

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
GENERAL GROWTH PROPERTIES, INC.

The present name of the corporation is General Growth Properties, Inc. (the “Corporation”). The Corporation was incorporated under the name “New GGP, Inc.” by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on July 1, 2010. This Amended and Restated Certificate of Incorporation, which restates and integrates and also further amends the provisions of the Corporation’s Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware (the “DGCL”) and is being filed as required by that certain Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of General Growth Properties, Inc., and Certain of their Debtor Affiliates, as filed with the United States Bankruptcy Court for the Southern District of New York (the “Court”) on August 27, 2010 (Case No. 09-11977 (ALG)) and confirmed by the Court on [] (the “Plan”). In accordance with Sections 242, 245 and 303 of the DGCL, the Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the corporation (which is hereinafter referred to as the “Corporation”) shall be General Growth Properties, Inc.

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle. The name of the Corporation’s registered agent at such address is Corporation Service Company. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors of the Corporation (the “Board of Directors”) may designate or as the business of the Corporation may from time to time require.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

A. Classes and Number of Shares. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is Eleven Billion Five Hundred Million (11,500,000,000) shares, consisting of (i) Five Hundred Million (500,000,000) shares of

preferred stock, par value \$0.01 per share (the “Preferred Stock”), and (ii) Eleven Billion (11,000,000,000) shares of common stock, par value \$0.01 per share (the “Common Stock”).

B. Common Stock. The holders of outstanding shares of Common Stock shall have the right to vote on all questions to the exclusion of all other stockholders, each holder of record of Common Stock being entitled to one vote for each share of Common Stock standing in the name of the stockholder on the books of the Corporation, except as may be provided in this Certificate of Incorporation, as it may be amended from time to time (the “Certificate of Incorporation”), in a Preferred Stock Designation (as hereinafter defined), or as required by law.

C. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate of designations pursuant to the applicable law of the State of Delaware (hereinafter referred to as a “Preferred Stock Designation”), to establish from time to time for each such series the number of shares to be included in each such series and to fix the designations, powers, rights and preferences of the shares of each such series, and the qualifications, limitations and restrictions thereof. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) Whether dividends, if any, shall be paid, and, if paid, the date or dates upon which, or other times at which, such dividends shall be payable, whether such dividends shall be cumulative or noncumulative, the rate of such dividends (which may be variable) and the relative preference in payment of dividends of such series.

(4) The redemption provisions and price or prices, if any, for shares of the series.

(5) The terms and amounts of any sinking fund or similar fund provided for the purchase or redemption of shares of the series.

(6) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(7) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices, or rate or rates, any adjustments thereto, the date or dates on which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.

(8) Restrictions on the issuance of shares of the same series or of any other class or series.

(9) The voting rights, if any, of the holders of shares of the series.

D. Issuance of Rights to Purchase Securities and Other Property. Subject to the express rights of the holders of any series of Preferred Stock, if any outstanding, but only to the extent expressly set forth in the Preferred Stock Designation with respect thereto, the Board of Directors is hereby authorized to create and to authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Corporation of rights, options and warrants for the purchase of shares of capital stock of the Corporation or other securities of the Corporation, at such times, in such amounts, to such persons, for such consideration, with such form and content (including without limitation the consideration for which any shares of capital stock of the Corporation or other securities of the Corporation are to be issued) and upon such terms and conditions as it may, from time to time, determine upon, subject only to the restrictions, limitations, conditions and requirements imposed by the DGCL, other applicable laws and this Certificate of Incorporation.

ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation; provided, however, that any amendment, alteration, modification or repeal of a Bylaw or adoption of a new provision in the Bylaws, in each case by the stockholders, may provide that it cannot be further amended, altered, modified or repealed by the Board of Directors, in which case the Board of Directors shall not be authorized to further amend, alter, modify or repeal such Bylaw amendment or such new Bylaw provision.

ARTICLE VI

A. Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, as set forth in a Preferred Stock Designation to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed by the Bylaws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the Bylaws and the DGCL.¹

B. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

C. Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, with respect to the election of directors under specified circumstances, any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote generally in the election of directors (the “Voting Stock”), voting together as a single class.

¹ Deletion of classified Board provision subject to amendment of Non-Control Agreements to reflect Brookfield’s ability to vote 10% of the Voting Stock in respect of non-Brookfield designees on the Board.

D. Notwithstanding the foregoing provisions of this Article VI and any limitations contained in any Preferred Stock Designation, each director shall serve until such director's successor is duly elected and qualified or until such director's death, resignation or removal. No change in the number of directors constituting the Board of Directors shall shorten or increase the term of any incumbent director.

ARTICLE VII

The Corporation, to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, shall indemnify and hold harmless any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, regulatory, arbitral or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is a legal representative, is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability entity, joint venture, trust, other enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss (including judgments, fines and amounts paid in settlement) suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the foregoing sentence, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person (other than proceedings to enforce rights conferred by this Certificate of Incorporation or the Bylaws of the Corporation) only if the commencement of such proceeding was authorized in the specific case by the Board of Directors. To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized hereby. The Corporation may, by action of the Board of Directors, provide indemnification to employees and agents of the Corporation or its subsidiaries with the same (or lesser) scope and effect as the foregoing indemnification of directors and officers.

ARTICLE VIII

No director shall be personally liable either to the Corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of any provision of this Certificate of Incorporation inconsistent with the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

ARTICLE IX

The Corporation may purchase and maintain insurance, at its expense, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a

director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability, expense or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability, expense or loss under the provisions of the Bylaws of the Corporation or the DGCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such person shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such person.

ARTICLE X

The Corporation reserves the right at any time and from time to time to amend, modify or repeal any provision contained in this Certificate of Incorporation or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware in force at such time may be added or inserted in the manner now or hereafter prescribed herein or by applicable law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article X; provided, however, that any amendment, modification or repeal of Article VII or Article VIII of this Certificate of Incorporation shall not adversely affect any right or protection existing hereunder immediately prior to such amendment, modification or repeal.

ARTICLE XI

The Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine.

ARTICLE XII

Subject to the rights of the holders of any series of Preferred Stock as set forth in a Preferred Stock Designation, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing of such stockholders.

ARTICLE XIII

The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Article XIII (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy

Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

ARTICLE XIV

For purposes of this Article XIV, the following terms shall have the following meaning:

“Beneficial Ownership” shall mean ownership of shares of Capital Stock by a Person, whether the interest in such shares is held directly or indirectly (including by a nominee), and shall include shares of Capital Stock that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms “Beneficial Owner,” “Beneficially Owns,” “Beneficially Own,” and “Beneficially Owned” shall have correlative meanings.

“Beneficiary” shall mean, with respect to any Trust, one or more organizations described in each of Section 501(c)(3), Section 170(b)(1)(A) (other than clauses (vii) or (viii) thereof) and Section 170(c)(2) of the Code that are named by the Corporation as the beneficiary or beneficiaries of such Trust, in accordance with the provisions of subsection G(1) of this Article XIV.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.

“Capital Stock” shall mean the Common Stock and the Preferred Stock.

“Constructive Ownership” shall mean ownership of shares of Capital Stock by a Person whether the interest in such shares is held directly or indirectly (including through a nominee), and shall include shares of Capital Stock that would be treated as owned through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms “Constructive Owner,” “Constructively Owns,” “Constructively Own,” and “Constructively Owned” shall have correlative meanings.

“Constructive Ownership Limit” shall mean 9.9% of the number or value, whichever is more restrictive, of the outstanding shares of Capital Stock, as may be adjusted pursuant to subsection H of this Article XIV.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Investment Agreements” means (i) that certain Amended and Restated Cornerstone Investment Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and REP Investments LLC, (ii) that certain Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and The Fairholme Fund and Fairholme Focused Income Fund and (iii) that certain Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and Pershing Square Capital Management, L.P., on behalf of Pershing Square L.P., Pershing Square II, L.P., Pershing Square International, Ltd. and

Pershing Square International V, Ltd.; each as may be further amended or modified from time to time.

“Market Price” on any date shall mean the fair market value of the relevant Capital Stock, as determined in good faith by the Board of Directors.

“Non-Transfer Event” shall mean an event, other than a purported Transfer, that would cause any Person to Beneficially Own shares of Capital Stock in excess of the Stock Ownership Limit or Constructively Own shares of Capital Stock in excess of the Constructive Ownership Limit. Non-Transfer Events include, but are not limited to, (i) the granting of any option or entering into any agreement for the sale, transfer, or other disposition of shares of Capital Stock, (ii) the sale, transfer, assignment, or other disposition of any securities or rights convertible into or exchangeable for shares of Capital Stock, (iii) a Person purchasing or otherwise acquiring an interest in a Person which Beneficially Owns shares of Capital Stock, or (iv) a redemption, repurchase, restructuring or similar transaction with respect to a person that Beneficially Owns shares of Capital Stock.

“Permitted Transferee” shall mean any Person designated as a Permitted Transferee in accordance with the provisions of subsection G(5) of this Article XIV.

“Person” shall mean an individual, corporation, partnership, limited liability company, estate, trust, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock corporation, or other entity.

“Prohibited Owner” shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who, but for the provisions of subsection B of Article XIV hereof, would (i) Beneficially Own shares of Capital Stock in excess of the Stock Ownership Limit (but such Person will be considered a Prohibited Owner only with respect to those shares in excess of the applicable limit), (ii) Constructively Own shares of Capital Stock in excess of the Constructive Ownership Limit (but such Person will be considered a Prohibited Owner only with respect to those shares in excess of the applicable limit), (iii) cause the shares of Capital Stock to be beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code), (iv) cause the Corporation to be “closely held” within the meaning of Section 856(h) of the Code, or (v) cause the Corporation or any of its Subsidiaries to Constructively Own 9.9% or more of the ownership interests in a tenant of the Corporation’s or a Subsidiary’s real property, within the meaning of Section 856(d)(2)(B) of the Code, and if appropriate in the context, shall also mean any Person who would own record title to shares of Capital Stock that the Prohibited Owner would have so owned.

“REIT” shall mean a real estate investment trust under Sections 856 through 860 of the Code.

“REIT Requirements” shall mean the requirements contained in Sections 856 through 860 of the Code which must be satisfied in order for the Corporation to qualify as a REIT.

“Restriction Termination Date” shall mean the first day after the date on which the Board of Directors determines that it is no longer in the best interests of the Corporation to qualify as a REIT.

“Shares-in-Trust” shall mean any shares of Capital Stock designated Shares-in-Trust pursuant to subsection B of this Article XIV.

“Stock Ownership Limit” shall mean 9.9% of the number or value, whichever is more restrictive, of the outstanding shares of Capital Stock, as may be adjusted pursuant to subsection H of this Article XIV.

“Subsidiary” shall have the meaning set forth in subsection A(4) of this Article XIV.

“Transfer” (as a noun) shall mean any issuance, sale, transfer, gift, assignment, devise, or other disposition of shares of Capital Stock, whether voluntary or involuntary, whether of record, constructively or beneficially, and whether by operation of law or otherwise. “Transfer” (as a verb) shall have the correlative meaning.

“Trust” shall mean any separate trust created pursuant to subsection B of this Article XIV and administered in accordance with the terms of subsection G of this Article XIV, for the exclusive benefit of any Beneficiary.

“Trustee” shall mean any Person or entity that is not an affiliate of either the Corporation or any Prohibited Owner, such Trustee to be designated by the Corporation to act as trustee of any Trust, or any successor trustee thereof.

A. Restrictions on Transfers.

(1) Except as provided in subsection F of this Article XIV, from the date hereof and through and including the Restriction Termination Date,

(a) (A) no Person shall Beneficially Own outstanding shares of Capital Stock in excess of the Stock Ownership Limit, and (B) no Person shall Constructively Own outstanding shares of Capital Stock in excess of the Constructive Ownership Limit;

(b) any purported Transfer that, if effective, would result in any Person Beneficially Owning shares of Capital Stock in excess of the Stock Ownership Limit or Constructively Owning shares of Capital Stock in excess of the Constructive Ownership Limit shall be void *ab initio* as to the Transfer of that number of shares of Capital Stock which otherwise would be Beneficially Owned by such person in excess of the Stock Ownership Limit or Constructively Owned by such Person in excess of the Constructive Ownership Limit, and the intended transferee shall acquire no rights in such excess shares of Capital Stock; and

(2) From the date hereof and through and including the Restriction Termination Date, any Transfer that, if effective, would result in shares of Capital Stock being beneficially owned by fewer than 100 Persons (determined under the principles of

Section 856(a)(5) of the Code) shall be void *ab initio* as to the Transfer of that number of shares which would be otherwise beneficially owned (determined without reference to any rules of attribution) by the transferee, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(3) From the date hereof and through and including the Restriction Termination Date, any Transfer of shares of Capital Stock that, if effective, would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of the taxable year) shall be void *ab initio* as to the Transfer of that number of shares of Capital Stock which would cause the Corporation to be “closely held” within the meaning of Section 856(h) of the Code, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(4) From the date hereof and through and including the Restriction Termination Date, any Transfer of shares of Capital Stock that, if effective, would cause the Corporation or any of its Subsidiaries to Constructively Own 10% or more of the ownership interests in a tenant of the real property of (i) the Corporation or (ii) any direct or indirect subsidiary (including, without limitation, partnerships and limited liability companies) of the Corporation (a “Subsidiary”), within the meaning of Section 856(d)(2)(B) of the Code, shall be void *ab initio* as to the Transfer of that number of shares of Capital Stock which would cause the Corporation to Constructively Own 10% or more of the ownership interests in a tenant of the Corporation’s or a Subsidiary’s real property, within the meaning of Section 856(d)(2)(B) of the Code, and the intended transferee shall acquire no rights in such excess shares of Capital Stock.

B. Transfers to Trust.

(1) If, notwithstanding the other provisions contained in this Article XIV, at any time after the date hereof and through and including the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that, if effective, any Person would either (A) Beneficially Own shares of Capital Stock in excess of the Stock Ownership Limit or (B) Constructively Own shares of Capital Stock in excess of the Constructive Ownership Limit (x) except as otherwise provided in subsection F of this Article XIV, the purported transferee shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to the shares of Capital Stock Beneficially Owned or Constructively Owned by such Beneficial Owner or Constructive Owner shall cease to own any right or interest) in such number of shares of Capital Stock which would cause such Person to Beneficially Own shares of Capital Stock in excess of the Stock Ownership Limit or Constructively Own shares of Capital Stock in excess of the Constructive Ownership Limit, as applicable, (y) such number of shares of Capital Stock in excess of the Stock Ownership Limit or the Constructive Ownership Limit, as applicable (rounded up to the nearest whole share), shall be designated Shares-in-Trust and, in accordance with the provisions of subsection G of this Article XIV, transferred automatically and by operation of law to the Trust to be held in accordance with subsection G of this Article XIV, and (z) the Prohibited Owner shall submit such number of shares of Capital Stock to the Corporation for registration in the name of the Trustee.

Such transfer to the Trust and the designation of shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event, as the case may be.

(2) If, notwithstanding the other provisions contained in this Article XIV, at any time after the date hereof and through and including the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would (i) result in the shares of Capital Stock being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code), (ii) result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code, or (iii) cause the Corporation or any of its Subsidiaries to Constructively Own 10% or more of the ownership interests in a tenant of the Corporation’s or a Subsidiary’s real property, within the meaning of Section 856(d)(2)(B) of the Code, then (x) the purported transferee shall not acquire any right or interest (or, in the case of a Non-Transfer Event, the Person holding record title of the shares of Capital Stock with respect to which such Non-Transfer Event occurred shall cease to own any right or interest) in such number of shares of Capital Stock, the ownership of which by such purported transferee or record holder would (A) result in the shares of Capital Stock being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code), (B) result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code, or (C) cause the Corporation or any of its Subsidiaries to Constructively Own 10% or more of the ownership interests in a tenant of the Corporation’s or a Subsidiary’s real property, within the meaning of Section 856(d)(2)(B) of the Code, (y) such number of shares of Capital Stock (rounded up to the nearest whole share) shall be designated Shares-in-Trust and, in accordance with the provisions of subsection G of this Article XIV, transmitted automatically and by operation of law to the Trust to be held in accordance with subsection G of this Article XIV, and (z) the Prohibited Owner shall submit such number of shares of Capital Stock to the Corporation for registration in the name of the Trustee. Such transfer to a Trust and the designation of shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event, as the case may be.

(3) The transfer of Capital Stock to the Trust shall be subject to the proviso in paragraph 10 of Exhibit D to the Investment Agreements.

C. Remedies For Breach. If the Corporation shall at any time determine, after requesting such information as the Corporation determines is relevant, subject to the provisions of subsection E of this Article XIV, that a Transfer has taken place in violation of subsection A of this Article XIV or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Capital Stock in violation of subsection A of this Article XIV, the Corporation shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or acquisition, including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer or acquisition.

D. Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares of Capital Stock in violation of subsection A of this Article XIV, or any Person who

owned shares of Capital Stock that were transferred to the Trust pursuant to the provisions of subsection B of this Article XIV, shall as promptly as practicable give written notice to the Corporation of such event or, in the case of such a proposed or attempted transaction, give at least fifteen (15) days prior written notice, and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or Non-Transfer Event, as the case may be, on the Corporation's status as a REIT.

E. Owner Required to Provide Information. From the date hereof and through and including the Restriction Termination Date, upon reasonable advance written notice by the Corporation by January 30th of each year, every Beneficial Owner or Constructive Owner of more than five percent (5%), or such lower percentages as required pursuant to regulations under the Code (currently Treasury Regulation § 1.857-8(d)), of the outstanding shares of all classes of Capital Stock shall either (A) provide to the Corporation a written statement or affidavit stating the name and address of such Beneficial Owner or Constructive Owner, the number of shares of Capital Stock Beneficially Owned or Constructively Owned, and a description of how such shares are held, or (B) comply with Treasury Regulation § 1.857-9. Each such Beneficial Owner or Constructive Owner shall provide to the Corporation such information as the Corporation may reasonably request in order to determine the effect, if any, of such Beneficial Ownership or Constructive Ownership on the Corporation's status as a REIT and to ensure compliance with the Stock Ownership Limit and the Constructive Ownership Limit.

F. Exception. The Board of Directors, in its sole and absolute discretion, may except a Person from the Stock Ownership Limit or the Constructive Ownership Limit if (i) such Person is not (A) an individual for purposes of Code Section 542(a)(2), as modified by Code Section 856(h), or (B) treated as the owner of such stock for purposes of Code Section 542(a)(2), as modified by Code Section 856(h), and the Board of Directors obtains such representations and undertakings from such Person as are necessary to ascertain that no Person's Beneficial or Constructive Ownership of such shares of Capital Stock will violate subsection A(1), A(2), A(3) or A(4) of this Article XIV, (ii) such Person does not and represents that it will not Beneficially Own shares of Capital Stock to the extent that such Beneficial Ownership of Capital Stock would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership that would result in the Corporation or any of its Subsidiaries Constructively Owning an interest in a tenant of the Corporation (or a tenant of any entity owned or controlled by the Corporation) that would cause the Corporation or a Subsidiary to Constructively Own 10% or more of the ownership interests in such tenant with the result that the Corporation does not satisfy the REIT Requirements), and the Board of Directors obtains such representations and undertakings from such Person as are necessary to ascertain this fact, and (iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in subsections A through E of this Article XIV) will result in such shares of Capital Stock that are in excess of the Stock Ownership Limit or the Constructive Ownership Limit, as applicable, being designated as Shares-in-Trust in accordance with the provisions of subsection B of this Article XIV. In exercising its discretion under this subsection F, the Board of Directors may, but is not required to, obtain a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors, as it may deem necessary or desirable in order to maintain the Corporation's status as a REIT, and, in addition, may obtain such

representations and undertakings from a Beneficial Owner or Constructive Owner that it may deem necessary or desirable under the circumstances.

G. Shares-in-Trust.

(1) Trust. Any shares of Capital Stock transferred to a Trust and designated Shares-in-Trust pursuant to subsection B of this Article XIV shall be held for the exclusive benefit of the Beneficiary. The Corporation shall name a Beneficiary for each Trust within five (5) days after the date on which the Corporation is made aware of the existence of the Trust. Any transfer to a Trust, and subsequent designation of shares of Capital Stock as Shares-in-Trust, pursuant to subsection B of this Article XIV shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event that results in the transfer to the Trust. Shares-in-Trust shall remain issued and outstanding shares of Capital Stock of the Corporation and shall be entitled to the same rights and privileges on identical terms and conditions as are all other issued and outstanding shares of Capital Stock of the same class and series. When transferred to a Permitted Transferee in accordance with the provisions of subsection G(5) of this Article XIV, such Shares-in-Trust shall cease to be designated as Shares-in-Trust.

