of a Instrument shall have legal title to any part of the Trust Estate and such Holders shall have an undivided interest in the proceeds of the Trust Estate only to the extent created hereunder and shall only be entitled to receive payments with respect to their interest in accordance with the terms of this Declaration of Trust. No transfer, by operation of law or otherwise, of any Instrument or other right, title and interest of any Holder of an Instrument in and to the Trust Estate or hereunder shall operate to terminate this Declaration of Trust or the Trust Estates hereunder or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

Section 10.03. Benefit. Nothing in this Declaration of Trust, whether express or implied, shall be construed to give to any person other than the Trustee and the registered Holders of the Instruments any legal or equitable right, remedy or claim under or in respect of this Declaration of Trust or any Instrument; but this Declaration of Trust and the Instruments be held for the sole and exclusive benefit of the Trustee and the Holders of the Instruments. The foregoing shall not be deemed to limit or restrict the rights specifically granted to Lessee herein, including, without limitation, the right to receive residual moneys where provided for in the various sections of Article V hereof and the rights of the Lessee to notices, consents, and approvals provided for herein.

Section 10.04. Severability. In case any one or more of the provisions contained in this Declaration of Trust or in any Instrument or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein and any other application thereof shall not in any way

be affected or impaired thereby.

**Section 10.05. Proof of Execution.** Any notice, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Declaration of Trust shall be in writing and shall be signed or executed by each person giving or making the same or by an attorney appointed in writing by such person. Proof of the execution of any such writing, including any writing appointing any such attorney, shall be sufficient for any purpose of this Declaration of Trust if the fact and date of such execution be proved by (i) the certificate of a notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act, that the person signing such instrument or writing acknowledged to him the execution thereof, (ii) an affidavit of a witness of such execution, or (iii) such other proof as shall be satisfactory to the Trustee in its sole discretion. Any such writing, and any other action, by any of the Holders of the Notes, or any authorized agent or representative of such Holders, shall bind every future Holder of the same Note or Notes and every Holder of a Note or Notes issued in exchange or substitution therefor, in respect of anything done or suffered to be done by the Trustees pursuant to such writing or action.

**Section 10.06. Notices.** Any notice to or demand upon the Trustee may be given or made at the Corporate Trust Office and the Trustee shall promptly forward a copy of such notice or demand to the attention of the Lessee and the Agent. The Trustee shall also provide to the Lessee and the Agent a simultaneous copy of any notices given by the Trustee hereunder. The Trustee shall promptly deliver to the Agent for distribution to the Holders of the Instruments a copy of each notice, request, communication or demand received by the Trustee pursuant to the Transaction Documents. Whenever, pursuant to any provisions of this Declaration of Trust, any notice or other instrument is required to be given, delivered or sent to the Holders of any Instruments or the Lessee, such requirements shall be satisfied if such notice or other instrument shall be given in the manner set forth in the Transaction Agreement and, in the case of the Holders of the Instruments, to such Holders at their respective addresses specified in the Register.

**Section 10.07. Waiver of Notice.** Whenever in this Declaration of Trust the giving of notice is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the date established for the giving of such notice.

**Section 10.08. Maximum Rate of Interest and Current Yield.** It is the intention of the parties hereto to conform strictly to usury Laws applicable to each Holder of an Instrument and the transactions contemplated by the Transaction Documents (the "Transactions"). Accordingly, if the Transactions or any part thereof would be usurious as to any Holder of an Instrument under Applicable Law, then, notwithstanding anything to the contrary in the Instruments, this Agreement or in any other Transaction Document or agreement entered into in connection with the Transactions, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest or current yield as to any Holder of an Instrument under