(2) Dividend Rights. The Trust, as record holder of Shares-in-Trust, shall be entitled to receive all dividends and distributions with respect to such shares of Capital Stock and shall hold such dividends or distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to Shares-in-Trust shall repay to the Trust the amount of any dividends or distributions received by it that are attributable to any shares of Capital Stock designated as Shares-in-Trust and the record date of which was on or after the date that such shares became Shares-in-Trust. The Corporation shall take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, (x) withholding any portion of future dividends or distributions payable on shares of Capital Stock Beneficially Owned or Constructively Owned by the Person who, but for the provisions of subsection B of this Article XIV, would Constructively Own or Beneficially Own the Shares-in-Trust, and (y) as soon as reasonably practicable following the Corporation's receipt or withholding thereof paying over to the Trust for the benefit of the Beneficiary the dividends or distributions so received or withheld, as the case may be.

(3) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of, or any distribution of the assets of, the Corporation, each holder of Shares-in-Trust shall be entitled to receive, ratably with each other holder of shares of Capital Stock of the same class or series, that portion of the assets of the Corporation which is available for distribution to the holders of such class or series of shares of Capital Stock. The Trust shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, winding-up, or distribution; provided, however, that the Prohibited Owner shall not be entitled to receive amounts pursuant to this subsection G(3) of this Article XIV in excess of, in the case of a purported Transfer in which the Prohibited Owner gave value for shares of Capital Stock

and which Transfer resulted in the transfer of the shares to the Trust, the price per share, if any, such Prohibited Owner paid for the shares of Capital Stock and, in the case of a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of shares to the Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer. Any remaining amount in such Trust shall be distributed to the Beneficiary.

(4) Voting Rights. The Trustee shall be entitled to vote all Shares-in-Trust. Any vote by a Prohibited Owner as a holder of shares of Capital Stock prior to the discovery by the Corporation that the shares of Capital Stock are Shares-in-Trust shall, subject to applicable law, be rescinded and be void *ab initio* with respect to such Shares-in-Trust and be recast by the Trustee; provided, however, that if the Corporation has already taken irreversible corporation action, then the Trustee shall not have the authority to rescind and recast such vote. The Trustee shall vote all Shares-in-Trust in accordance with the recommendation of the Designated Proxy Firm and shall abstain if no such recommendation has been made. For the purposes of this subsection (4), the “Designated Proxy Firm” means [Institutional Shareholder Services, Inc.] or any successor thereto or a nationally recognized proxy advisory firm designated by the vote of a majority of the independent members of the Board of Directors in their discretion from time to time; provided, however, that the independent members of the Board of Directors shall not designate a Designated Proxy Firm after the date on which a meeting of stockholders has been called until after such meeting has been held; provided, further, however that if such meeting has been adjourned, no designation of a Designated Proxy Firm shall occur until after the date on which such adjourned meeting has been held. The Prohibited Owner shall be deemed to have given, as of the close of business on the business day prior to the date of the purported Transfer or Non-Transfer Event that results in the transfer to the Trust of shares of Capital Stock under subsection B of this Article XIV, an irrevocable proxy to the Trustee to vote the Shares-in-Trust in accordance with this subsection (4).

(5) Designation of Permitted Transferee. The Trustee shall have the exclusive and absolute right to designate a Permitted Transferee of any and all Shares-in-Trust in an orderly fashion so as not to materially adversely affect the Market Price of its Shares-in-Trust. The Trustee shall designate any Person as a Permitted Transferee, provided, however, that (i) the Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale) the Shares-in-Trust, and (ii) the Permitted Transferee so designated may acquire such Shares-in-Trust without such acquisition resulting in a transfer to a Trust and the redesignation of such shares of Capital Stock so acquired as Shares-in-Trust under subsection B of this Article XIV. Upon the designation by the Trustee of a Permitted Transferee in accordance with the provisions of this subsection G(5), the Trustee shall (i) cause to be transferred to the Permitted Transferee that number of Shares-in-Trust acquired by the Permitted Transferee, (ii) cause to be recorded on the books of the Corporation that the Permitted Transferee is the holder of record of such number of shares of Capital Stock, as applicable, (iii) cause the Shares-in-Trust to be cancelled, and (iv) distribute to the

Beneficiary any and all amounts held with respect to the Shares-in-Trust after making the payment to the Prohibited Owner pursuant to subsection G(6) of this Article XIV.

(6) Compensation to Record Holder of Shares of Capital Stock that Become Shares-in-Trust. Any Prohibited Owner shall be entitled (following discovery of the Shares-in-Trust and subsequent designations of the Permitted Transferee in accordance with subsection G(5) of this Article XIV or following the acceptance of the offer to purchase such shares in accordance with subsection G(7) of this Article XIV) to receive from the Trustee following the sale or other disposition of such Shares-in-Trust the lesser of (i) in the case of (a) a purported Transfer in which the Prohibited Owner gave value for shares of Capital Stock and which Transfer resulted in the transfer of the shares to the Trust, the price per share, if any, such Prohibited Owner paid for the shares of Capital Stock, or (b) a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of shares to the Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer, and (ii) the price per share received by the Trustee from the sale or other disposition of such Shares-in-Trust. Any amounts received by the Trustee in respect of such Shares-in-Trust and in excess of such amounts to be paid to the Prohibited Owner pursuant to this subsection G(6) shall be distributed to the Beneficiary in accordance with the provisions of subsection G(5) of this Article XIV. Each Beneficiary and Prohibited Owner waives any and all claims that it may have against the Trustee and the Trust arising out of the disposition of Shares-in-Trust, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this subsection G(6), by such Trustee or the Corporation.

(7) Purchase Right in Shares-in-Trust. Shares-in-Trust shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such Shares-in-Trust (or, in the case of devise, gift or Non-Transfer Event, the Market Price at the time of such devise, gift or Non-Transfer Event), and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. Subject to subsection G(6) of this Article XIV, the Corporation shall have the right to accept such offer for a period of ninety (90) days after the later of (i) the date of the Non-Transfer Event or purported Transfer which resulted in such Shares-in-Trust and (ii) the date the Corporation determines in good faith that a Transfer or Non-Transfer Event resulting in Shares-in-Trust has occurred, if the Corporation does not receive a notice of such Transfer or Non-Transfer Event pursuant to subsection D of this Article XIV.

H. Modification and Limitations on Changes of Limits.

(1) Increase or Decrease in Stock Ownership Limit or Constructive Ownership Limit. Subject to the limitations provided in subsection H(2) of this Article XIV, the Board may from time to time increase or decrease the Stock Ownership Limit or the Constructive Ownership Limit; provided, however, that (i) any decrease may only be made prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law that would require a decrease in order for the

Corporation to retain REIT status, in which case such decrease shall be effective immediately) and (ii) any decrease may only be made if the Board reasonably determines that such decrease is advisable to help the Corporation protect its status as a REIT.

(2) Limitation on Changes in Stock Ownership Limit or Constructive Ownership Limit. Prior to the modification of any Stock Ownership Limit or Constructive Ownership Limit pursuant to subsection H(1) of this Article XIV, the Board may require such opinions of counsel, affidavits, undertakings, or agreements as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

I. Remedies Not Limited. Nothing contained in this Article XIV shall limit the authority of the Corporation to take such other action as it deems necessary or advisable (i) to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT, and (ii) to ensure compliance with the Stock Ownership Limit or the Constructive Ownership Limit, as applicable.

J. Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article XIV, including any defined term contained herein, the Board of Directors shall have the power to determine the application of the provisions of this Article XIV with respect to any situation based on the facts known to it. In the event that this Article XIV requires an action by the Board of Directors and this Certificate of Incorporation fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is in furtherance of the provisions of this Article XIV.

K. Severability. If any provision of this Article XIV or any application of any such provision is determined to be invalid by any Federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

L. Legend. Each certificate for shares of Capital Stock shall bear substantially the following legend:

"The shares represented by this certificate are subject to restrictions on transfer for the purpose of the Corporation's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"). No Person may (i) Beneficially Own shares of Capital Stock in excess of 9.9% of the number or value of outstanding shares of Capital Stock (whichever is more restrictive) or Constructively Own shares of Capital Stock in excess of 9.9% of the number or value of outstanding shares of Capital Stock (whichever is more restrictive); (ii) beneficially own shares of Capital Stock that would result in the shares of Capital Stock being beneficially owned by fewer than 100 Persons (determined without reference to any rules of attribution); (iii) Beneficially Own shares of Capital Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code; or (iv) Constructively Own shares of Capital Stock that would cause the Corporation or any of its Subsidiaries to Constructively Own 10% or more of the ownership interests in a tenant of the Corporation's or a

Subsidiary's real property, within the meaning of Section 856(d)(2)(B) of the Code. Any Person who attempts to Beneficially Own or Constructively Own shares of Capital Stock in excess of the above limitations must notify the Corporation in writing as promptly as practicable. Any transfer in violation of the above limitations will be void *ab initio*. Notwithstanding the foregoing, if the restrictions above are violated, the shares of Capital Stock represented hereby will be transferred automatically and by operation of law to a Trust and shall be designated Shares-in-Trust. The foregoing summary does not purport to be complete and is qualified in its entirety by reference to, and all capitalized terms in this legend have the meanings defined in, the Corporation's charter, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests."

ARTICLE XV

In addition to any votes required by applicable law and subject to the express rights of the holders of any series of Preferred Stock, if any outstanding, and notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend, modify or repeal any provision, or adopt any new or additional provision, in a manner inconsistent with Articles V, VI(C), VII, XII and this Article XV.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its [_____] this [__] day of [____], 2010.

GENERAL GROWTH PROPERTIES, INC.

/s/ _____
Name: [_____] _____
Its: [_____] _____

EXHIBIT 5

**AMENDED AND RESTATED
BYLAWS
OF
GENERAL GROWTH PROPERTIES, INC.
[_____] , 2010**

**AMENDED AND RESTATED
BYLAWS
OF
GENERAL GROWTH PROPERTIES, INC.
(Adopted [_____], 2010)**

**ARTICLE I
STOCKHOLDERS**

SECTION 1. Stockholder Meetings.

(a) The annual meeting of stockholders of General Growth Properties, Inc. (the “Corporation”) for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date, time and place, if any, within or without the State of Delaware, as the Board of Directors shall determine.

(b) A special meeting of the stockholders for any purpose or purposes may be called by the Board of Directors. A special meeting of stockholders shall be called by the Secretary promptly upon and in accordance with the written request, stating the purpose, date, time and place within or without the State of Delaware of the meeting, of stockholders of record who together hold fifteen percent (15%) or more of the voting power of the issued and outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the “Voting Stock”).

SECTION 2. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting, the place at which the list of stockholders may be examined, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, and any other information required by law to be included in the notice. Unless otherwise provided by law, the Corporation’s Certificate of Incorporation, as it may be amended from time to time (the “Certificate of Incorporation”), or these amended and restated bylaws (the “Bylaws”), the notice of any meeting shall be mailed or otherwise delivered (including pursuant to electronic transmission in the manner provided in Section 232 of the General Corporation Law of the State of Delaware (the “DGCL”)) not less than ten (10) nor more than sixty (60) days prior to the date of the meeting to each stockholder of record entitled to vote at such meeting and shall otherwise comply with applicable law. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any previously scheduled meeting of the stockholders may be postponed, and (unless the Corporation’s Certificate of Incorporation otherwise provides) any special meeting of the stockholders called by the Board of Directors may be cancelled, by resolution of the Board of Directors upon public announcement made prior to the date previously scheduled for such meeting of stockholders.

SECTION 3. Quorum and Adjournment. Except as otherwise provided by law or the Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the voting power of the Voting Stock, present in person or by proxy, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting may (i) from time to time adjourn any meeting that is not a special meeting called by a stockholder(s) pursuant to Section 1(b), whether or not there is such a quorum and (ii) adjourn a special meeting called by a stockholder(s) pursuant to Section 1(b) only if there is not such a quorum; provided, that, in the case of clauses (i) and (ii), the date, time and place of the adjourned meeting is announced at the meeting such adjournment is taken; provided, however, that notice shall be provided if the meeting is adjourned for more than 30 days or otherwise required by law. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 4. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors (the “Chairman”), or if none or in the Chairman’s absence, the Presiding Director, or if none or in the Presiding Director’s absence, the Vice-Chairman, or if none or in the Vice-Chairman’s absence, the Chief Executive Officer, or in the Chief Executive Officer’s absence, a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary’s absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 5. Voting; Proxies; Required Vote.

(a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by such stockholder’s duly authorized attorney in fact and otherwise complying with requirements of the DGCL and any stock exchange(s) upon which the Voting Stock is then listed (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, which shall be governed by Section 8 of this Article I, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders.

(b) When specified business is to be voted on by a class or series of stock voting as a class, the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class, unless otherwise provided in the Certificate of Incorporation.

SECTION 6. **Inspectors.** The Board of Directors, in advance of any meeting, may, but need not unless required by law, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of such inspector's ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

SECTION 7. **Notice of Stockholder Nominations and Other Business.**

(a) **Annual Meetings of Stockholders.**

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors, or (C) by any stockholder of the Corporation who (i) was a stockholder of record of the Corporation at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the annual meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in this Section 7 as to such business or nomination. Clause (C) of the preceding sentence shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters or nominations properly brought under Rule 14a-8 or Rule 14a-11 under the Securities Exchange Act of 1934, as amended (including the rules and regulations promulgated thereunder, the "Exchange Act") and included in the Corporation's proxy statement) at an annual meeting of stockholders.

(2) Without qualification or limitation of any other requirement, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(1) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day nor later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than

thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, not later than the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) To be in proper form, a stockholder's notice delivered pursuant to this Section 7 must set forth: (A) as to each person, if any, whom the stockholder proposes to nominate for election or reelection as a director (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in contested election, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected and (iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and, if applicable, the beneficial owner of the shares held of record by such stockholder (the "Beneficial Owner"), if any, and their respective affiliates, or others acting in concert therewith, on the one hand, and each proposed nominee, and such persons' respective affiliates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if the stockholder making the nomination and any Beneficial Owner, if any, or any affiliate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the Beneficial Owner, if any, on whose behalf the proposal is made, and a description of all agreements, arrangements and understandings between such stockholder and Beneficial Owner, if any, (including their names) in connection with the proposal of such business by such stockholder; and (C) as to the stockholder giving the notice and the Beneficial Owner, if any, (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such Beneficial Owner, if any, (ii) (a) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such Beneficial Owner, (b) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (c) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed have a short interest of such stockholders and Beneficial Owner, if any, in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship

or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (d) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder and Beneficial Owner, if any, that are separated or separable from the underlying shares of the Corporation and (e) any proportionate interest in shares of the Corporation held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and such Beneficial Owner, if any, any of their respective affiliates, and any others acting in concert with any of the foregoing with respect to such nomination or proposal, (iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (v) a representation whether the stockholder or the Beneficial Owner, if any, intends to be or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding Voting Stock required to approve or adopt the proposal or elect the nominee or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination, and (vi) any other information relating to such stockholder and Beneficial Owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act. In addition, the stockholder's notice with respect to the election of directors must include, with respect to each nominee for election or reelection to the Board of Directors, the completed and signed questionnaire, representation and agreement required by Section 9 of this Article I. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Notwithstanding the foregoing, the information required by clauses (a)(3)(C)(ii) and (a)(3)(C)(iii) of this Section 7 shall be updated by such stockholder and Beneficial Owner, if any, not later than ten (10) days after the record date for the meeting to disclose such information as of the record date.

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 7 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 7 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected

pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or a committee thereof, or (2) provided, that the Board of Directors, such committee or stockholder(s) pursuant to Section 1(b) hereof have determined that a purpose of the meeting is to elect directors, by any stockholder of the Corporation who (i) is a stockholder of record of the Corporation at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the special meeting, (ii) is entitled to vote at the meeting and upon such election, and (iii) complies with the notice procedures set forth in this Section 7 as to such nomination. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(3) hereof with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by these Bylaws) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or, if the first public announcement of the date of such special meeting is less than one hundred (100) days prior to the date of such special meeting, the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(d) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 7 and the Certificate of Incorporation shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 7. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the person presiding at the meeting of stockholders shall have the power and duty (a) to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 7 (including whether the stockholder or Beneficial Owner, if any, solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(3)(C)(v) of this Section 7) and (b) if the presiding person determines that any proposed nomination or other business was not made or proposed in compliance with this Section 7, to declare that such nomination shall be disregarded or that such proposed other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 7, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such proposed other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 7, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 7, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "SEC") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 7; provided, however, that any references in these Bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 7 (including clause (a)(1)(C) and paragraph (b) hereof), and compliance with clause (a)(1)(C) and paragraph (b) of this Section 7 shall be the exclusive means for a stockholder to make nominations or submit other business, as applicable (other than matters or nominations brought properly under and in compliance with Rule 14a-8 or Rule 14a-11 of the Exchange Act). Nothing in this Section 7 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act or (B) of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation

(“Preferred Stock”) to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 8. Required Vote for Election of Directors.

(a) Except as otherwise provided pursuant to the Certificate of Incorporation and except as provided by Section 12 of Article II with respect to the filling of vacancies, directors shall be elected by a majority of votes cast by the shares represented at a meeting of stockholders and entitled to vote thereon, a quorum being present at such meeting, unless the election is contested, in which case directors shall be elected by a plurality of votes cast by the shares represented at such meeting. A “majority of votes cast” means that the number of votes cast “for” the election of the nominee exceeds fifty percent (50%) of the total number of votes cast “for” and “against” the election of that nominee. Stockholders shall also be provided the opportunity to abstain from voting with respect to the election of a director. In voting on the election of directors, abstentions, votes designated to be withheld from the election of a director and shares present but not voted in respect of the election of a director shall not be considered as votes cast. An election shall be considered “contested” if the number of nominees for election is greater than the number of directors to be elected. For purposes hereof, the number of nominees shall be determined as of the later of (i) the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation and (ii) the last date on which a stockholder in accordance with these Bylaws may give notice of the nomination of a person for election as a director in order for such nomination to be required to be presented for a vote of the stockholders of the Corporation. Each director, including a director elected to fill a vacancy, shall hold office until the next annual meeting of stockholders and until such director’s successor is duly elected and qualified or until such director’s earlier death, incapacity, resignation, retirement, disqualification or removal from office.

(b) If a nominee for director who is an incumbent director is not elected and no successor has been elected at such meeting, the director shall promptly tender such director’s resignation to the Board of Directors. The Nominating and Governance Committee shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Governance Committee’s recommendation, and publicly disclose (by a press release, a filing with the SEC or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Nominating and Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director who tenders a resignation shall not participate in the recommendation of the Nominating and Governance Committee or the decision of the Board of Directors with respect to such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until such director’s successor is duly elected, or such director’s earlier resignation or removal. If a director’s resignation is accepted by the Board of Directors pursuant to these Bylaws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting

vacancy pursuant to the provisions of Article II, Section 12 of these Bylaws or may decrease the size of the Board of Directors pursuant to the provisions of Article II, Section 2 of these Bylaws.

SECTION 9. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Article I, Section 7 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) will abide by the requirements of Article I, Section 8 of these Bylaws, (B) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law as it presently exists or may hereafter be amended, (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (D) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

SECTION 10. Removal of Director. Unless otherwise provided by law and subject to the provisions of the Certificate of Incorporation and subject to the rights of the holders of any series of Preferred Stock, if any outstanding, with respect to such series of Preferred Stock, the stockholders, acting at a duly called annual meeting or a duly called special meeting of the stockholders, at which there is a proper quorum and where notice has been provided in accordance with Section 2 of this Article I, may remove a director or directors of the Corporation, but only for cause.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

SECTION 2. **Qualification; Number; Term; Remuneration.**

(a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The total number of directors that the Corporation would have if there were no vacancies (the “Whole Board”) shall be fixed from time to time exclusively by action of the Board of Directors, one of whom may be selected by the Board of Directors to be its Chairman.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal.¹

(c) Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and directors who are not employees of the Corporation may be paid a fixed sum for attendance at each meeting of the Board of Directors and each meeting of a committee of the Board of Directors on which such director serves or a stated salary as director or such other compensation scheme (which may include awards of stock, options, or other incentive awards) as the Compensation Committee of the Board of Directors determines from time to time. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for committee service.

SECTION 3. **Quorum and Manner of Voting.** Except as otherwise provided by law or in these Bylaws, a majority of the Whole Board shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 4. **Places of Meetings.** Meetings of the Board of Directors may be held at any place within or without the State of Delaware as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. **Regular Meetings.** Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 6. **Special Meetings.** Special meetings of the Board of Directors shall be held whenever called by the Chairman, Presiding Director, President, Chief Executive Officer or by any two (2) of the directors then in office.

¹ Deletion of classified Board provision subject to amendment of Non-Control Agreements to reflect Brookfield’s ability to vote 10% of the Voting Stock in respect of non-Brookfield designees on the Board.

SECTION 7. **Notice of Meetings.** A notice of the place, date and time and the purpose or purposes of each special meeting of the Board of Directors shall be given to each director by mail, personal delivery, electronic transmission or telephone at least twenty-four (24) hours before the day of the meeting; provided, however, if notice is sent by United States Mail, it shall be deposited in the United States Mail at least five (5) days before the date of the meeting. Notice shall be deemed to be given at the time of mailing, but said twenty-four (24) hours' notice need not be given to any director who consents in writing, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

SECTION 8. **Chairman of the Board of Directors.** Except as otherwise provided by law, the Certificate of Incorporation, or in Section 9 of this Article II, the Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 9. **Presiding Director.** If at any time the Chairman of the Board of Directors shall be an executive officer or former executive officer of the Corporation or for any reason shall not be an independent director, a Presiding Director shall be selected by the independent directors from among the directors who are not executive officers or former executive officers of the Corporation and are otherwise independent. If the Chairman of the Board of Directors is not present, the Presiding Director shall chair meetings of the Board of Directors. The Presiding Director shall chair any meeting of the independent directors and shall also perform such other duties as may be assigned to the Presiding Director by these Bylaws or the Board of Directors.

SECTION 10. **Organization.** At all meetings of the Board of Directors, the Chairman, or if none or in the Chairman's absence or inability to act, the Presiding Director, or if none or in the Presiding Director's absence or inability to act, the Chief Executive Officer, or in the Chief Executive Officer's absence or inability to act, any Vice-President who is a member of the Board of Directors, or if none or in such Vice-President's absence or inability to act, a chairman chosen by the directors shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 11. **Resignation.** Any director may resign at any time upon written notice to the Corporation and, except for a resignation tendered pursuant to Section 8(b) of Article I, such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation.

SECTION 12. **Vacancies.** Subject to applicable law and the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, if any outstanding, newly created directorships resulting from any increase in the authorized number of directors will be filled by a majority of the Board of Directors then in office, provided, that a majority of the Whole Board is present, unless the Board of Directors otherwise determines that such directorships should be filled by the affirmative vote of the stockholders of record of at least a majority of the Voting Stock, and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause will be filled

generally by the majority vote of the remaining directors in office, even if less than a quorum is present. No change in the number of authorized directors constituting the Whole Board shall shorten or increase the term of any incumbent director.

SECTION 13. **Conference Telephone Meetings.** Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 14. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the Board of Directors.

ARTICLE III

COMMITTEES

SECTION 1. **Appointment.** From time to time the Board of Directors, by a resolution adopted by a majority of the Whole Board, may appoint any committee or committees, each committee to consist of two (2) (or such other minimum number, if any, mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), as in effect from time to time) or more directors of the Corporation for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment, including the following committees:

(a) an Executive Committee, which shall have such authority as has been or shall be delegated by the Board of Directors and shall advise the Board of Directors from time to time with respect to such matters as the Board of Directors shall direct; and

(b) an Audit Committee, a Compensation Committee and a Nominating & Governance Committee, each of which shall have such authority (i) as has been or shall be set forth in the charter for such committee (as in effect from time to time and approved by the Board of Directors), which authority shall at all times be not less than that mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), and (ii) as shall otherwise be delegated by the Board of Directors.

The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee, provided, that each committee shall consist of at least such minimum number of directors, if any, mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), as in effect from time to time. Nothing herein shall be deemed to prevent the Board of Directors from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

SECTION 2. **Procedures, Quorum and Manner of Acting.** Each committee shall fix its own rules of procedure and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. **Term; Termination.** In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

ARTICLE IV

OFFICERS

SECTION 1. **Election and Qualifications.** The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer and a Secretary, and may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Any two or more offices may be held by the same person; provided, however, no person shall simultaneously hold the offices of Chief Executive Officer and Secretary.

SECTION 2. **Term of Office and Remuneration.** The term of office of all officers shall be one year or until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by a vote of the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. **Resignation; Removal.** Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief

Executive Officer or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by a vote of the Board of Directors.

SECTION 4. **Chief Executive Officer.** The Chief Executive Officer shall have such duties as customarily pertain to that office. The Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers and may appoint and remove assistant officers and other agents and employees other than officers referred to in Section 1 of this Article IV.

SECTION 5. **Vice-President.** A Vice-President shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 6. **Treasurer.** The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 7. **Secretary.** The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 8. **Assistant Officers.** Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

SECTION 9. **Other Officers.** The Board of Directors may elect other officers from time to time, and vest such officers with such powers and duties, as the Board of Directors may deem proper.

ARTICLE V

BOOKS AND RECORDS

SECTION 1. **Location.** The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. **Addresses of Stockholders.** Notices of meetings and all other corporate notices may be delivered (i) personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation, or (ii) any other method permitted by applicable law and rules and regulations of the SEC as they presently exist or may hereafter be amended.

SECTION 3. **Fixing Date for Determination of Stockholders of Record.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VI

STOCK

SECTION 1. **Stock; Signatures.** Shares of the Corporation's stock may be evidenced by certificates for shares of stock or may be issued in uncertificated form in accordance with applicable law as it presently exists or may hereafter be amended. The Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution or the issuance of shares in uncertificated form shall not affect shares already represented by a certificate until such certificate is surrendered to the Corporation. Every holder of shares of stock in the Corporation that is represented by certificates shall be entitled to have a certificate certifying the number of shares owned by him in the Corporation and registered in certificated form. Stock certificates shall be signed by or in the name of the Corporation by the Chairman or Vice Chairman, if any, of the Board of Directors, or the Chief Executive Officer or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificated form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented by certificated or uncertificated shares, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. **Transfers of Stock.** Transfers of shares of stock of the Corporation shall be made on the books of the Corporation after receipt of a request with proper evidence of succession, assignation, or authority to transfer by the record holder of such stock, or by an attorney lawfully constituted in writing, and in the case of stock represented by a certificate, upon surrender of the certificate. Subject to the foregoing, the Board of Directors may make such rules and regulations as it shall deem necessary or appropriate concerning the issue, transfer and registration of shares of stock of the Corporation, and to appoint and remove transfer agents and registrars of transfers.

SECTION 3. **Fractional Shares.** The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

SECTION 4. **Lost, Stolen or Destroyed Certificates.** The Corporation may issue a new certificate of stock or uncertificated shares in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or the legal representative thereof, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificated or uncertificated shares.

SECTION 5. **Special Designation on Certificates.** If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of any certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 5 or otherwise required by law or with respect to this Section 5 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

ARTICLE VII

DIVIDENDS

Except as otherwise provided by law or the Certificate of Incorporation (including the terms of any Preferred Stock provided for therein), the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

ARTICLE VIII

RATIFICATION

Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, nondisclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE IX

CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal. Affixing the corporate seal shall not be required for the validity of any contract or agreement, deed, promissory note or other document executed and delivered by the Corporation, except as otherwise required by law.

ARTICLE X

FISCAL YEAR

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE XI

WAIVER OF NOTICE

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, the person or persons entitled to said notice may consent in writing, whether before or after the time stated therein, to waive such notice requirement. Notice shall also be deemed waived by any person who attends a meeting without protesting prior thereto or at its commencement, the lack of notice to him.

ARTICLE XII

BANK ACCOUNTS, DRAFTS, CONTRACTS, ETC.

SECTION 1. **Bank Accounts and Drafts.** In addition to such bank accounts as may be authorized by the Board of Directors, the chief financial officer, the Treasurer or any person designated by said chief financial officer or Treasurer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as such person may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said chief financial officer, or other person so designated by the Treasurer.

SECTION 2. **Contracts.** The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. Except as otherwise provided by the Board of Directors or the Chief Executive Officer, any officer of the Corporation may execute and deliver any deed, bond, mortgage, contract or other obligation or instrument on behalf of the Corporation.

SECTION 3. **Proxies; Powers of Attorney; Other Instruments.** The Chief Executive Officer, the Treasurer or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chief Executive Officer, the Treasurer or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in

the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. **Financial Reports**. The Board of Directors may appoint the chief financial officer, the Treasurer or other fiscal officer or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XIII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any person (a "Covered Person") who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature (a "proceeding"), by reason of the fact that such Covered Person, or a person for whom he or she is the legal representative, is or was, at any time during which these Bylaws are in effect or any time prior thereto (whether or not such Covered Person continues to serve in such capacity at the time any indemnification or payment of expenses pursuant hereto is sought or at the time any proceeding relating thereto exists or is brought), a director or officer of the Corporation (including, for the purposes of this Article XIII, any predecessor of the Corporation absorbed by the Corporation in a consolidation, merger or reorganization), or has or had agreed to become a director or officer of the Corporation, or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity or other enterprise, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, trustee, employee or agent or in any other capacity while serving as a director, officer, trustee, employee or agent, against all liability and loss suffered (including, without limitation, any judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) and expenses (including attorneys' fees and disbursements), actually and reasonably incurred by such Covered Person in connection with such proceeding to the fullest extent permitted by law, and such indemnification shall continue as to a person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators, and the Corporation may enter into agreements with any such person for the purpose of providing for such indemnification. For purposes of this Article XIII, a director or officer of the Corporation serving as a director, officer, trustee, employee or agent or in any other capacity while serving as a director, officer, trustee, employee or agent of a company of which the Corporation owns, directly or indirectly, a majority of the shares or other interests entitled to vote in the selection of its directors or the members of a comparable governing body or of an employee benefit plan of the Corporation or of any such company shall be deemed to have served in such capacity at the request of the Corporation and actions taken or omitted by a Covered Person on behalf of such an employee benefit plan of the Corporation or of any direct or indirect subsidiary of the Corporation, if done in good faith and in a manner that he

or she reasonably believed was in the best interests of the employee benefit plan or its participants or beneficiaries, shall be deemed to have been done in a manner not opposed to the best interests of the Corporation and actions taken or omitted on behalf of a direct or indirect subsidiary of the Corporation (even if not wholly owned by the Corporation), if done in good faith and in a manner that he or she reasonably believed to be in the best interests of the subsidiary or its owners, shall be deemed to have been done in a manner not opposed to the best interests of the Corporation. Except as otherwise provided in this Article XIII, and other than proceedings to enforce rights conferred by the Certificate of Incorporation or this Article XIII, the Corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by the Board of Directors. The right to indemnification conferred in this Article XIII shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred by a Covered Person in defending any such proceeding in advance of its final disposition, such advances to be paid by the Corporation within sixty (60) days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time (and subject to filing a written request for indemnification pursuant to the following paragraph of Section 1 of this Article XIII); provided, however, that the payment of such expenses incurred by a director or officer (or a former director or officer) in such person's capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon receipt of an undertaking by or on behalf of the Covered Person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal that the Covered Person is not entitled to be indemnified by the Corporation for such expenses under this Article XIII or otherwise. The rights conferred upon Covered Persons in this Article XIII shall be contract rights that vest at the time of such person's service to or at the request of the Corporation and such rights shall continue as to a Covered Person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

To obtain advancement or indemnification under this Article XIII, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to advancement or indemnification. Upon written request by a claimant for indemnification pursuant to the immediately preceding sentence, a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as hereinafter defined), or (ii) by a committee of Disinterested Directors designated by a majority of such directors, even though less than a quorum, or (iii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iv) if a quorum of Disinterested Directors so directs, by the stockholders of the Corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two (2) years prior to the date of the

commencement of the action, suit or proceeding for which indemnification is claimed a “Change of Control” (as defined below), in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within sixty (60) days after such determination. As used herein, “Change in Control” means the happening of any of the following events: (A) any Person (as hereinafter defined) acquires Beneficial Ownership (as hereinafter defined) of 50% or more of the combined voting power of the then outstanding Voting Stock; (B) consummation of a Business Combination (as hereinafter defined), unless, following such Business Combination, (x) all or substantially all of the individuals and entities that were the Beneficial Owners of the outstanding Voting Stock immediately prior to such Business Combination Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the issued and outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of the entity resulting from such Business Combination (including, without limitation, a company that, as a result of such transaction, owns the Corporation or all or substantially all of the Corporation’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the voting power of the Voting Stock, and (y) no Person Beneficially Owns, directly or indirectly, 50% or more of the combined voting power of the issued and outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity; (C) approval by the stockholders of the Corporation of a liquidation or dissolution of the Corporation; or (D) individuals who, as of [Effective Date], 2010, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board of Directors (provided, however, that any individual whose election or nomination for election by the Corporation’s shareholders was approved by a vote of at least a majority of the directors comprising the incumbent Board of Directors as of such election or nomination, shall be considered as though such individual were a member of the Incumbent Board). In this paragraph, the terms (I) “Beneficial Owner,” “Beneficially Own” and “Beneficial Ownership” are used as defined in Rules 13d-3 and 13d-5 of the Exchange Act (but without taking into account any contractual restrictions or limitations on voting or other rights), (II) “Business Combination” means (a) any merger, consolidation, share exchange or similar business combination transaction involving the Corporation with any Person or (b) the sale or other disposition by the Corporation of all or substantially all of its assets; and (III) “Person” means an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).

SECTION 2. If a claim for advancement or indemnification under this Article XIII is not paid in full within sixty (60) days after a written claim pursuant has been received by the Corporation, the claimant may at any time thereafter file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances

because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

SECTION 3. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred on any Covered Person by this Article XIII (i) shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the Corporation, the Board of Directors or the stockholders of the Corporation with respect to a Covered Person's service occurring prior to the date of such termination. The Corporation may enter into agreements providing for indemnity of or advancement of expenses to a director or officer containing such provisions further to or alternative to the provisions of this Article XIII as the Board of Directors determines is in the best interests of the Corporation. However, notwithstanding the foregoing, the Corporation's obligation to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, enterprise or nonprofit entity shall be reduced by any amount such person has collected as indemnification from such other corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity, or other enterprise; and, in the event the Corporation has fully paid such expenses, the Covered Person shall return to the Corporation any amounts subsequently received from such other source of indemnification.

Any repeal, other termination, amendment, alteration or modification of the provisions of this Article XIII that in any way diminishes, limits, restricts, adversely affects or eliminates any right of an indemnitee or such person's successors to indemnification, advancement of expenses or otherwise shall be prospective only and shall not in any way diminish, limit, restrict, adversely affect or eliminate any such right with respect to any actual or alleged act or omission occurring prior thereto while such a person was a director or officer of the Corporation or any actual or alleged state of facts, occurrence, action or omission then or previously existing, or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such actual or alleged state of facts, occurrence, action or omission.

SECTION 4. This Article XIII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and advance expenses (on substantially similar terms and subject to the same obligations as those set forth in Sections 1 through 3 of this Article XIII) to persons other than Covered Persons when and as authorized by the Board of Directors. In addition, the Corporation may purchase and maintain insurance, at its expense, on behalf of any person who is or was a Covered Person and any employee or agent of the Corporation or its subsidiaries against any liability, expense or loss asserted against such person and incurred by such person in such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or obligation to indemnify such person against such liability, expense or loss.

SECTION 5. If any provision or provisions of this Article XIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article XIII (including, without limitation, each portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article XIII (including, without limitation, each such portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 6. For purposes of this Article XIII:

(1) “Disinterested Director” means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(2) “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and indemnification issues and neither presently is, nor in the past five years has been, retained to represent: (i) the Corporation or the claimant in any matter material to either such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant’s rights under this Article XIII.

SECTION 7. Any notice, request or other communication required or permitted to be given to the Corporation under this Article XIII shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

ARTICLE XIV

AMENDMENTS

The Board of Directors shall have power to amend, modify or repeal these Bylaws or adopt any new provision authorized by the laws of the State of Delaware in force at such time. The stockholders of the Corporation shall have the power to amend, modify or repeal these Bylaws, or adopt any new provision authorized by the laws of the State of Delaware in force at such time, at a duly called meeting of the stockholders; provided, that notice of the proposed adoption, amendment, modification or repeal was given in the notice of the meeting; provided, further, notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend, modify or repeal any provision, or adopt

any new or additional provision, in a manner inconsistent with Sections 7 and 8 of Article I, Sections 2(a) of Article II, Article XIII and this Article XIV of these Bylaws.

General Growth Properties, Inc.
a Delaware corporation

CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting [_____] of General Growth Properties, Inc., a Delaware corporation, and that the foregoing Amended and Restated Bylaws were adopted as the Corporation's bylaws on [_____] , 2010 by the Corporation's Board of Directors.

IN WITNESS WHEREOF, the undersigned has hereunto set such person's hand this [_____] day of [_____] , 2010.

By: /s/ _____
[_____]

EXHIBIT 6

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF

[_____], INC.

The present name of the corporation is [_____], Inc. (the “Corporation”). The Corporation was incorporated under the name “Spinco, Inc.” by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on July 1, 2010. This Amended and Restated Certificate of Incorporation, which restates and integrates and also further amends the provisions of the Corporation’s Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”). The Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the corporation (which is hereinafter referred to as the “Corporation”) shall be [_____], Inc.

ARTICLE II

The address of the Corporation’s registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, County of New Castle. The name of the Corporation’s registered agent at such address is Corporation Service Company. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors of the Corporation (the “Board of Directors”) may designate or as the business of the Corporation may from time to time require.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

A. Classes and Number of Shares. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is Two Hundred Million (200,000,000) shares, consisting of (i) Fifty Million (50,000,000) shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”), and (ii) One Hundred Fifty Million (150,000,000) shares of common stock, par value \$0.01 per share (the “Common Stock”).

B. Common Stock. The holders of outstanding shares of Common Stock shall have the right to vote on all questions to the exclusion of all other stockholders, each holder of record of Common Stock being entitled to one vote for each share of Common Stock standing in the name of the stockholder on the books of the Corporation, except as may be provided in this

Certificate of Incorporation, as it may be amended from time to time (the “Certificate of Incorporation”), in a Preferred Stock Designation (as hereinafter defined), or as required by law.

C. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized to provide for the issuance of shares of Preferred Stock in series and, by filing a certificate of designations pursuant to the applicable law of the State of Delaware (hereinafter referred to as a “Preferred Stock Designation”), to establish from time to time for each such series the number of shares to be included in each such series and to fix the designations, powers, rights and preferences of the shares of each such series, and the qualifications, limitations and restrictions thereof. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

- (1) The designation of the series, which may be by distinguishing number, letter or title.
- (2) The number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).
- (3) Whether dividends, if any, shall be paid, and, if paid, the date or dates upon which, or other times at which, such dividends shall be payable, whether such dividends shall be cumulative or noncumulative, the rate of such dividends (which may be variable) and the relative preference in payment of dividends of such series.
- (4) The redemption provisions and price or prices, if any, for shares of the series.
- (5) The terms and amounts of any sinking fund or similar fund provided for the purchase or redemption of shares of the series.
- (6) The amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.
- (7) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices, or rate or rates, any adjustments thereto, the date or dates on which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.
- (8) Restrictions on the issuance of shares of the same series or of any other class or series.
- (9) The voting rights, if any, of the holders of shares of the series.

D. Issuance of Rights to Purchase Securities and Other Property. Subject to the express rights of the holders of any series of Preferred Stock, if any outstanding, but only to the

extent expressly set forth in the Preferred Stock Designation with respect thereto, the Board of Directors is hereby authorized to create and to authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Corporation of rights, options and warrants for the purchase of shares of capital stock of the Corporation or other securities of the Corporation, at such times, in such amounts, to such persons, for such consideration, with such form and content (including without limitation the consideration for which any shares of capital stock of the Corporation or other securities of the Corporation are to be issued) and upon such terms and conditions as it may, from time to time, determine upon, subject only to the restrictions, limitations, conditions and requirements imposed by the DGCL, other applicable laws and this Certificate of Incorporation.

ARTICLE V

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation; provided, however, that any amendment, alteration, modification or repeal of a Bylaw or adoption of a new provision in the Bylaws, in each case by the stockholders, may provide that it cannot be further amended, altered, modified or repealed by the Board of Directors, in which case the Board of Directors shall not be authorized to further amend, alter, modify or repeal such Bylaw amendment or such new Bylaw provision.

ARTICLE VI

A. Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, as set forth in a Preferred Stock Designation to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed by the Bylaws of the Corporation and may be increased or decreased from time to time in such a manner as may be prescribed by the Bylaws and the DGCL.

B. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

C. Subject to the rights of the holders of any series of Preferred Stock, if any outstanding, with respect to the election of directors under specified circumstances, any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class.