Applicable Law that is contracted for, taken, reserved, charged or received by any Holder of an Instrument under the Instruments, this Agreement or under any of such other Transaction Documents or agreements or otherwise in connection with the Transactions shall under no circumstances exceed the maximum amount allowed by such Applicable Law, (ii) in the event that the maturity of the Instruments is accelerated for any reason, or in the event of any required or permitted prepayment, then such consideration that constitutes interest or current yield as to any Holder of an Instrument under Applicable law may never include more than the maximum amount allowed by such Applicable Law, and (iii) excess interest or current yield, if any, provided for in this Agreement or otherwise in connection with the Transactions shall be either (A) if required by Applicable Law canceled automatically and, if theretofore paid, shall be credited by such Holder of an Instrument on the principal or stated amount of the Instruments (or, to the extent that the principal or stated amount of the Instruments shall have been or would thereby be paid in full, refunded by such Holder of an Instrument to the Trustee) or (B) to the extent permitted by Applicable Law, be payable to the Holders of the Instruments (together with interest or current yield on the unpaid amount of such excess interest or yield, if permitted under Applicable Law, at the respective applicable Note Rate or Certificate Rate, as the case may be) at such time as the interest or current yield, as the case may be, otherwise payable in respect of the Instruments would be less than the maximum rate permissible under Applicable Law but for the operation of this clause, provided that at no time shall the aggregate amount by which interest or current yield paid for the account of the Holders of the Instruments has been increased pursuant to this clause (B) exceed the aggregate amount of interest or current yield paid for their account, together with interest or current yield thereon as aforesaid, which has theretofore been deferred as provided in this clause (B). The right to accelerate the maturity of the Instruments does not include the right to accelerate any interest or current yield which has not otherwise accrued on the date of such acceleration, and the Holders of the Instruments do not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to each Holder of an Instrument for the use, forbearance or detention of sums included in the indebtedness represented by the Instruments shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread throughout the full term of the Instruments until payment in full so that the rate or amount of interest or current yield on account of the Instruments does not exceed the applicable usury ceiling, if any. As used herein, the term "Applicable Law" means the Law of the State of Massachusetts (or the Law of any other jurisdiction whose Laws may be mandatorily applicable notwithstanding other provisions of this Agreement), or the Law of the United States of America and the State of Massachusetts applicable to any Holder of an Instrument and the Transactions which would permit such Holder to contract for, charge, take, reserve or receive a greater amount of interest or current yield than under such other jurisdiction's law.

Section 10.09. Counterparts. This Declaration of Trust may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same Declaration of Trust.

Section 10.10. Governing Law. THIS AGREEMENT AND ALL TRANSACTION DOCUMENTS SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.

Section 10.11. Table of Contents. The table of contents preceding this Declaration of Trust and the headings to the various Articles and Sections of this Declaration of Trust have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Declaration of Trust.

Section 10.12. Non-Business Day. Unless otherwise specified herein, if the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Declaration of Trust, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Declaration of Trust, except that interest or yield, as applicable, shall accrue and be payable for the period after such nominal date.

Section 10.13. Lease Senior. It is expressly acknowledged that the rights of the Lessee in and to the Property and the Proceeds (as defined in the Lease) thereof pursuant to the Lease (including, without limitation, the right to purchase all or part of the Property as provided in the Lease) are prior and senior to the provisions of this Declaration of Trust or any other Transaction Document that purport to allocate or define the rights of the parties with respect to the Property or the Proceeds thereof, and so long as no Event of Default or Trigger Event has occurred and is continuing, the Lessee shall not be disturbed in its use and occupancy of the Property, whether or not any memorandum of the Lease is recorded with respect to any particular portion of the Property.

IN WITNESS WHEREOF, Trust Company has caused this Declaration of Trust to be duly executed by one of its duly authorized officers as of the day and year first above written.

**TRUSTEE:**

STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts trust company, as Trustee

By: Arthur J. Macdonald  
Name: ARTHUR J. MACDONALD  
Title: ASSISTANT VICE PRESIDENT



EXHIBIT "B"

Property Description

All that certain lot, piece or parcel of land with all improvements thereon and all appurtenances thereto belonging, more particularly described as follows:

Lot 54 of Goodman 51 Commercial and Industrial Park, Section C, located in the Northeast Quarter of the Northwest Quarter of Section 35, Township 1 South, Range 8 West, Horn Lake, DeSoto County, Mississippi, as per plat thereof of record in Plat Book 53, Page 25, in the Chancery Court Clerk's office of DeSoto County, Mississippi.