D. Notwithstanding the foregoing provisions of this Article VI and any limitations contained in any Preferred Stock Designation, each director shall serve until such director's successor is duly elected and qualified or until such director's death, resignation or removal. No change in the number of directors constituting the Board of Directors shall shorten or increase the term of any incumbent director.

ARTICLE VII

The Corporation, to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, shall indemnify and hold harmless any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, regulatory, arbitral or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is a legal representative, is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability entity, joint venture, trust, other enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss (including judgments, fines and amounts paid in settlement) suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the foregoing sentence, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person (other than proceedings to enforce rights conferred by this Certificate of Incorporation or the Bylaws of the Corporation) only if the commencement of such proceeding was authorized in the specific case by the Board of Directors. To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized hereby. The Corporation may, by action of the Board of Directors, provide indemnification to employees and agents of the Corporation or its subsidiaries with the same (or lesser) scope and effect as the foregoing indemnification of directors and officers.

ARTICLE VIII

No director shall be personally liable either to the Corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of any provision of this Certificate of Incorporation inconsistent with the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

ARTICLE IX

The Corporation may purchase and maintain insurance, at its expense, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability, expense or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability, expense or loss under the

provisions of the Bylaws of the Corporation or the DGCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such person shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such person.

ARTICLE X

The Corporation reserves the right at any time and from time to time to amend, modify or repeal any provision contained in this Certificate of Incorporation or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware in force at such time may be added or inserted in the manner now or hereafter prescribed herein or by applicable law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article X; provided, however, that any amendment, modification or repeal of Article VII or Article VIII of this Certificate of Incorporation shall not adversely affect any right or protection existing hereunder immediately prior to such amendment, modification or repeal.

ARTICLE XI

The Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director or officer of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or this Certificate of Incorporation or the Bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine.

ARTICLE XII

Subject to the rights of the holders of any series of Preferred Stock as set forth in a Preferred Stock Designation, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing of such stockholders.

ARTICLE XIII

The Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by Section 1123(a)(6) of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this Article XIII (a) will have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation and (c) in all events may be amended or eliminated from time to time in accordance with applicable law.

ARTICLE XIV

In addition to any votes required by applicable law and subject to the express rights of the holders of any series of Preferred Stock, if any outstanding, and notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend, modify or repeal any provision, or adopt any new or additional provision, in a manner inconsistent with Articles V, VII, XII and this Article XIV.

ARTICLE XV

It is in the best interests of the Corporation and its shareholders that certain restrictions on the transfer or other disposition of certain corporation securities, as relates to the preservation of certain tax attributes, be established as more fully set forth in this Article XV.

A. Certain Definitions. As used in this Article XV, the following terms have the following respective meanings:

“Acquire” means the acquisition of ownership of Corporation Securities by any means, including, without limitation, (i) the exercise of any rights under any option, warrant, convertible security, pledge or other security interest or similar right to acquire shares, (ii) the entering into of any swap, hedge or other arrangement that results in the acquisition of any of the economic consequences of ownership of Corporation Securities, or (iii) any other acquisition or transaction treated under the applicable rules under Section 382 of the Code as a direct or indirect acquisition (including the acquisition of an ownership interest in a Substantial Holder), but shall not include the acquisition of any such rights unless, as a result, the acquirer would be considered an owner within the meaning of the United States federal income tax laws. The terms “Acquires” and “Acquisition” shall have the same meaning.

“Code” means the United States Internal Revenue Code of 1986, as amended from time to time, and any reference to a section of the Code shall include any comparable successor provision.

“Corporation Securities” means (i) shares of Common Stock, (ii) shares of Preferred Stock (unless otherwise provided by the Board of Directors in connection with the issuance or reissuance of such shares), and (iii) warrants, rights or options (including within the meaning of Treasury Regulation Section 1.382-4(d)(8)) to purchase stock of the Corporation, but only to the extent such warrants, rights or options are treated as exercised pursuant to Treasury Regulation Section 1.382-4(d) or otherwise regarded as “stock” under general federal income tax principles.

“Investment Agreements” means (i) that certain Amended and Restated Cornerstone Investment Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and REP Investments LLC, (ii) that certain Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and The Fairholme Fund and Fairholme Focused Income Fund and (iii) that certain

Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between General Growth Properties, Inc. and Pershing Square Capital Management, L.P., on behalf of Pershing Square L.P., Pershing Square II, L.P., Pershing Square International, Ltd. and Pershing Square International V, Ltd.; each as may be further amended or modified from time to time.

“Percentage Stock Ownership” means percentage stock ownership as determined in accordance with Treasury Regulation Section 1.382-2T(g), (h) (without regard to the rule that treats stock of an entity as to which the constructive ownership rules apply as no longer owned by that entity), (j) and (k).

“Person” means an individual, corporation, estate, trust, association, limited liability company, partnership, joint venture or similar organization or “entity” within the meaning of Treasury Regulation Section 1.382-3.

“Plan of Reorganization” means the bankruptcy plan of reorganization of General Growth Properties, Inc. and its subsidiaries pursuant to which the Common Stock of the Corporation is distributed to, among others, the shareholders of General Growth Properties, Inc.

“Prohibited Acquisition” means any purported Acquisition of Corporation Securities to the extent that such Acquisition is prohibited and/or void under this Article XV.

“Restriction Release Date” means the earlier of (i) the first day after the date on which a majority of the Board of Directors determines that the restrictions contained in this Article XV are no longer necessary for the preservation of the Tax Benefits, (ii) the first day after the date on which a majority of the Board of Directors determines that it is no longer in the best interests of the Corporation and the shareholders for the restrictions contained in this Article XV to continue to apply, (iii) [November 10, 2013] or (iv) the repeal of Section 382 of the Code.

“Substantial Holder” means a Person holding Corporation Securities representing a Percentage Stock Ownership (including indirect ownership, as determined under applicable Treasury Regulations) in any class of Corporation Securities of at least 4.99%.

“Tax Benefits” means the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers, as well as any “net unrealized built-in loss” within the meaning of Section 382 of the Code, of the Corporation or any direct or indirect subsidiary thereof.

“Treasury Regulation” means a Treasury regulation promulgated under the Code.

B. Restrictions.

(1) Except as provided in paragraph C of this Article XV, no Person shall be permitted to make an Acquisition and any such purported Acquisition will be *void ab initio*, (i) to the extent that after giving effect to such purported Acquisition the purported transferee or a Person related to the purported transferee would become a Substantial Holder and such purported Acquisition would decrease the purported transferor’s

Percentage Stock Ownership of Corporation Securities, or (ii) if such Person is a Substantial Holder and such purported Acquisition would increase such Substantial Holder's Percentage Stock Ownership of Corporation Securities; provided, however, that nothing in this Article XV shall apply to any Acquisition pursuant to which the acquiring Person owns at least 80% (or such other lesser amount as may be required from time to time to conduct a merger in accordance with Section 253 of the DGCL) of the Voting Stock. The prior sentence is not intended to prevent the Corporation Securities from being DTC-eligible and shall not preclude the settlement of any transactions in the Corporation Securities entered into through the facilities of a national securities exchange, but such transaction, if prohibited by the prior sentence, shall nonetheless be a Prohibited Acquisition.

(2) The Corporation may require as a condition to the registration of the Acquisition of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed acquirer or payee furnish to the Corporation the information reasonably necessary to allow the Corporation to determine whether a transaction would constitute a Prohibited Acquisition (including with respect to all the direct or indirect ownership interests in such Corporation Securities). The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this Article XV, including, without limitation, authorizing such transfer agent to require an affidavit from a purported transferee regarding such Person's actual and constructive ownership of Corporation Securities and other evidence that an Acquisition will not be prohibited by this Article XV as a condition to registering any Acquisition.

C. Certain Exceptions. The restrictions set forth in paragraph B of this Article XV shall not apply to (i) a proposed Acquisition if the transferor or the transferee, upon providing at least twenty (20) days prior written notice of such proposed Acquisition to the Board of Directors, obtains the written consent to the proposed Acquisition from a majority of the Board of Directors, (ii) a proposed Acquisition that is made as part of (A) a tender or exchange offer by the Corporation to purchase Corporation Securities, (B) a purchase program effected by the Corporation on the open market and not the result of a privately-negotiated transaction, (C) any optional or required redemption of a Corporation Security pursuant to the terms of such security, or (D) the acquisition of any capital stock or other equity interest or exercise of any subscription right or warrant or option issued pursuant to or contemplated by the Plan of Reorganization or the Investment Agreements, or (iii) an Acquisition after the Restriction Release Date. In determining whether to grant its consent to a proposed Acquisition, the Board of Directors is permitted, but not required, to assume, among other things, that any shares held by a Substantial Holder will shortly be sold and to take into account potential capital transactions in which the Corporation may seek to engage in the future (whether or not currently under consideration). As a condition to granting its consent, the Board of Directors may, in its discretion, require (at the expense of the transferor and/or transferee) such representations from the transferor and/or transferee or such opinions of counsel to be rendered by counsel selected by the Board of Directors, in each case as to such matters as the Board of Directors determines.

D. Treatment of Excess Securities.

(1) No employee or agent of the Corporation shall record any Prohibited Acquisition, and the purported acquirer in a Prohibited Acquisition (the “Purported Acquirer”) shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities which are the subject of the Prohibited Acquisition (the “Excess Securities”). The Purported Acquirer shall not be entitled with respect to such Excess Securities to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, but, once the Excess Securities have been acquired in an Acquisition that is not a Prohibited Acquisition, such Corporation Securities shall cease to be Excess Securities.

(2) If the Board of Directors determines that a Prohibited Acquisition has been recorded by an agent or employee of the Corporation, such recording and the Prohibited Acquisition shall be void *ab initio* and have no legal effect and, upon written demand by the Corporation, the Purported Acquirer shall transfer or cause to be transferred any certificate or other evidence of ownership or proceeds from the resale by such Purported Acquirer of the Excess Securities within the Purported Acquirer’s possession or control, together with any dividends or other distributions that were received by the Purported Acquirer from the Corporation with respect to the Excess Securities (the “Prohibited Distributions”), to an agent designated by the Board of Directors (the “Agent”). The Agent shall thereupon sell to a buyer or buyers the Excess Securities transferred to it in one or more arm’s-length transactions (including over a national securities exchange on which the Corporation Securities may be traded, if possible); provided, however, that the Agent, in its sole discretion, shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent’s discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities; provided, further, however, that if the Agent holds any Excess Securities constituting Voting Stock on or after the record date for any vote of the stockholders, the Agent shall vote all such securities in connection with such vote in accordance with the recommendation of the Designated Proxy Firm and shall abstain if no such recommendation has been made. For the purposes of this subsection (2), the “Designated Proxy Firm” means [Institutional Shareholder Services Inc.] or any successor thereto or a nationally recognized proxy advisory firm designated by the vote of a majority of the independent members of the Board of Directors in their discretion from time to time; provided, however, that the independent members of the Board of Directors shall not designate a Designated Proxy Firm after the date on which a meeting of stockholders has been called until after such meeting has been held; provided, further, however that if such meeting has been adjourned, no designation of a Designated Proxy Firm shall occur until after the date on which such adjourned meeting has been held. The Purported Acquirer shall be deemed to have given, as of the close of business on the business day prior to the date of the Prohibited Acquisition that results in the transfer of the Excess Securities to the Agent, an irrevocable proxy to the Trustee to vote the Excess Securities constituting shares of Voting Stock in accordance with this subsection (2). If the Purported Acquirer has resold the Excess Securities before receiving the Corporation’s demand to surrender the Excess Securities to the Agent, the Purported Acquirer shall be deemed to have sold the Excess Securities for the Agent, and shall be

required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Acquirer to retain a portion of such sales proceeds not exceeding the amount that the Purported Acquirer would have received from the Agent pursuant to paragraph D(3) of this Article XV if the Agent, rather than the Purported Acquirer, had resold the Excess Securities; or

(3) The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Acquirer had previously resold the Excess Securities, any amounts received by it from a Purported Acquirer, as follows:

(a) *first*, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder;

(b) *second*, any remaining amounts shall be paid to the Purported Acquirer, up to the amount paid by the Purported Acquirer for the Excess Securities (or in the case of any Prohibited Acquisition by gift, devise or inheritance or any other Prohibited Acquisition without consideration, the fair market value, (1) calculated on the basis of the closing market price for the Corporation Securities on the day before the Prohibited Acquisition, or (2) if the Corporation Securities are not listed or admitted to trading on any stock exchange but are traded in the over-the-counter market, calculated based upon the difference between the highest bid and lowest asked prices, as such prices are reported by the National Association of Securities Dealers through its NASDAQ system or any successor system on the day before the Prohibited Acquisition or, if none, on the last preceding day for which such quotations exist, or (3) if the Corporation Securities are neither listed nor admitted to trading on any stock exchange nor traded in the over-the counter market, then as determined in good faith by the Board of Directors, which amount (or fair market value) shall be determined at the discretion of the Board of Directors); and

(c) *third*, any remaining amounts, subject to the limitations imposed by the following proviso, shall be paid to one or more organizations qualifying under Section 501(c)(3) of the Code (or any comparable successor provision) ("Section 501(c)(3)") selected by the Board of Directors; provided, however, that if the Excess Securities (including any Excess Securities arising from a previous Prohibited Acquisition not sold by the Agent in a prior sale or sales) represent a 4.99% or greater Percentage Stock Ownership interest in the Corporation, then such remaining amounts shall be paid to two or more organizations qualifying under Section 501(c)(3) selected by the Board of Directors such that no organization qualifying under Section 501(c)(3) of the Code shall possess Percentage Stock Ownership in the Corporation in excess of 4.99%.

The recourse of any Purported Acquirer in respect of any Prohibited Acquisition shall be limited to the amount payable to the Purported Acquirer pursuant to clause (b) above. Except as may be required by law, in no event shall the proceeds of any sale of Excess Securities pursuant to this Article XV inure to the benefit of the Corporation.

(4) If the Purported Acquirer fails to surrender the Excess Securities (as applicable) or the proceeds of a sale thereof to the Agent within thirty (30) days from the date on which the Corporation makes a demand pursuant to paragraph D(2) of this Article

XV, then the Corporation shall use its best efforts to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender.

(5) Notwithstanding any other provision this paragraph D, where a Prohibited Acquisition occurs between Persons identified by the Corporation, the Corporation may require that the Prohibited Acquisition be rescinded; provided, that the Purported Acquirer derives no net benefit from the Prohibited Acquisition and its rescission or any net benefit is treated in accordance with clause (c) of paragraph D(3). The Corporation may institute legal proceedings to force a rescission pursuant to this paragraph D(5).

(6) In the event of any Acquisition which does not involve a transfer of Corporation Securities but which would cause a Substantial Holder to violate a restriction on Acquisition provided for in Article XV, the application of this paragraph D shall be modified as described in this paragraph D(6). In such case, no such Substantial Holder shall be required to dispose of any interest that is not a Corporation Security, but such Substantial Holder and/or any Person whose ownership of Corporation Securities is attributed to such Substantial Holder shall be deemed to have disposed of and shall be required to dispose of sufficient Corporation Securities (which Corporation Securities shall be disposed of in the inverse order in which they were acquired) to cause such Substantial Holder, following such disposition, not to be in violation of this Article XV. Such disposition shall be deemed to occur simultaneously with the Purported Acquisition giving rise to the application of this provision, and the number of Corporation Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of as provided in paragraph D(2); provided, however, that the maximum aggregate amount payable either to such Substantial Holder or to such other Person that was the direct holder of such Excess Securities in connection with such sale shall be the fair market value of such Excess Securities at the time of the Purported Acquisition. All expenses incurred by the Agent in disposing of such Excess Securities shall be paid out of any amounts due such Substantial Holder or such other Person. The purpose of this paragraph D(6) is to make clear the remedy for situations in which there is a Prohibited Acquisition without a direct Acquisition of Corporation Securities, and this paragraph D(6), along with the other provisions of this Article XV, shall be interpreted to produce the same results, with differences as the context requires, as a direct Acquisition of Corporation Securities.

E. Bylaws, Legends, etc.

(1) The Bylaws may make appropriate provisions to effectuate the requirements of this Article XV.

(2) Until the Restriction Release Date, all certificates representing Corporation Securities during the effectiveness of this Article XV shall bear a conspicuous legend as follows:

THE TRANSFER OF THE SECURITIES REPRESENTED HEREBY IS SUBJECT TO OWNERSHIP RESTRICTIONS PURSUANT TO ARTICLE XV OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF [_____] , INC. THE

CORPORATION WILL FURNISH A COPY OF ITS AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO THE HOLDER OF RECORD OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST ADDRESSED TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

(3) The Corporation shall have the power to make appropriate notations upon its stock transfer records and instruct any transfer agent, registrar, securities intermediary or depository with respect to the requirements of this Article XV for any uncertificated Corporation Securities or Corporation Securities held in an indirect holding system.

(4) The Board of Directors shall have the power to determine all matters necessary for determining compliance with this Article XV, including, without limitation, determining (A) the identification of Substantial Holders, (B) whether an Acquisition is a Prohibited Acquisition, (C) the Percentage Stock Ownership of any Substantial Holder or other Person, (D) whether an instrument constitutes a Corporation Security, (E) the amount (or fair market value) due to a Purported Acquirer pursuant to clause (b) of paragraph D(3) of this Article XV, and (F) any other matters which the Board determines to be relevant. The good faith determination of the Board on such matters shall be conclusive and binding for the purposes of this Article XV. Without limiting the generality of the foregoing, in the event of a change in law or Treasury Regulations making one or more of the following actions necessary or desirable, the Board of Directors may (i) modify the specific application of the transfer restrictions set forth in this Article XV, or (ii) modify the definitions of any terms set forth in this Article XV; provided, that a majority of the Board of Directors shall determine in writing that such acceleration, extension, change or modification is reasonably necessary or advisable to preserve the Tax Benefit under the Code and the regulations thereunder or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefit.

(5) The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article XV without any requirement of the posting of a bond in connection therewith or any related appellate proceeding and each holder of Corporation Securities is deemed to have waived any right to require the posting of any such bond.

(6) No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board, as the case may be, except to the extent specifically waived in writing.

F. Damages. Any Person subject to the provisions of this Article XV who knowingly violates or any Person who knowingly causes a stockholder of the Corporation under such Person's control and subject to the provisions of this Article XV to knowingly violate the provisions of this Article XV shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination

of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

G. Reliance. The Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer or the chief accounting officer of the Corporation or of the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article XV, and the members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith.

H. Severability. Any provision in this Article XV which is judicially determined to be prohibited, invalid or otherwise unenforceable (whether on its face or as applied to a particular stockholder, transferee or Acquisition) under the laws of the State of Delaware shall be ineffective to the extent of such prohibition, invalidity or unenforceability without prohibiting, invalidating or rendering unenforceable the remaining provisions of this Article XV and of this Certificate of Incorporation, which shall be thereafter interpreted as if the prohibited, invalid or unenforceable part had been reformed to the extent required to be valid, legal and enforceable, and, to the maximum extent possible, in a manner consistent with preserving the Corporation's use of the Tax Benefits without any Code Section 382 limitation.

I. Waiver of Restrictions. Upon the occurrence of the Restriction Release Date, the Board of Directors shall promptly cause the Corporation to (i) announce waiver of the restrictions in paragraph B of this Article XV by press release and the filing of a Current Report on Form 8-K with the Securities and Exchange Commission and (ii) following the delivery by any stockholder to the Company of a certificate representing Corporation Securities legended in accordance with paragraph E(2) of this Article XV, deliver or cause to be delivered to such stockholder a certificate representing such Corporation Securities that is free from such legend.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its [] this [] day of [], 2010.

[], INC.

/s/ _____

Name: []

Its: []

EXHIBIT 7

AMENDED AND RESTATED

BYLAWS

OF

[_____], Inc.

[_____] 2010

**AMENDED AND RESTATED
BYLAWS
OF
[_____] , Inc.
(Adopted [_____] , 2010)**

**ARTICLE I
STOCKHOLDERS**

SECTION 1. Stockholder Meetings.

(a) The annual meeting of stockholders of [_____] , Inc. (the “Corporation”) for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year at such date, time and place, if any, within or without the State of Delaware, as the Board of Directors shall determine.

(b) A special meeting of the stockholders for any purpose or purposes may be called by the Board of Directors. A special meeting of stockholders shall be called by the Secretary promptly upon and in accordance with the written request, stating the purpose, date, time and place within or without the State of Delaware of the meeting, of stockholders of record who together hold fifteen percent (15%) or more of the voting power of the issued and outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the “Voting Stock”).

SECTION 2. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such meeting, the place at which the list of stockholders may be examined, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, and any other information required by law to be included in the notice. Unless otherwise provided by law, the Corporation’s Certificate of Incorporation, as it may be amended from time to time (the “Certificate of Incorporation”), or these amended and restated bylaws (the “Bylaws”), the notice of any meeting shall be mailed or otherwise delivered (including pursuant to electronic transmission in the manner provided in Section 232 of the General Corporation Law of the State of Delaware (the “DGCL”)) not less than ten (10) nor more than sixty (60) days prior to the date of the meeting to each stockholder of record entitled to vote at such meeting and shall otherwise comply with applicable law. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Any previously scheduled meeting of the stockholders may be postponed, and (unless the Certificate of Incorporation otherwise provides) any special meeting of the stockholders called by the Board of Directors may be cancelled, by resolution of the Board of Directors upon public announcement made prior to the date previously scheduled for such meeting of stockholders.

SECTION 3. Quorum and Adjournment. Except as otherwise provided by law or the Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the voting power of the Voting Stock, present in person or by proxy, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting may (i) from time to time adjourn any meeting that is not a special meeting called by a stockholder(s) pursuant to Section 1(b), whether or not there is such a quorum and (ii) adjourn a special meeting called by a stockholder(s) pursuant to Section 1(b) only if there is not such a quorum; provided, that, in the case of clauses (i) and (ii), the date, time and place of the adjourned meeting is announced at the meeting such adjournment is taken; provided, however, that notice shall be provided if the meeting is adjourned for more than 30 days or otherwise required by law. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

SECTION 4. Organization. Meetings of stockholders shall be presided over by the Chairman of the Board of Directors (the "Chairman"), or if none or in the Chairman's absence the Presiding Director, or if none or in the Presiding Director's absence, the Vice-Chairman, or if none or in the Vice-Chairman's absence the Chief Executive Officer, or in the Chief Executive Officer's absence a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by the stockholders entitled to vote who are present in person or by proxy at the meeting. The Secretary of the Corporation, or in the Secretary's absence an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint any person present to act as secretary of the meeting.

SECTION 5. Voting; Proxies; Required Vote.

(a) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by an instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney in fact and otherwise complying with requirements of the DGCL and any stock exchange(s) upon which the Voting Stock is then listed (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period), and, unless the Certificate of Incorporation provides otherwise, shall have one vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, which shall be governed by Section 8 of this Article I, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter shall be the act of the stockholders.

(b) When specified business is to be voted on by a class or series of stock voting as a class, the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class, unless otherwise provided in the Certificate of Incorporation.

SECTION 6. **Inspectors.** The Board of Directors, in advance of any meeting, may, but need not unless required by law, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of such inspector's ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

SECTION 7. **Notice of Stockholder Nominations and Other Business.**

(a) **Annual Meetings of Stockholders.**

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors, or (C) by any stockholder of the Corporation who (i) was a stockholder of record of the Corporation at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the annual meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the notice procedures set forth in this Section 7 as to such business or nomination. Clause (C) of the preceding sentence shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters or nominations properly brought under Rule 14a-8 or Rule 14a-11 under the Securities Exchange Act of 1934, as amended (including the rules and regulations promulgated thereunder, the "Exchange Act") and included in the Corporation's proxy statement) at an annual meeting of stockholders.

(2) Without qualification or limitation of any other requirement, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(1) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day nor later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than

thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, not later than the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) To be in proper form, a stockholder's notice delivered pursuant to this Section 7 must set forth: (A) as to each person, if any, whom the stockholder proposes to nominate for election or reelection as a director (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in contested election, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected and (iii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and, if applicable, the beneficial owner of the shares held of record by such stockholder (the "Beneficial Owner"), if any, and their respective affiliates, or others acting in concert therewith, on the one hand, and each proposed nominee, and such persons' respective affiliates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if the stockholder making the nomination and any Beneficial Owner, if any, or any affiliate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the Beneficial Owner, if any, on whose behalf the proposal is made, and a description of all agreements, arrangements and understandings between such stockholder and Beneficial Owner, if any, (including their names) in connection with the proposal of such business by such stockholder; and (C) as to the stockholder giving the notice and the Beneficial Owner, if any, (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such Beneficial Owner, if any, (ii) (a) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such Beneficial Owner, (b) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (c) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed have a short interest of such stockholders and Beneficial Owner, if any, in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 7 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 7 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected

pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or a committee thereof, or (2) provided, that the Board of Directors, such committee or stockholder(s) pursuant to Section 1(b) hereof have determined that a purpose of the meeting is to elect directors, by any stockholder of the Corporation who (i) is a stockholder of record of the Corporation at the time the notice provided for in this Section 7 is delivered to the Secretary of the Corporation and at the time of the special meeting, (ii) is entitled to vote at the meeting and upon such election, and (iii) complies with the notice procedures set forth in this Section 7 as to such nomination. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(3) hereof with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by these Bylaws) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or, if the first public announcement of the date of such special meeting is less than one hundred (100) days prior to the date of such special meeting, the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(d) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 7 and the Certificate of Incorporation shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 7. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the person presiding at the meeting of stockholders shall have the power and duty (a) to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 7 (including whether the stockholder or Beneficial Owner, if any, solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(3)(C)(v) of this Section 7) and (b) if the presiding person determines that any proposed nomination or other business was not made or proposed in compliance with this Section 7, to declare that such nomination shall be disregarded or that such proposed other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 7, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such proposed other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 7, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 7, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "SEC") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 7; provided, however, that any references in these Bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 7 (including clause (a)(1)(C) and paragraph (b) hereof), and compliance with clause (a)(1)(C) and paragraph (b) of this Section 7 shall be the exclusive means for a stockholder to make nominations or submit other business, as applicable (other than matters or nominations brought properly under and in compliance with Rule 14a-8 or Rule 14a-11 of the Exchange Act). Nothing in this Section 7 shall be deemed to affect any rights (A) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act or (B) of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation

(“Preferred Stock”) to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 8. Required Vote for Election of Directors.

(a) Except as otherwise provided pursuant to the Certificate of Incorporation and except as provided by Section 12 of Article II with respect to the filling of vacancies, directors shall be elected by a majority of votes cast by the shares represented at a meeting of stockholders and entitled to vote thereon, a quorum being present at such meeting, unless the election is contested, in which case directors shall be elected by a plurality of votes cast by the shares represented at such meeting. A “majority of votes cast” means that the number of votes cast “for” the election of the nominee exceeds fifty percent (50%) of the total number of votes cast “for” and “against” the election of that nominee. Stockholders shall also be provided the opportunity to abstain from voting with respect to the election of a director. In voting on the election of directors, abstentions, votes designated to be withheld from the election of a director and shares present but not voted in respect of the election of a director shall not be considered as votes cast. An election shall be considered “contested” if the number of nominees for election is greater than the number of directors to be elected. For purposes hereof, the number of nominees shall be determined as of the later of (i) the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation and (ii) the last date on which a stockholder in accordance with these Bylaws may give notice of the nomination of a person for election as a director in order for such nomination to be required to be presented for a vote of the stockholders of the Corporation. Each director, including a director elected to fill a vacancy, shall hold office until the next annual meeting of stockholders and until such director’s successor is duly elected and qualified or until such director’s earlier death, incapacity, resignation, retirement, disqualification or removal from office.

(b) If a nominee for director who is an incumbent director is not elected and no successor has been elected at such meeting, the director shall promptly tender such director’s resignation to the Board of Directors. The Nominating and Governance Committee shall make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Governance Committee’s recommendation, and publicly disclose (by a press release, a filing with the SEC or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Nominating and Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director who tenders a resignation shall not participate in the recommendation of the Nominating and Governance Committee or the decision of the Board of Directors with respect to such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until such director’s successor is duly elected, or such director’s earlier resignation or removal. If a director’s resignation is accepted by the Board of Directors pursuant to these Bylaws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting

vacancy pursuant to the provisions of Article II, Section 12 of these Bylaws or may decrease the size of the Board of Directors pursuant to the provisions of Article II, Section 2 of these Bylaws.

SECTION 9. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Article I, Section 7 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) will abide by the requirements of Article I, Section 8 of these Bylaws, (B) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law as it presently exists or may hereafter be amended, (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (D) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

SECTION 10. Removal of Director. Unless otherwise provided by law and subject to the provisions of the Certificate of Incorporation and subject to the rights of the holders of any series of Preferred Stock, if any outstanding, with respect to such series of Preferred Stock, the stockholders, acting at a duly called annual meeting or a duly called special meeting of the stockholders, at which there is a proper quorum and where notice has been provided in accordance with Section 7 of this Article I, may remove a director or directors of the Corporation, but only for cause.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. General Powers. The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

SECTION 2. Qualification; Number; Term; Remuneration.

(a) Each director shall be at least 18 years of age. A director need not be a stockholder, a citizen of the United States, or a resident of the State of Delaware. The total number of directors that the Corporation would have if there were no vacancies (the "Whole Board") shall be fixed from time to time exclusively by action of the Board of Directors, one of whom may be selected by the Board of Directors to be its Chairman.

(b) Directors who are elected at an annual meeting of stockholders, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified or until their earlier resignation or removal.

(c) Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and directors who are not employees of the Corporation may be paid a fixed sum for attendance at each meeting of the Board of Directors and each meeting of a committee of the Board of Directors on which such director serves or a stated salary as director or such other compensation scheme (which may include awards of stock, options, or other incentive awards) as the Compensation Committee of the Board of Directors determines from time to time. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for committee service.

SECTION 3. Quorum and Manner of Voting. Except as otherwise provided by law or in these Bylaws, a majority of the Whole Board shall constitute a quorum. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 4. Places of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of Delaware as may from time to time be fixed by resolution of the Board of Directors, or as may be specified in the notice of meeting.

SECTION 5. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 6. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Presiding Director, President, Chief Executive Officer or by any two (2) of the directors then in office.

SECTION 7. Notice of Meetings. A notice of the place, date and time and the purpose or purposes of each special meeting of the Board of Directors shall be given to each director by mail, personal delivery, electronic transmission or telephone at least twenty-four (24) hours before the day of the meeting; provided, however, if notice is sent by United States Mail, it shall be deposited in the United States Mail at least five (5) days before the date of the meeting.

Notice shall be deemed to be given at the time of mailing, but said twenty-four (24) hours' notice need not be given to any director who consents in writing, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

SECTION 8. **Chairman of the Board of Directors.** Except as otherwise provided by law, the Certificate of Incorporation, or in Section 9 of this Article II, the Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 9. **Presiding Director.** If at any time the Chairman of the Board of Directors shall be an executive officer or former executive officer of the Corporation or for any reason shall not be an independent director, a Presiding Director shall be selected by the independent directors from among the directors who are not executive officers or former executive officers of the Corporation and are otherwise independent. If the Chairman of the Board of Directors is not present, the Presiding Director shall chair meetings of the Board of Directors. The Presiding Director shall chair any meeting of the independent directors and shall also perform such other duties as may be assigned to the Presiding Director by these Bylaws or the Board of Directors.

SECTION 10. **Organization.** At all meetings of the Board of Directors, the Chairman, or if none or in the Chairman's absence or inability to act, the Presiding Director, or if none or in the Presiding Director's absence or inability to act, the Chief Executive Officer, or in the Chief Executive Officer's absence or inability to act any Vice-President who is a member of the Board of Directors, or if none or in such Vice-President's absence or inability to act, a chairman chosen by the directors shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 11. **Resignation.** Any director may resign at any time upon written notice to the Corporation and, except for a resignation tendered pursuant to Section 8(b) of Article I, such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation.

SECTION 12. **Vacancies.** Subject to applicable law and the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, if any outstanding, newly created directorships resulting from any increase in the authorized number of directors will be filled by a majority of the Board of Directors then in office, provided, that a majority of the Whole Board is present, unless the Board of Directors otherwise determines that such directorships should be filled by the affirmative vote of the stockholders of record of at least a majority of the Voting Stock, and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause will be filled generally by the majority vote of the remaining directors in office, even if less than a quorum is present. No change in the number of authorized directors constituting the Whole Board shall shorten or increase the term of any incumbent director.

SECTION 13. **Conference Telephone Meetings.** Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 14. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the Board of Directors.

ARTICLE III

COMMITTEES

SECTION 1. **Appointment.** From time to time the Board of Directors, by a resolution adopted by a majority of the Whole Board, may appoint any committee or committees, each committee to consist of two (2) (or such other minimum number, if any, mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), as in effect from time to time) or more directors of the Corporation for any purpose or purposes, to the extent lawful, which shall have powers as shall be determined and specified by the Board of Directors in the resolution of appointment, including the following committees:

(a) an Executive Committee, which shall have such authority as has been or shall be delegated by the Board of Directors and shall advise the Board of Directors from time to time with respect to such matters as the Board of Directors shall direct; and

(b) an Audit Committee, a Compensation Committee and a Nominating & Governance Committee, each of which shall have such authority (i) as has been or shall be set forth in the charter for such committee (as in effect from time to time and approved by the Board of Directors), which authority shall at all times be not less than that mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), and (ii) as shall otherwise be delegated by the Board of Directors.

The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee, provided, that each committee shall consist of at least such minimum number of directors, if any, mandated by law and the applicable listing requirements of the New York Stock Exchange (or the principal stock exchange on which the Corporation's common stock is listed), as in effect from time to time. Nothing herein shall be deemed to prevent the Board of Directors from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

SECTION 2. **Procedures, Quorum and Manner of Acting.** Each committee shall fix its own rules of procedure and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the

then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. **Action by Unanimous Written Consent.** Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing (which may be provided by electronic transmission), and such writing or writings are filed with the minutes of proceedings of the committee.

SECTION 4. **Term; Termination.** In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

ARTICLE IV

OFFICERS

SECTION 1. **Election and Qualifications.** The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer and a Secretary, and may include, by election or appointment, one or more Vice-Presidents (any one or more of whom may be given an additional designation of rank or function), a Treasurer and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Any two or more offices may be held by the same person; provided, however, no person shall simultaneously hold the offices of Chief Executive Officer and Secretary.

SECTION 2. **Term of Office and Remuneration.** The term of office of all officers shall be one year or until their respective successors have been elected and qualified, but any officer may be removed from office, either with or without cause, at any time by a vote of the Board of Directors. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board of Directors. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 3. **Resignation; Removal.** Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chief Executive Officer or Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by a vote of the Board of Directors.

SECTION 4. **Chief Executive Officer.** The Chief Executive Officer shall have such duties as customarily pertain to that office. The Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and over its other officers and may appoint and remove assistant officers and other agents and employees other than officers referred to in Section 1 of this Article IV.

SECTION 5. **Vice-President.** A Vice-President shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 6. **Treasurer.** The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 7. **Secretary.** The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 8. **Assistant Officers.** Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board of Directors shall from time to time prescribe.

SECTION 9. **Other Officers.** The Board of Directors may elect other officers from time to time, and vest such officers with such powers and duties, as the Board of Directors may deem proper.

ARTICLE V

BOOKS AND RECORDS

SECTION 1. **Location.** The books and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all stockholders, the number and class of shares of stock held by each and the dates when they respectively became the owners of record thereof shall be kept by the Secretary and by such officer or agent as shall be designated by the Board of Directors.

SECTION 2. **Addresses of Stockholders.** Notices of meetings and all other corporate notices may be delivered (i) personally or mailed to each stockholder at the stockholder's address as it appears on the records of the Corporation, or (ii) any other method permitted by applicable law and rules and regulations of the SEC as they presently exist or may hereafter be amended.

SECTION 3. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall

not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE VI

STOCK

SECTION 1. **Stock; Signatures.** Shares of the Corporation's stock may be evidenced by certificates for shares of stock or may be issued in uncertificated form in accordance with applicable law as it presently exists or may hereafter be amended. The Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution or the issuance of shares in uncertificated form shall not affect shares already represented by a certificate until such certificate is surrendered to the Corporation. Every holder of shares of stock in the Corporation that is represented by certificates shall be entitled to have a certificate certifying the number of shares owned by him in the Corporation and registered in certificated form. Stock certificates shall be signed by or in the name of the Corporation by the Chairman or Vice Chairman, if any, of the Board of Directors, or the Chief Executive Officer or Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificated form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented by certificated or uncertificated shares, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. **Transfers of Stock.** Transfers of shares of stock of the Corporation shall be made on the books of the Corporation after receipt of a request with proper evidence of succession, assignation, or authority to transfer by the record holder of such stock, or by an

attorney lawfully constituted in writing, and in the case of stock represented by a certificate, upon surrender of the certificate. Subject to the foregoing, the Board of Directors may make such rules and regulations as it shall deem necessary or appropriate concerning the issue, transfer and registration of shares of stock of the Corporation, and to appoint and remove transfer agents and registrars of transfers.

SECTION 3. **Fractional Shares.** The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a stockholder except as therein provided.

SECTION 4. **Lost, Stolen or Destroyed Certificates.** The Corporation may issue a new certificate of stock or uncertificated shares in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or the legal representative thereof, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificated or uncertificated shares.

SECTION 5. **Special Designation on Certificates.** If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of any certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 5 or otherwise required by law or with respect to this Section 5 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

ARTICLE VII

DIVIDENDS

Except as otherwise provided by law or the Certificate of Incorporation (including the terms of any Preferred Stock provided for therein), the Board of Directors shall have full power to determine whether any, and, if any, what part of any, funds legally available for the payment of dividends shall be declared as dividends and paid to stockholders; the division of the whole or any part of such funds of the Corporation shall rest wholly within the lawful discretion of the Board of Directors, and it shall not be required at any time, against such discretion, to divide or pay any part of such funds among or to the stockholders as dividends or otherwise; and before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall think conducive to the interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

ARTICLE VIII

RATIFICATION

Any transaction, questioned in any lawsuit on the ground of lack of authority, defective or irregular execution, adverse interest of director, officer or stockholder, nondisclosure, miscomputation, or the application of improper principles or practices of accounting, may be ratified before or after judgment, by the Board of Directors or by the stockholders, and if so ratified shall have the same force and effect as if the questioned transaction had been originally duly authorized. Such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned transaction.

ARTICLE IX

CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Corporation and the year of its incorporation, and shall be in such form and contain such other words and/or figures as the Board of Directors shall determine. The corporate seal may be used by printing, engraving, lithographing, stamping or otherwise making, placing or affixing, or causing to be printed, engraved, lithographed, stamped or otherwise made, placed or affixed, upon any paper or document, by any process whatsoever, an impression, facsimile or other reproduction of said corporate seal. Affixing the corporate seal shall not be required for the validity of any contract or agreement, deed, promissory note or other document executed and delivered by the Corporation, except as otherwise required by law.

ARTICLE X

FISCAL YEAR

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE XI

WAIVER OF NOTICE

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, the person or persons entitled to said notice may consent in writing, whether before or after the time stated therein, to waive such notice requirement. Notice shall also be deemed waived by any person who attends a meeting without protesting prior thereto or at its commencement, the lack of notice to him.

ARTICLE XII

BANK ACCOUNTS, DRAFTS, CONTRACTS, ETC.

SECTION 1. **Bank Accounts and Drafts.** In addition to such bank accounts as may be authorized by the Board of Directors, the chief financial officer, the Treasurer or any person designated by said chief financial officer or Treasurer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as such person may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said chief financial officer, or other person so designated by the Treasurer.

SECTION 2. **Contracts.** The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. Except as otherwise provided by the Board of Directors or the Chief Executive Officer, any officer of the Corporation may execute and deliver any deed, bond, mortgage, contract or other obligation or instrument on behalf of the Corporation.

SECTION 3. **Proxies; Powers of Attorney; Other Instruments.** The Chief Executive Officer, the Treasurer or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock by the Corporation. The Chief Executive Officer, the Treasurer or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in

the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

SECTION 4. **Financial Reports**. The Board of Directors may appoint the chief financial officer, the Treasurer or other fiscal officer or any other officer to cause to be prepared and furnished to stockholders entitled thereto any special financial notice and/or financial statement, as the case may be, which may be required by any provision of law.

ARTICLE XIII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any person (a "Covered Person") who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature (a "proceeding"), by reason of the fact that such Covered Person, or a person for whom he or she is the legal representative, is or was, at any time during which these Bylaws are in effect or any time prior thereto (whether or not such Covered Person continues to serve in such capacity at the time any indemnification or payment of expenses pursuant hereto is sought or at the time any proceeding relating thereto exists or is brought), a director or officer of the Corporation, or has or had agreed to become a director or officer of the Corporation, or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity or other enterprise, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, trustee, employee or agent or in any other capacity while serving as a director, officer, trustee, employee or agent, against all liability and loss suffered (including, without limitation, any judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) and expenses (including attorneys' fees and disbursements), actually and reasonably incurred by such Covered Person in connection with such proceeding to the fullest extent permitted by law, and such indemnification shall continue as to a person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of such person's heirs, executors and administrators, and the Corporation may enter into agreements with any such person for the purpose of providing for such indemnification. For purposes of this Article XIII, a director or officer of the Corporation serving as a director, officer, trustee, employee or agent or in any other capacity while serving as a director, officer, trustee, employee or agent of a company of which the Corporation owns, directly or indirectly, a majority of the shares or other interests entitled to vote in the selection of its directors or the members of a comparable governing body or of an employee benefit plan of the Corporation or of any such company shall be deemed to have served in such capacity at the request of the Corporation and actions taken or omitted by a Covered Person on behalf of such an employee benefit plan of the Corporation or of any direct or indirect subsidiary of the Corporation, if done in good faith and in a manner that he or she reasonably believed was in the best interests of the employee benefit plan or its participants or beneficiaries, shall be deemed to have been done in a

manner not opposed to the best interests of the Corporation and actions taken or omitted on behalf of a direct or indirect subsidiary of the Corporation (even if not wholly owned by the Corporation), if done in good faith and in a manner that he or she reasonably believed to be in the best interests of the subsidiary or its owners, shall be deemed to have been done in a manner not opposed to the best interests of the Corporation. Except as otherwise provided in this Article XIII, and other than proceedings to enforce rights conferred by the Certificate of Incorporation or this Article XIII, the Corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by the Board of Directors. The right to indemnification conferred in this Article XIII shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred by a Covered Person in defending any such proceeding in advance of its final disposition, such advances to be paid by the Corporation within sixty (60) days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time (and subject to filing a written request for indemnification pursuant to the following paragraph of Section 1 of this Article XIII); provided, however, that the payment of such expenses incurred by a director or officer (or a former director or officer) in such person's capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon receipt of an undertaking by or on behalf of the Covered Person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal that the Covered Person is not entitled to be indemnified by the Corporation for such expenses under this Article XIII or otherwise. The rights conferred upon Covered Persons in this Article XIII shall be contract rights that vest at the time of such person's service to or at the request of the Corporation and such rights shall continue as to a Covered Person who has ceased to be a director, officer, trustee, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

To obtain advancement or indemnification under this Article XIII, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to advancement or indemnification. Upon written request by a claimant for indemnification pursuant to the immediately preceding sentence, a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as hereinafter defined), or (ii) by a committee of Disinterested Directors designated by a majority of such directors, even though less than a quorum, or (iii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iv) if a quorum of Disinterested Directors so directs, by the stockholders of the Corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two (2) years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a "Change

of Control” (as defined below), in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within sixty (60) days after such determination. As used herein, “Change in Control” means the happening of any of the following events: (A) any Person (as hereinafter defined) acquires Beneficial Ownership (as hereinafter defined) of 50% or more of the combined voting power of the then outstanding Voting Stock; (B) consummation of a Business Combination (as hereinafter defined), unless, following such Business Combination, (x) all or substantially all of the individuals and entities that were the Beneficial Owners of the outstanding Voting Stock immediately prior to such Business Combination Beneficially Own, directly or indirectly, more than 50% of the combined voting power of the issued and outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of the entity resulting from such Business Combination (including, without limitation, a company that, as a result of such transaction, owns the Corporation or all or substantially all of the Corporation’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the voting power of the Voting Stock, and (y) no Person Beneficially Owns, directly or indirectly, 50% or more of the combined voting power of the issued and outstanding voting securities entitled to vote generally in the election of directors (or equivalent) of such entity; (C) approval by the stockholders of the Corporation of a liquidation or dissolution of the Corporation; or (D) individuals who, as of [Effective Date], 2010, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board of Directors (provided, however, that any individual whose election or nomination for election by the Corporation’s shareholders was approved by a vote of at least a majority of the directors comprising the incumbent Board of Directors as of such election or nomination, shall be considered as though such individual were a member of the Incumbent Board). In this paragraph, the terms (I) “Beneficial Owner,” “Beneficially Own” and “Beneficial Ownership” are used as defined in Rules 13d-3 and 13d-5 of the Exchange Act (but without taking into account any contractual restrictions or limitations on voting or other rights), (II) “Business Combination” means (a) any merger, consolidation, share exchange or similar business combination transaction involving the Corporation with any Person or (b) the sale or other disposition by the Corporation of all or substantially all of its assets; and (III) “Person” means an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).

SECTION 2. If a claim for indemnification or advancement under this Article XIII is not paid in full within sixty (60) days after a written claim pursuant has been received by the Corporation, the claimant may at any time thereafter file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an

actual determination by the Corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

SECTION 3. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred on any Covered Person by this Article XIII (i) shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the Corporation, the Board of Directors or the stockholders of the Corporation with respect to a Covered Person's service occurring prior to the date of such termination. The Corporation may enter into agreements providing for indemnity of or advancement of expenses to a director or officer containing such provisions further to or alternative to the provisions of this Article XIII as the Board of Directors determines is in the best interests of the Corporation. However, notwithstanding the foregoing, the Corporation's obligation to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, enterprise or nonprofit entity shall be reduced by any amount such person has collected as indemnification from such other corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity, or other enterprise; and, in the event the Corporation has fully paid such expenses, the Covered Person shall return to the Corporation any amounts subsequently received from such other source of indemnification.

Any repeal, other termination, amendment, alteration or modification of the provisions of this Article XIII that in any way diminishes, limits, restricts, adversely affects or eliminates any right of an indemnitee or such person's successors to indemnification, advancement of expenses or otherwise shall be prospective only and shall not in any way diminish, limit, restrict, adversely affect or eliminate any such right with respect to any actual or alleged act or omission occurring prior thereto while such a person was a director or officer of the Corporation or any actual or alleged state of facts, occurrence, action or omission then or previously existing, or any action, suit or proceeding previously or thereafter brought or threatened based in whole or in part upon any such actual or alleged state of facts, occurrence, action or omission.

SECTION 4. This Article XIII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and advance expenses (on substantially similar terms and subject to the same obligations as those set forth in Sections 1 through 3 of this Article XIII) to persons other than Covered Persons when and as authorized by the Board of Directors. In addition, the Corporation may purchase and maintain insurance, at its expense, on behalf of any person who is or was a Covered Person and any employee or agent of the Corporation or its subsidiaries against any liability, expense or loss asserted against such person and incurred by such person in such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or obligation to indemnify such person against such liability, expense or loss.

SECTION 5. If any provision or provisions of this Article XIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and

enforceability of the remaining provisions of this Article XIII (including, without limitation, each portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article XIII (including, without limitation, each such portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 6. For purposes of this Article XIII:

(1) “Disinterested Director” means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(2) “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and indemnification issues and neither presently is, nor in the past five years has been, retained to represent: (i) the Corporation or the claimant in any matter material to either such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant’s rights under this Article XIII.

SECTION 7. Any notice, request or other communication required or permitted to be given to the Corporation under this Article XIII shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

ARTICLE XIV

AMENDMENTS

The Board of Directors shall have power to amend, modify or repeal these Bylaws or adopt any new provision authorized by the laws of the State of Delaware in force at such time. The stockholders of the Corporation shall have the power to amend, modify or repeal these Bylaws, or adopt any new provision authorized by the laws of the State of Delaware in force at such time, at a duly called meeting of the stockholders; provided, that notice of the proposed adoption, amendment, modification or repeal was given in the notice of the meeting; provided, further, notwithstanding any other provisions of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend, modify or repeal any provision, or adopt any new or additional provision, in a manner inconsistent with Sections 7 and 8 of Article I, Article XIII and this Article XIV of these Bylaws.

[_____] , Inc.
a Delaware corporation

CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting [_____] of [_____] , Inc., a Delaware corporation, and that the foregoing Amended and Restated Bylaws were adopted as the Corporation's bylaws on [_____] , 2010 by the Corporation's Board of Directors.

IN WITNESS WHEREOF, the undersigned has hereunto set such person's hand this [_____] day of [_____] , 2010.

By: /s/ _____
[_____]

EXHIBIT 8

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “Agreement”) is made as of the [•] day of [___], 2010 by and between [General Growth Properties, Inc.], a Delaware corporation (the “Company”), and [•] (the “Indemnitee”).

WHEREAS, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the “Board of Directors”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, although the [Amended and Restated] Certificate of Incorporation of the Company (the “Certificate”) and the [Amended and Restated] Bylaws of the Company (the “Bylaws”) require indemnification of the officers and directors of the Company under the circumstances specified therein, and Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”), the Certificate, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and authorize the Company to enter into contracts between the Company and members of the board of directors, officers and other persons with respect to indemnification; and

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate and the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

NOW, THEREFORE, in consideration of Indemnitee’s agreement to serve or continue serving as a director or officer, or both, of the Company after the date hereof, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) “Change in Control” shall mean a change in control of the Company occurring after the date hereof of a nature that would be required to be reported in response to Item 6(e) on Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended (the “Act”), whether or not the Company is then subject to such reporting requirement; provided, however, that, without limitation, a Change in Control shall include: (i) the acquisition (other than acquisition by or from the Company) after the date hereof by any person, entity or “group,” within the meaning of Section 13(d)(3) or 14(d)(2) of the Act (excluding, for this purpose, the Company or its subsidiaries, any employee benefit plan of the Company or its subsidiaries that acquires beneficial ownership of voting securities of the Company, and any qualified institutional investor that meets the requirements of Rule 13d-1(b)(1) promulgated under the Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act), of 50% or more of either the then-outstanding shares of common stock or the combined voting power of the Company’s then-outstanding capital stock entitled to vote generally in the election of directors; (ii) individuals who, as of the date hereof, constitute the Board of Directors (the “Incumbent Board”) ceasing for any reason to constitute at least a majority of the Board of Directors, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board; or (iii) approval by the stockholders of the Company of (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged, consolidated or other surviving corporation’s then-outstanding voting securities, (B) a liquidation or dissolution of the Company, or (C) the sale of all or substantially all of the assets of the Company.

(b) “Corporate Status” describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving in a similar capacity at the written request of the Company.

(c) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement is sought by Indemnitee.

(d) “Enterprise” shall mean the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the written request of the Company as a director, officer, employee, agent or fiduciary.

(e) “Expenses” shall include all reasonable attorneys’ fees, retainers, disbursements of counsel, court costs, filing fees, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, duplicating and imaging costs, printing and binding costs, telephone charges, facsimile transmission charges, computer legal research costs, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, as well as all other “expenses” within the meaning of that term as used in Section 145 of the General Corporation Law of the State of Delaware and all other disbursements or expenses of types customarily and reasonably incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, actions, suits, or proceedings similar to or of the same type as the Proceeding with respect to which such disbursements or expenses were incurred; but, notwithstanding anything in the foregoing to the contrary, “Expenses” shall not include amounts of judgments, penalties, or fines actually levied against the Indemnitee in connection with any Proceeding. Expenses also shall include the foregoing incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent.

(f) “Independent Counsel” means a law firm, a member of a law firm or an independent practitioner that is experienced in matters of corporation law and indemnification issues and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(g) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation (including any internal investigation), inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by Indemnitee or of any inaction on such Indemnitee’s part while acting as an officer or director of the Company, or by reason of the fact that such Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 8 of this Agreement to enforce such Indemnitee’s rights under this Agreement.

(h) References herein to “fines” shall not include any excise tax assessed with respect to any employee benefit plan.

(i) References herein to a director of another Enterprise or a director of an other Enterprise shall include, in the case of any entity that is not managed by a board of directors, such other position, such as manager or trustee or member of the governing body of such entity, that entails responsibility for the management and direction of such entity’s affairs, including, without limitation, the general partner of any partnership (general or limited) and the manager or managing member of any limited liability company.

(j) (i) References herein to serving at the request of the Company as a director, officer, employee, agent, or fiduciary of another Enterprise shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan of the Company or any of its affiliates, other than solely as a participant or beneficiary of such a plan; and (ii) if the Indemnatee has acted in good faith and in a manner the Indemnatee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, the Indemnatee shall be deemed to have acted in a manner not opposed to the best interests of the Company for purposes of this Agreement.

2. Indemnity of Indemnatee. The Company hereby agrees to hold harmless and indemnify Indemnatee to the fullest extent permitted by applicable law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Except as provided in Section 10 hereof, Indemnatee shall be entitled to the rights of indemnification provided in this Section 2(a) if, by reason of Indemnatee’s Corporate Status, the Indemnatee is or was, or is or was threatened to be made, a party to or is otherwise involved in any Proceeding other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2(a), Indemnatee shall be indemnified against all Expenses, judgments, penalties, fines, liabilities and amounts paid in settlement actually and reasonably incurred by Indemnatee, or on Indemnatee’s behalf, in connection with such Proceeding or any claim, issue or matter therein, but only if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnatee’s conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Except as provided in Section 10 hereof, Indemnatee shall be entitled to the rights of indemnification provided in this Section 2(b) if, by reason of Indemnatee’s Corporate Status, the Indemnatee is or was, or is or was threatened to be made, a party to or is or was otherwise involved in any Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2(b), Indemnatee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnatee, or on the Indemnatee’s behalf, in connection with such Proceeding or any claim, issue or matter therein, but only if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company;

provided, however, if applicable law so provides, no indemnification for such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which the Indemnatee shall have been adjudged liable to the Company unless (and only to the extent that) the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnatee is fairly and reasonably entitled to indemnity for such Expenses that the Court of Chancery or such other court shall deem proper.

(c) Overriding Right to Indemnification if Successful on the Merits.

Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is or was, by reason of Indemnatee's Corporate Status or otherwise, a party to and is or was successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by applicable law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee to the maximum extent permitted by applicable law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

3. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 2 of this Agreement, the Company shall and hereby does, to the fullest extent permissible under applicable law, indemnify and hold harmless Indemnatee against all Expenses, judgments, penalties, fines, liabilities and amounts paid in settlement actually and reasonably incurred by Indemnatee or on Indemnatee's behalf if, by reason of Indemnatee's Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnatee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnatee that is finally determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof) to be unlawful.

4. Contribution.

(a) To the fullest extent permissible under applicable law, whether or not the indemnification provided in Section 2 and Section 3 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnatee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have against Indemnatee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or

proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnatee.

(b) To the fullest extent permissible under applicable law, without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnatee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines, liabilities and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnatee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, in connection with the events that resulted in such Expenses, judgments, fines, liabilities or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnatee harmless from any claim of contribution brought by officers, directors or employees of the Company, other than Indemnatee, who may be jointly liable with Indemnatee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, shall contribute to the amount incurred by Indemnatee, whether for judgments, fines, liabilities, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as the Board of Directors deems fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company (together with its directors, officers, employees and agents) and Indemnatee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

5. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is or was, by reason of Indemnatee's Corporate Status or otherwise, a witness, or is or was made (or asked) to respond to discovery requests, in

any Proceeding to which Indemnatee is not a party, he shall be indemnified to the fullest extent permissible under applicable law against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith.

6. Advancement of Expenses. Notwithstanding any other provision of this Agreement, but subject to Section 9(e) hereof, the Company shall advance all Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding by reason of Indemnatee's Corporate Status or otherwise within thirty (30) calendar days after the receipt by the Company of a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by or on behalf of Indemnatee and for which advancement is requested, and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it shall finally be determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof) that Indemnatee is not entitled to be indemnified against such Expenses. Such undertaking shall be sufficient for purposes of this Section 6 if it is substantially in the form attached hereto as Exhibit A. Any advances and undertakings to repay pursuant to this Section 6 shall be unsecured and interest-free. The Indemnatee shall be entitled to advancement of Expenses as provided in this Section 6 regardless of any determination by or on behalf of the Company that the Indemnatee has not met the standards of conduct set forth in Sections 2(a) and 2(b) hereof.

7. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnatee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnatee is entitled to indemnification under this Agreement:

(a) Indemnatee shall give the Company notice in writing as soon as practicable of any claim made against Indemnatee for which indemnification will or could be sought under this Agreement. To obtain indemnification under this Agreement, the Indemnatee shall submit to the Company a written request for indemnification, including therein or therewith, except to the extent previously provided to the Company in connection with a request or requests for advancement pursuant to Section 6 hereof, a statement or statements reasonably evidencing all Expenses incurred or paid by or on behalf of the Indemnatee and for which indemnification is requested, together with such documentation and information as is reasonably available to Indemnatee and as is reasonably necessary for the Company to determine whether and to what extent Indemnatee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnatee has requested indemnification. Failure to provide any notice required hereby shall not impair Indemnatee's rights of indemnification and contribution under this Agreement except to the extent that such failure to provide notice actually and materially prejudices the rights of the Company to defend any action or proceeding which is the basis of the claimed indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the second sentence of Section 7(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made by the following person or persons, who shall be empowered to make such determination: (i) if a Change in Control shall have occurred, by Independent Counsel (unless Indemnitee shall request in writing that such determination be made by the Board of Directors (or a committee thereof) in the manner provided for in clause (ii) of this Section 7(b)) in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall not have occurred, (A)(1) by Independent Counsel, if Indemnitee shall request in writing that such determination be made by Independent Counsel upon making Indemnitee's request for indemnification pursuant to the second sentence of Section 7(a), (2) by the Board of Directors of the Company, by a majority vote of Disinterested Directors even though less than a quorum, or (3) by a committee of Disinterested Directors designated by majority vote of Disinterested Directors, even though less than a quorum, or (B) if there are no such Disinterested Directors or, even if there are such Disinterested Directors, if the Board of Directors, by the majority vote of Disinterested Directors, so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(b) hereof, the Independent Counsel shall be selected by the Board of Directors and approved by Indemnitee. Upon failure of the Board of Directors to so select, or upon the failure of Indemnitee to so approve, such Independent Counsel within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 7(a) hereof, the Independent Counsel shall be selected by the Court of Chancery of the State of Delaware or such other person or body as the Indemnitee and the Company may agree in writing. Such determination of entitlement to indemnification shall be made not later than forty-five (45) days after receipt by the Company of a written request for indemnification. If the person making such determination shall determine that Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably pro-rate such part of indemnification among such claims, issues or matters. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 7(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 7(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In connection with any determination (including a determination by the Court of Chancery of the State of Delaware (or other court of competent jurisdiction)) with respect to entitlement to indemnification hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not entitled to indemnification and any decision that Indemnitee is not entitled to indemnification must be supported by clear and convincing evidence. The failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, or an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall not

be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(e) In making a determination with respect to whether Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, the person or persons or entity making such determination shall presume that Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and any decision that Indemnatee is not entitled to indemnification must be supported by clear and convincing evidence. In addition, and in no way limiting the provisions of this Section 7, Indemnatee shall be deemed to have acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Enterprise, or with respect to any criminal action or proceeding to have had no reasonable cause to believe Indemnatee's conduct was unlawful, if Indemnatee's action is based on (i) the records or books of account of the Enterprise, (ii) information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise; provided, however, that any failure by Indemnatee to act on the advice of legal counsel for the Enterprise shall not, in and of itself, constitute grounds for an adverse determination with respect to whether Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement.

(f) If the person, persons or entity empowered or selected under this Section 7 to determine whether Indemnatee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnatee shall be entitled to such indemnification absent (i) a misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto and so notifies the Indemnatee.

(g) Indemnatee shall cooperate with the person, persons or entity making such determination with respect to Indemnatee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnatee and reasonably necessary to such determination. Any Independent Counsel or member of the Board of Directors shall act reasonably and in good faith in making a determination regarding the Indemnatee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by

Indemnatee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnatee's entitlement to indemnification) and the Company hereby agrees to indemnify and hold Indemnatee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnatee is or becomes a party is resolved in any manner other than by adverse judgment against Indemnatee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnatee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnatee to indemnification under this Agreement or create a presumption that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that Indemnatee's conduct was unlawful.

8. Remedies of Indemnatee.

(a) In the event that (i) a determination is made pursuant to Section 7 of this Agreement that Indemnatee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 6 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 7(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within fifty-five (55) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnatee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 7 of this Agreement, Indemnatee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnatee's entitlement to such indemnification and/or advancement of Expenses. The Company shall not oppose Indemnatee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnatee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 8 shall be conducted in all respects as a de novo trial on the merits, and Indemnatee shall not be prejudiced by reason of the adverse determination under Section 7(b).

(c) If a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnatee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 8, absent (i) a

misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that (a) the Indemnitee commences a proceeding seeking (1) to establish or enforce the Indemnitee's entitlement to indemnification or advancement pursuant to this Agreement, (2) to otherwise enforce Indemnitee's rights under or to interpret the terms of this Agreement, (3) to recover damages for breach of this Agreement, (4) to establish or enforce Indemnitee's entitlement to indemnification or advancement pursuant to the Certificate or the Bylaws, or (5) to enforce or interpret the terms of any liability insurance policy maintained by the Company (each such proceeding an "Indemnitee Enforcement Proceeding"), or (b) the Company commences a proceeding against the Indemnitee seeking (1) to recover, pursuant to an undertaking or otherwise, amounts previously advanced to Indemnitee, (2) to enforce the Company's rights under or to interpret the terms of this Agreement, or (3) to recover damages for breach of this Agreement (each such proceeding a "Company Enforcement Proceeding" and together with each form of Indemnitee Enforcement Proceeding, an "Enforcement Proceeding"), then the Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all Expenses actually and reasonably incurred by or on behalf of such Indemnitee in connection with such Enforcement Proceeding, provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding on which Indemnitee does not prevail, unless (and only to the extent that) the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication in respect of such claim, issue or matter but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Expenses that the Court of Chancery or such other court shall deem proper. The Company also shall be required to advance all Expenses actually and reasonably incurred by or on behalf of the Indemnitee in connection with any Enforcement Proceeding in advance of the final disposition of such Enforcement Proceeding within thirty (30) days after the receipt by the Company of a written request for such advance or advances from time to time, which request shall include or be accompanied by a statement or statements reasonably evidencing the Expenses incurred by or on behalf of the Indemnitee and for which advancement is requested; provided, however, that any such advancement shall be made only after the Company receives an undertaking by or on behalf of the Indemnitee to repay any Expenses so advanced if it shall be finally determined that Indemnitee is not entitled to be indemnified against such Expenses.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 8 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

9. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under applicable law, the Certificate, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnatee under this Agreement in respect of any action taken or omitted by such Indemnatee in Indemnatee's Corporate Status or otherwise prior to such amendment, alteration or repeal. To the extent that a change in the DGCL or applicable law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Certificate, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnatee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. Notwithstanding anything in this Agreement to the contrary, the indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee or any of Indemnatee's agents.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other Enterprise that such person serves at the request of the Company, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability or other applicable insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, in the event of any payment to or on behalf of the Indemnatee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnatee, who shall execute all papers reasonably required and take all action reasonably necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnatee has otherwise actually received such

payment under any Company insurance policy, Company contract, Company agreement or otherwise (except to the extent that Indemnatee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(e) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, the Company's obligation to indemnify or advance Expenses hereunder to Indemnatee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other Enterprise shall be reduced by any amount Indemnatee has actually received as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise (except to the extent that Indemnatee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(f) The Company hereby acknowledges that Indemnatee is serving as a director or officer of the Company at the request of the Company or its Board of Directors. The Company hereby further acknowledges that Indemnatee might have certain rights to indemnification, advancement of Expenses and/or insurance coverage provided by one or more third parties other than the Company and its insurers (collectively, the "Third Party Indemnitors"). The Company hereby agrees that: (i) as between the Company and any Third Party Indemnitor, the Company is the indemnitor of first resort (i.e., its obligations to Indemnatee are primary and any obligation of any Third Party Indemnitor to advance Expenses or to provide indemnification or insurance coverage for the same Expenses or liabilities incurred by Indemnatee are secondary); (ii) it shall be required to advance the full amount of Expenses incurred by or on behalf of Indemnatee and shall be liable for the full amount of all judgments or amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement, the Certificate or the Bylaws (or any other agreement between the Company and Indemnatee), without regard to any rights Indemnatee may have against any Third Party Indemnitor; and (iii) it hereby irrevocably and unconditionally waives, relinquishes and releases any and all Third Party Indemnitors from any and all claims against the Third Party Indemnitors (or any of them) for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by any Third Party Indemnitor on behalf of Indemnatee with respect to any claim for which Indemnatee has sought indemnification from the Company shall affect the foregoing in any respect and the Third Party Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnatee against the Company. The Company and Indemnatee agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this Section 9.

10. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been made to or on behalf of Indemnatee under any insurance policy, or other indemnity provision or otherwise, except with respect to any

excess beyond the amount so paid, and except as may otherwise be agreed between the Company, on the one hand, and Indemnitee or another indemnitor of Indemnitee, on the other;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Act, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or any of its direct or indirect subsidiaries or the directors, officers, employees or other indemnitees of the Company or its direct or indirect subsidiaries (other than any Proceeding initiated by Indemnitee pursuant to Section 8(d), which shall be governed by the terms of such section), unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

11. Successors. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

12. Security. To the extent requested by Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

13. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve or continue serving as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company represents that this Agreement has been approved by the Company's Board of Directors.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision hereof. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee

indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees to promptly notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Disclosure of Payments. Except as expressly required by any law, neither party shall publicly disclose any payments under this Agreement unless prior approval of the other party is obtained.

18. Notices. Unless otherwise provided herein, any notice required or permitted under this Agreement shall be deemed effective upon the earlier of (a) actual receipt, or (b) (i) one (1) business day after the date of delivery by confirmed facsimile transmission, (ii) one (1) business day after the business day of deposit with a nationally recognized overnight courier service for next day delivery, freight prepaid, or (iii) three (3) business days after deposit with the United States Post Office for delivery by registered or certified mail, postage prepaid. Any such notice shall be in writing and shall be addressed to the party to be notified at the address indicated for such party indicated on the signature pages or exhibits hereto, as otherwise set forth in this Section 18, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee's signature hereto;

(b) To the Company at:

[General Growth Properties, Inc.]
110 N. Wacker Drive
Chicago, IL 60606
Attention: General Counsel
Facsimile: (312) 960-5485

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile or electronic signature.

20. Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

21. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “Delaware Court”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) consent to service of any summons and complaint and any other process that may be served in any action, suit, or proceeding arising out of or relating to this Agreement by mailing by certified or registered mail, with postage prepaid, copies of such process to such party at its address for receiving notice pursuant to Section 18 hereof, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum. Nothing herein shall preclude service of process by any other means permitted by applicable law.

22. Assignment. Neither party hereto may assign this Agreement without the prior written consent of the other party; provided, however, that the Company may assign this Agreement upon a Change in Control.

23. Construction. The parties acknowledge that both parties have contributed to the drafting of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

INDEMNITEE:

Signature: _____

Name: [•]

Address: [•]

COMPANY:

[GENERAL GROWTH PROPERTIES, INC.]

By: _____

Name:

Title: Authorized Officer

Address:

Exhibit A

UNDERTAKING

Reference is hereby made to that certain Indemnification Agreement, by and between [General Growth Properties, Inc.], a Delaware corporation (the "Company"), and the undersigned, dated as of [•] (the "Indemnification Agreement"). All initially capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indemnification Agreement.

Pursuant to the Indemnification Agreement, I,
_____, agree to reimburse the Company for all Expenses paid to me or on my behalf by the Company in connection with my involvement in **[name or description of proceeding or proceedings]**, in the event, and to the extent, that it shall ultimately be determined (pursuant to the terms of the Indemnification Agreement) that I am not entitled to be indemnified by the Company for such Expenses.

Signature _____

Typed Name _____

_____) ss:

Before me _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, stated that the contents of said instrument is to the best of his/her knowledge and belief true and correct and who acknowledged that he/she executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and official seal at _____, this _____ day of _____, 20__.

Notary Public

My commission expires:

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “Agreement”) is made as of the [•] day of [___], 2010 by and between [Spinco, Inc.], a Delaware corporation (the “Company”), and [•] (the “Indemnitee”).

WHEREAS, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the “Board of Directors”) has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, although the [Amended and Restated] Certificate of Incorporation of the Company (the “Certificate”) and the [Amended and Restated] Bylaws of the Company (the “Bylaws”) require indemnification of the officers and directors of the Company under the circumstances specified therein, and Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (“DGCL”), the Certificate, the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and authorize the Company to enter into contracts between the Company and members of the board of directors, officers and other persons with respect to indemnification; and

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate and the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

NOW, THEREFORE, in consideration of Indemnitee’s agreement to serve or continue serving as a director or officer, or both, of the Company after the date hereof, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) “Change in Control” shall mean a change in control of the Company occurring after the date hereof of a nature that would be required to be reported in response to Item 6(e) on Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended (the “Act”), whether or not the Company is then subject to such reporting requirement; provided, however, that, without limitation, a Change in Control shall include: (i) the acquisition (other than acquisition by or from the Company) after the date hereof by any person, entity or “group,” within the meaning of Section 13(d)(3) or 14(d)(2) of the Act (excluding, for this purpose, the Company or its subsidiaries, any employee benefit plan of the Company or its subsidiaries that acquires beneficial ownership of voting securities of the Company, and any qualified institutional investor that meets the requirements of Rule 13d-1(b)(1) promulgated under the Act) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act), of 50% or more of either the then-outstanding shares of common stock or the combined voting power of the Company’s then-outstanding capital stock entitled to vote generally in the election of directors; (ii) individuals who, as of the date hereof, constitute the Board of Directors (the “Incumbent Board”) ceasing for any reason to constitute at least a majority of the Board of Directors, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board; or (iii) approval by the stockholders of the Company of (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged, consolidated or other surviving corporation’s then-outstanding voting securities, (B) a liquidation or dissolution of the Company, or (C) the sale of all or substantially all of the assets of the Company.

(b) “Corporate Status” describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving in a similar capacity at the written request of the Company.

(c) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification or advancement is sought by Indemnitee.

(d) “Enterprise” shall mean the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the written request of the Company as a director, officer, employee, agent or fiduciary.

(e) “Expenses” shall include all reasonable attorneys’ fees, retainers, disbursements of counsel, court costs, filing fees, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, duplicating and imaging costs, printing and binding costs, telephone charges, facsimile transmission charges, computer legal research costs, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, as well as all other “expenses” within the meaning of that term as used in Section 145 of the General Corporation Law of the State of Delaware and all other disbursements or expenses of types customarily and reasonably incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, actions, suits, or proceedings similar to or of the same type as the Proceeding with respect to which such disbursements or expenses were incurred; but, notwithstanding anything in the foregoing to the contrary, “Expenses” shall not include amounts of judgments, penalties, or fines actually levied against the Indemnitee in connection with any Proceeding. Expenses also shall include the foregoing incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent.

(f) “Independent Counsel” means a law firm, a member of a law firm or an independent practitioner that is experienced in matters of corporation law and indemnification issues and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(g) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation (including any internal investigation), inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by Indemnitee or of any inaction on such Indemnitee’s part while acting as an officer or director of the Company, or by reason of the fact that such Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 8 of this Agreement to enforce such Indemnitee’s rights under this Agreement.

(h) References herein to “fines” shall not include any excise tax assessed with respect to any employee benefit plan.

(i) References herein to a director of another Enterprise or a director of an other Enterprise shall include, in the case of any entity that is not managed by a board of directors, such other position, such as manager or trustee or member of the governing body of such entity, that entails responsibility for the management and direction of such entity’s affairs, including, without limitation, the general partner of any partnership (general or limited) and the manager or managing member of any limited liability company.

(j) (i) References herein to serving at the request of the Company as a director, officer, employee, agent, or fiduciary of another Enterprise shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan of the Company or any of its affiliates, other than solely as a participant or beneficiary of such a plan; and (ii) if the Indemnatee has acted in good faith and in a manner the Indemnatee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, the Indemnatee shall be deemed to have acted in a manner not opposed to the best interests of the Company for purposes of this Agreement.

2. Indemnity of Indemnatee. The Company hereby agrees to hold harmless and indemnify Indemnatee to the fullest extent permitted by applicable law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Except as provided in Section 10 hereof, Indemnatee shall be entitled to the rights of indemnification provided in this Section 2(a) if, by reason of Indemnatee’s Corporate Status, the Indemnatee is or was, or is or was threatened to be made, a party to or is otherwise involved in any Proceeding other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2(a), Indemnatee shall be indemnified against all Expenses, judgments, penalties, fines, liabilities and amounts paid in settlement actually and reasonably incurred by Indemnatee, or on Indemnatee’s behalf, in connection with such Proceeding or any claim, issue or matter therein, but only if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnatee’s conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Except as provided in Section 10 hereof, Indemnatee shall be entitled to the rights of indemnification provided in this Section 2(b) if, by reason of Indemnatee’s Corporate Status, the Indemnatee is or was, or is or was threatened to be made, a party to or is or was otherwise involved in any Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2(b), Indemnatee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnatee, or on the Indemnatee’s behalf, in connection with such Proceeding or any claim, issue or matter therein, but only if the Indemnatee acted in good faith and in a manner the Indemnatee reasonably believed to be in or not opposed to the best interests of the Company;

provided, however, if applicable law so provides, no indemnification for such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which the Indemnatee shall have been adjudged liable to the Company unless (and only to the extent that) the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnatee is fairly and reasonably entitled to indemnity for such Expenses that the Court of Chancery or such other court shall deem proper.

(c) Overriding Right to Indemnification if Successful on the Merits.

Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is or was, by reason of Indemnatee's Corporate Status or otherwise, a party to and is or was successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by applicable law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee to the maximum extent permitted by applicable law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

3. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 2 of this Agreement, the Company shall and hereby does, to the fullest extent permissible under applicable law, indemnify and hold harmless Indemnatee against all Expenses, judgments, penalties, fines, liabilities and amounts paid in settlement actually and reasonably incurred by Indemnatee or on Indemnatee's behalf if, by reason of Indemnatee's Corporate Status, he is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnatee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnatee that is finally determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof) to be unlawful.

4. Contribution.

(a) To the fullest extent permissible under applicable law, whether or not the indemnification provided in Section 2 and Section 3 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnatee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have against Indemnatee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or

proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnatee.

(b) To the fullest extent permissible under applicable law, without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnatee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines, liabilities and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnatee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, in connection with the events that resulted in such Expenses, judgments, fines, liabilities or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnatee, who are jointly liable with Indemnatee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnatee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnatee harmless from any claim of contribution brought by officers, directors or employees of the Company, other than Indemnatee, who may be jointly liable with Indemnatee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, shall contribute to the amount incurred by Indemnatee, whether for judgments, fines, liabilities, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as the Board of Directors deems fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company (together with its directors, officers, employees and agents) and Indemnatee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

5. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnatee is or was, by reason of Indemnatee's Corporate Status or otherwise, a witness, or is or was made (or asked) to respond to discovery requests, in

any Proceeding to which Indemnatee is not a party, he shall be indemnified to the fullest extent permissible under applicable law against all Expenses actually and reasonably incurred by Indemnatee or on Indemnatee's behalf in connection therewith.

6. Advancement of Expenses. Notwithstanding any other provision of this Agreement, but subject to Section 9(e) hereof, the Company shall advance all Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding by reason of Indemnatee's Corporate Status or otherwise within thirty (30) calendar days after the receipt by the Company of a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by or on behalf of Indemnatee and for which advancement is requested, and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it shall finally be determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof) that Indemnatee is not entitled to be indemnified against such Expenses. Such undertaking shall be sufficient for purposes of this Section 6 if it is substantially in the form attached hereto as Exhibit A. Any advances and undertakings to repay pursuant to this Section 6 shall be unsecured and interest-free. The Indemnatee shall be entitled to advancement of Expenses as provided in this Section 6 regardless of any determination by or on behalf of the Company that the Indemnatee has not met the standards of conduct set forth in Sections 2(a) and 2(b) hereof.

7. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnatee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnatee is entitled to indemnification under this Agreement:

(a) Indemnatee shall give the Company notice in writing as soon as practicable of any claim made against Indemnatee for which indemnification will or could be sought under this Agreement. To obtain indemnification under this Agreement, the Indemnatee shall submit to the Company a written request for indemnification, including therein or therewith, except to the extent previously provided to the Company in connection with a request or requests for advancement pursuant to Section 6 hereof, a statement or statements reasonably evidencing all Expenses incurred or paid by or on behalf of the Indemnatee and for which indemnification is requested, together with such documentation and information as is reasonably available to Indemnatee and as is reasonably necessary for the Company to determine whether and to what extent Indemnatee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnatee has requested indemnification. Failure to provide any notice required hereby shall not impair Indemnatee's rights of indemnification and contribution under this Agreement except to the extent that such failure to provide notice actually and materially prejudices the rights of the Company to defend any action or proceeding which is the basis of the claimed indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the second sentence of Section 7(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made by the following person or persons, who shall be empowered to make such determination: (i) if a Change in Control shall have occurred, by Independent Counsel (unless Indemnitee shall request in writing that such determination be made by the Board of Directors (or a committee thereof) in the manner provided for in clause (ii) of this Section 7(b)) in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee; or (ii) if a Change of Control shall not have occurred, (A)(1) by Independent Counsel, if Indemnitee shall request in writing that such determination be made by Independent Counsel upon making Indemnitee's request for indemnification pursuant to the second sentence of Section 7(a), (2) by the Board of Directors of the Company, by a majority vote of Disinterested Directors even though less than a quorum, or (3) by a committee of Disinterested Directors designated by majority vote of Disinterested Directors, even though less than a quorum, or (B) if there are no such Disinterested Directors or, even if there are such Disinterested Directors, if the Board of Directors, by the majority vote of Disinterested Directors, so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(b) hereof, the Independent Counsel shall be selected by the Board of Directors and approved by Indemnitee. Upon failure of the Board of Directors to so select, or upon the failure of Indemnitee to so approve, such Independent Counsel within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 7(a) hereof, the Independent Counsel shall be selected by the Court of Chancery of the State of Delaware or such other person or body as the Indemnitee and the Company may agree in writing. Such determination of entitlement to indemnification shall be made not later than forty-five (45) days after receipt by the Company of a written request for indemnification. If the person making such determination shall determine that Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably pro-rate such part of indemnification among such claims, issues or matters. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 7(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 7(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In connection with any determination (including a determination by the Court of Chancery of the State of Delaware (or other court of competent jurisdiction)) with respect to entitlement to indemnification hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not entitled to indemnification and any decision that Indemnitee is not entitled to indemnification must be supported by clear and convincing evidence. The failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, or an actual determination by the Company (including by its directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall not

be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(e) In making a determination with respect to whether Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company, the person or persons or entity making such determination shall presume that Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and any decision that Indemnatee is not entitled to indemnification must be supported by clear and convincing evidence. In addition, and in no way limiting the provisions of this Section 7, Indemnatee shall be deemed to have acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Enterprise, or with respect to any criminal action or proceeding to have had no reasonable cause to believe Indemnatee's conduct was unlawful, if Indemnatee's action is based on (i) the records or books of account of the Enterprise, (ii) information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise; provided, however, that any failure by Indemnatee to act on the advice of legal counsel for the Enterprise shall not, in and of itself, constitute grounds for an adverse determination with respect to whether Indemnatee acted in good faith and in a manner that Indemnatee reasonably believed to be in or not opposed to the best interests of the Company. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement.

(f) If the person, persons or entity empowered or selected under this Section 7 to determine whether Indemnatee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnatee shall be entitled to such indemnification absent (i) a misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto and so notifies the Indemnatee.

(g) Indemnatee shall cooperate with the person, persons or entity making such determination with respect to Indemnatee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnatee and reasonably necessary to such determination. Any Independent Counsel or member of the Board of Directors shall act reasonably and in good faith in making a determination regarding the Indemnatee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by

Indemnatee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnatee's entitlement to indemnification) and the Company hereby agrees to indemnify and hold Indemnatee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Proceeding to which Indemnatee is or becomes a party is resolved in any manner other than by adverse judgment against Indemnatee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnatee has been successful on the merits or otherwise in such Proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnatee to indemnification under this Agreement or create a presumption that Indemnatee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that Indemnatee's conduct was unlawful.

8. Remedies of Indemnatee.

(a) In the event that (i) a determination is made pursuant to Section 7 of this Agreement that Indemnatee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 6 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 7(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within fifty-five (55) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnatee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 7 of this Agreement, Indemnatee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnatee's entitlement to such indemnification and/or advancement of Expenses. The Company shall not oppose Indemnatee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnatee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 8 shall be conducted in all respects as a de novo trial on the merits, and Indemnatee shall not be prejudiced by reason of the adverse determination under Section 7(b).

(c) If a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnatee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 8, absent (i) a

misstatement by Indemnatee of a material fact, or an omission of a material fact necessary to make Indemnatee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that (a) the Indemnatee commences a proceeding seeking (1) to establish or enforce the Indemnatee's entitlement to indemnification or advancement pursuant to this Agreement, (2) to otherwise enforce Indemnatee's rights under or to interpret the terms of this Agreement, (3) to recover damages for breach of this Agreement, (4) to establish or enforce Indemnatee's entitlement to indemnification or advancement pursuant to the Certificate or the Bylaws, or (5) to enforce or interpret the terms of any liability insurance policy maintained by the Company (each such proceeding an "Indemnatee Enforcement Proceeding"), or (b) the Company commences a proceeding against the Indemnatee seeking (1) to recover, pursuant to an undertaking or otherwise, amounts previously advanced to Indemnatee, (2) to enforce the Company's rights under or to interpret the terms of this Agreement, or (3) to recover damages for breach of this Agreement (each such proceeding a "Company Enforcement Proceeding" and together with each form of Indemnatee Enforcement Proceeding, an "Enforcement Proceeding"), then the Indemnatee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all Expenses actually and reasonably incurred by or on behalf of such Indemnatee in connection with such Enforcement Proceeding, provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding on which Indemnatee does not prevail, unless (and only to the extent that) the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication in respect of such claim, issue or matter but in view of all the circumstances of the case, the Indemnatee is fairly and reasonably entitled to indemnity for such Expenses that the Court of Chancery or such other court shall deem proper. The Company also shall be required to advance all Expenses actually and reasonably incurred by or on behalf of the Indemnatee in connection with any Enforcement Proceeding in advance of the final disposition of such Enforcement Proceeding within thirty (30) days after the receipt by the Company of a written request for such advance or advances from time to time, which request shall include or be accompanied by a statement or statements reasonably evidencing the Expenses incurred by or on behalf of the Indemnatee and for which advancement is requested; provided, however, that any such advancement shall be made only after the Company receives an undertaking by or on behalf of the Indemnatee to repay any Expenses so advanced if it shall be finally determined that Indemnatee is not entitled to be indemnified against such Expenses.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 8 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

9. Non-Exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under applicable law, the Certificate, the Bylaws, any agreement, a vote of stockholders, a resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnatee under this Agreement in respect of any action taken or omitted by such Indemnatee in Indemnatee's Corporate Status or otherwise prior to such amendment, alteration or repeal. To the extent that a change in the DGCL or applicable law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Certificate, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnatee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. Notwithstanding anything in this Agreement to the contrary, the indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnatee or any of Indemnatee's agents.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other Enterprise that such person serves at the request of the Company, Indemnatee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability or other applicable insurance in effect, the Company shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, in the event of any payment to or on behalf of the Indemnatee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnatee, who shall execute all papers reasonably required and take all action reasonably necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnatee has otherwise actually received such

payment under any Company insurance policy, Company contract, Company agreement or otherwise (except to the extent that Indemnatee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(e) Subject to Section 9(f), except as otherwise agreed between the Company, on the one hand, and Indemnatee or another indemnitor of Indemnatee, on the other, the Company's obligation to indemnify or advance Expenses hereunder to Indemnatee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other Enterprise shall be reduced by any amount Indemnatee has actually received as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise (except to the extent that Indemnatee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(f) The Company hereby acknowledges that Indemnatee is serving as a director or officer of the Company at the request of the Company or its Board of Directors. The Company hereby further acknowledges that Indemnatee might have certain rights to indemnification, advancement of Expenses and/or insurance coverage provided by one or more third parties other than the Company and its insurers (collectively, the "Third Party Indemnitors"). The Company hereby agrees that: (i) as between the Company and any Third Party Indemnitor, the Company is the indemnitor of first resort (i.e., its obligations to Indemnatee are primary and any obligation of any Third Party Indemnitor to advance Expenses or to provide indemnification or insurance coverage for the same Expenses or liabilities incurred by Indemnatee are secondary); (ii) it shall be required to advance the full amount of Expenses incurred by or on behalf of Indemnatee and shall be liable for the full amount of all judgments or amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement, the Certificate or the Bylaws (or any other agreement between the Company and Indemnatee), without regard to any rights Indemnatee may have against any Third Party Indemnitor; and (iii) it hereby irrevocably and unconditionally waives, relinquishes and releases any and all Third Party Indemnitors from any and all claims against the Third Party Indemnitors (or any of them) for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by any Third Party Indemnitor on behalf of Indemnatee with respect to any claim for which Indemnatee has sought indemnification from the Company shall affect the foregoing in any respect and the Third Party Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnatee against the Company. The Company and Indemnatee agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this Section 9.

10. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been made to or on behalf of Indemnatee under any insurance policy, or other indemnity provision or otherwise, except with respect to any

excess beyond the amount so paid, and except as may otherwise be agreed between the Company, on the one hand, and Indemnitee or another indemnitor of Indemnitee, on the other;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Act, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or any of its direct or indirect subsidiaries or the directors, officers, employees or other indemnitees of the Company or its direct or indirect subsidiaries (other than any Proceeding initiated by Indemnitee pursuant to Section 8(d), which shall be governed by the terms of such section), unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

11. Successors. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

12. Security. To the extent requested by Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

13. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve or continue serving as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company represents that this Agreement has been approved by the Company's Board of Directors.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision hereof. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee

indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees to promptly notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Disclosure of Payments. Except as expressly required by any law, neither party shall publicly disclose any payments under this Agreement unless prior approval of the other party is obtained.

18. Notices. Unless otherwise provided herein, any notice required or permitted under this Agreement shall be deemed effective upon the earlier of (a) actual receipt, or (b) (i) one (1) business day after the date of delivery by confirmed facsimile transmission, (ii) one (1) business day after the business day of deposit with a nationally recognized overnight courier service for next day delivery, freight prepaid, or (iii) three (3) business days after deposit with the United States Post Office for delivery by registered or certified mail, postage prepaid. Any such notice shall be in writing and shall be addressed to the party to be notified at the address indicated for such party indicated on the signature pages or exhibits hereto, as otherwise set forth in this Section 18, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee's signature hereto;

(b) To the Company at:

[Spinco, Inc.]

[]

[]

Attention: []

Facsimile: []

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile or electronic signature.

20. Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

21. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the “Delaware Court”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) consent to service of any summons and complaint and any other process that may be served in any action, suit, or proceeding arising out of or relating to this Agreement by mailing by certified or registered mail, with postage prepaid, copies of such process to such party at its address for receiving notice pursuant to Section 18 hereof, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum. Nothing herein shall preclude service of process by any other means permitted by applicable law.

22. Assignment. Neither party hereto may assign this Agreement without the prior written consent of the other party; provided, however, that the Company may assign this Agreement upon a Change in Control.

23. Construction. The parties acknowledge that both parties have contributed to the drafting of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

INDEMNITEE:

Signature: _____

Name: [•]

Address: [•]

COMPANY:

[SPINCO, INC.]

By: _____

Name:

Title: Authorized Officer

Address:

Exhibit A

UNDERTAKING

Reference is hereby made to that certain Indemnification Agreement, by and between [Spinco, Inc.], a Delaware corporation (the "Company"), and the undersigned, dated as of [•] (the "Indemnification Agreement"). All initially capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indemnification Agreement.

Pursuant to the Indemnification Agreement, I,
_____, agree to reimburse the Company for all Expenses paid to me or on my behalf by the Company in connection with my involvement in [**name or description of proceeding or proceedings**], in the event, and to the extent, that it shall ultimately be determined (pursuant to the terms of the Indemnification Agreement) that I am not entitled to be indemnified by the Company for such Expenses.

Signature _____

Typed Name _____

_____) ss:

Before me _____, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, stated that the contents of said instrument is to the best of his/her knowledge and belief true and correct and who acknowledged that he/she executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and official seal at _____, this _____ day of _____, 20__.

Notary Public

My commission expires:

EXHIBIT 9

**FOURTEENTH AMENDMENT
TO
SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
GGP LIMITED PARTNERSHIP**

THIS FOURTEENTH AMENDMENT (this “Amendment”) is made and entered into on _____, 2010 by and among the undersigned parties:

WHEREAS, a Delaware limited partnership known as GGP Limited Partnership (the “Partnership”) exists pursuant to that certain Second Amended and Restated Agreement of Limited Partnership dated as of April 1, 1998, as amended (“Second Restated Limited Partnership Agreement”), and the Delaware Revised Uniform Limited Partnership Act;

WHEREAS, General Growth Properties, Inc., a Delaware corporation, is the sole general partner of the Partnership (the “General Partner”);

WHEREAS, on April 16, 2009, the General Partner and the Partnership filed voluntary petitions for relief under title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Chapter 11 Cases”);

WHEREAS, in connection with the General Partner and the Partnership’s emergence from the Chapter 11 Cases, it is proposed that all of the issued and outstanding shares of common stock, par value \$0.01 per share, of The Howard Research and Development Corporation, a Maryland corporation (“HRD”), be distributed by the Partnership to the General Partner (the “HRD Distribution”);

WHEREAS, in connection with the General Partner and the Partnership’s emergence from the Chapter 11 Cases, shares of common stock, no par value, of Spinco, Inc., a Delaware corporation and a wholly-owned subsidiary of the Partnership (“Spinco”), will be distributed (the “Spinco Distribution”) to the holders of Units (as defined in the Second Restated Limited Partnership Agreement) in a manner such that upon emergence of the Partnership and the General Partner from the Chapter 11 Cases, each of the holders of Units (other than the General Partner) and each holder of shares of common stock of the General Partner will hold the same number of shares of common stock of Spinco as each such holder would have held if each of the holders of Units (other than the General Partner) had converted (in accordance with its existing contractual rights) its respective Units into shares of common stock of the General Partner immediately prior to the HRD/Spinco Distribution;

WHEREAS, after contributing certain assets to HRD, the General Partner proposes to contribute its shares of common stock of HRD to Spinco in exchange for additional shares of common stock of Spinco (the “Contribution”);

WHEREAS, the HRD Distribution, the Spinco Distribution and the Contribution, taken together, will result in the pro rata ownership, directly or indirectly, of Spinco and HRD by the holders of Units; and

WHEREAS, the General Partner and a Majority-In-Interest of the Limited Partners of the Partnership desire to adopt this Amendment and provide for the HRD Distribution and the Spinco Distribution.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, do hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the definitions assigned to such terms in the Second Restated Limited Partnership Agreement, as amended.

2. Amendments. Notwithstanding anything to the contrary in the Second Restated Limited Partnership Agreement, including but not limited to Section 6.3(c), the Second Restated Limited Partnership Agreement shall be amended as follows:

a. The following defined term is added to Section 1.1 of the Second Restated Limited Partnership Agreement:

““Chapter 11 Cases” shall mean those voluntary petitions filed on April 16, 2009 by the General Partner and the Partnership for relief under title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York.”

b. The following new Section 5.2(c) is added to the Second Restated Limited Partnership Agreement:

“The General Partner may, in connection with the emergence of the General Partner and the Partnership from the Chapter 11 Cases, make a non-pro rata distribution of shares of common stock of each of The Howard Research and Development Corporation, a Maryland corporation (“HRD”), and Spinco, Inc., a Delaware corporation (“Spinco”) (the “HRD/Spinco Distribution”). The HRD/Spinco Distribution shall consist of (a) the distribution of all of the issued and outstanding shares of common stock, par value \$0.01 per share, of HRD by the Partnership to the General Partner and (b) the distribution of shares of common stock, no par value, of Spinco by the Partnership to the holders of Units. For the avoidance of doubt, following the HRD/Spinco Distribution, upon emergence of the Partnership and the General Partner from the Chapter 11 Cases, each of the holders of Units (other than the General Partner) and each holder of shares of common stock of the General Partner will hold the same number of shares of common stock of Spinco as each such

holder would have held if each of the holders of Units (other than the General Partner) had converted (in accordance with its existing contractual rights) its respective Units into shares of common stock of the General Partner immediately prior to the HRD/Spinco Distribution.”

3. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original and all of which together shall constitute the same document.

4. **Other Provisions Unaffected.** Except as expressly amended hereby, the Second Restated Limited Partnership Agreement shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS WHEREOF, the parties hereto have executed this Amendment on the date first written above.

GENERAL PARTNER:

GENERAL GROWTH PROPERTIES, INC.,
a Delaware corporation

By: _____

Its: _____

LIMITED PARTNERS:

**MAJORITY-IN-INTEREST OF
THE LIMITED PARTNERS:**

M.B. CAPITAL UNITS, LLC,
a Delaware limited liability company

By: M.B. CAPITAL PARTNERS III,
a South Dakota general partnership,
its sole member

By: General Trust Company,
as Trustee of MBA Trust,
a partner

By: _____
E. Michael Greaves,
Vice President

**MATTHEW BUCKSBAUM REVOCABLE
TRUST**

By: General Trust Company,
as Trustee

By: _____
E. Michael Greaves,
Vice President

**THIRD AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
GGP LIMITED PARTNERSHIP**

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**THIRD AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
GGP LIMITED PARTNERSHIP**

THIS THIRD AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is made and entered into this [__] day of [____], 2010, by and among the undersigned parties.

W I T N E S S E T H:

WHEREAS, a Delaware limited partnership known as GGP Limited Partnership (the "Partnership") exists pursuant to that certain Second Amended and Restated Agreement of Limited Partnership dated as of April 1, 1998, as amended by that certain First Amendment thereto dated June 10, 1998, that certain Second Amendment thereto dated June 29, 1998, that certain Third Amendment thereto dated as of February 15, 2002, that certain Amendment thereto dated as of April 24, 2002, that certain Fourth Amendment thereto dated as of July 10, 2002, that certain Amendment thereto dated as of November 27, 2002, that certain Sixth Amendment thereto dated as of November 20, 2003, that certain Amendment thereto dated as of December 11, 2003, that certain Amendment thereto dated March 5, 2004, that certain Amendment thereto dated November 12, 2004, that certain Amendment thereto dated as of September 30, 2006, that certain Twelfth Amendment thereto dated as of December 31, 2006, that certain Thirteenth Amendment thereto dated February 9, 2007 and that certain Fourteenth Amendment thereto dated as of [____] [__], 2010 (collectively, the "Second Restated Partnership Agreement"), and the Delaware Revised Uniform Limited Partnership Act;

WHEREAS, GGP, Inc., f/k/a General Growth Properties, Inc., a Delaware corporation, is the sole general partner of the Partnership (the "General Partner");

WHEREAS, pursuant to that certain [Contribution Agreement], GGP Limited Partnership II, a Delaware limited partnership, will be admitted to the Partnership as a Limited Partner (the "Affiliate Limited Partner") and will receive Common Units and Series F Preferred Units;

WHEREAS, contemporaneously with the admission of the Affiliate Limited Partner, the General Partner desires to transfer certain of its Units to the Affiliate Limited Partner (the "GP Transfer");

WHEREAS, the General Partner and a Majority-in-Interest of the Limited Partners of the Partnership desire to create and issue the Series F Preferred Units, amend and restate the Second Restated Partnership Agreement as set forth herein and consent to the GP Transfer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, do hereby create and issue the Series F Preferred Units, consent to the GP Transfer and amend and restate the Second Restated Partnership Agreement to read as follows:

ARTICLE I

Definitions; Etc.

1.1 Definitions. Except as otherwise herein expressly provided, the following terms and phrases shall have the meanings set forth below:

“Accountants” shall mean the firm or firms of independent certified public accountants selected by the General Partner on behalf of the Partnership and the Property Partnerships to audit the books and records of the Partnership and the Property Partnerships and to prepare statements and reports in connection therewith.

“Acquisition Cost” shall have the meaning set forth in Section 4.1 hereof.

“Act” shall mean the Revised Uniform Limited Partnership Act as enacted in the State of Delaware, and as the same may hereafter be amended from time to time.

“Additional Units” shall have the meaning set forth in Section 8.3 hereof.

“Additional Partner” shall have the meaning set forth in Section 8.3 hereof.

“Adjusted Capital Account Deficit” shall mean, with respect to any Limited Partner, the deficit balance, if any, in such Partner’s Capital Account as of the end of any relevant fiscal year and after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Partner is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the requirements of the alternate test for economic effect contained in Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“Adjustment Date” shall have the meaning set forth in Section 4.3(a) hereof.

“Administrative Expenses” shall mean (i) all administrative and operating costs and expenses incurred by the Partnership, (ii) all administrative, operating and other costs and expenses incurred by the Property Partnerships, which expenses are being assumed by the Partnership pursuant to Section 6.1 hereof, (iii) those administrative costs and expenses of the Affiliate Limited Partner and the REIT Entities, including salaries paid to officers of the Public REIT and accounting and legal expenses undertaken by the General Partner on behalf or for the

benefit of the Partnership, and (iv) to the extent not included in clause (iii) above, REIT Expenses.

“Affiliate” shall mean, with respect to any Partner (or as to any other Person the affiliates of whom are relevant for purposes of any of the provisions of this Agreement), (i) any member of the Immediate Family of such Partner; (ii) any trustee or beneficiary of a Partner; (iii) any legal representative, successor, or assignee of such Partner or any Person referred to in the preceding clauses (i) and (ii); (iv) any trustee of any trust for the benefit of such Partner or any Person referred to in the preceding clauses (i) through (iii); or (v) any Entity which directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Partner or any Person referred to in the preceding clauses (i) through (iv).

“Affiliate Limited Partner” shall mean GGP Limited Partnership II, a Delaware limited partnership.

“Aggregate Protected Amount” shall mean, with respect to the Obligated Partners, as a group, the aggregate amount of the Protected Amounts, if any, of the Obligated Partners, as determined on the date in question.

“Agreement” shall mean this Third Amended and Restated Agreement of Limited Partnership, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

“Audited Financial Statements” shall mean financial statements (balance sheet, statement of income, statement of partners’ equity and statement of cash flows prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor’s report containing (i) an opinion containing no material qualification, and (ii) no explanatory paragraph disclosing information relating to material uncertainties (except as to litigation) or going concern issues.

“Bankruptcy” shall mean, with respect to any Partner or the Partnership, (i) the commencement by such Partner or the Partnership of any proceeding seeking relief under any provision or chapter of the federal Bankruptcy Code or any other federal or state law relating to insolvency, bankruptcy or reorganization, (ii) an adjudication that such Partner or the Partnership is insolvent or bankrupt, (iii) the entry of an order for relief under the federal Bankruptcy Code with respect to such Partner or the Partnership, (iv) the filing of any such petition or the commencement of any such case or proceeding against such Partner or the Partnership, unless such petition and the case or proceeding initiated thereby are dismissed within ninety (90) days from the date of such filing, (v) the filing of an answer by such Partner or the Partnership admitting the allegations of any such petition, (vi) the appointment of a trustee, receiver or custodian for all or substantially all of the assets of such Partner or the Partnership unless such appointment is vacated or dismissed within ninety (90) days from the date of such appointment but not less than five (5) days before the proposed sale of any assets of such Partner or the Partnership, (vii) the insolvency of such Partner or the Partnership or the execution by such Partner or the Partnership of a general assignment for the benefit of creditors, (viii) the convening by such Partner or the Partnership of a meeting of its creditors, or any class thereof,

for purposes of effecting a moratorium upon or extension or composition of its debts, (ix) the failure of such Partner or the Partnership to pay its debts as they mature, (x) the levy, attachment, execution or other seizure of substantially all of the assets of such Partner or the Partnership where such seizure is not discharged within thirty (30) days thereafter, or (xi) the admission by such Partner or the Partnership in writing of its inability to pay its debts as they mature or that it is generally not paying its debts as they become due.

“Bankruptcy Cases” shall mean those voluntary petitions filed on April 16, 2009 by the General Partner and the Partnership for relief under title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York.

“Bucksbaum Limited Partners” shall mean M.B. Capital Partners III and its successors and assigns.

“Bucksbaum Rights Agreement” shall mean that certain Rights Agreement dated as of July 27, 1993, among the General Partner and certain predecessors of the Bucksbaum Limited Partners.

“Capital Account” shall mean, with respect to any Partner, the separate “book” account which the Partnership shall establish and maintain for such Partner in accordance with Section 704(b) of the Code and Section 1.704-1(b)(2)(iv) of the Regulations and such other provisions of Section 1.704-1(b) of the Regulations that must be complied with in order for the Capital Accounts to be determined in accordance with the provisions of said Regulations. In furtherance of the foregoing, the Capital Accounts shall be maintained in compliance with Section 1.704-1(b)(2)(iv) of the Regulations, and the provisions hereof shall be interpreted and applied in a manner consistent therewith. In the event that any Units are transferred in accordance with the terms of this Agreement, the Capital Account, at the time of the transfer, of the transferor attributable to the transferred Units shall carry over to the transferee.

“Capital Contribution” shall mean, with respect to any Partner, the amount of money and the initial Gross Asset Value of any property other than money contributed to the Partnership with respect to the Units held by such Partner (net of liabilities to which such property is subject).

“Certificate” shall mean the Certificate of Limited Partnership establishing the Partnership, as filed with the office of the Delaware Secretary of State, as it may be amended from time to time in accordance with the terms of this Agreement and the Act.

“Charter” shall mean the corporate charter of the Public REIT, as filed with the office of the Delaware Secretary of State, as it may be amended from time to time.

“Closing Price” on any day shall mean the average of the intra-day high and low for such day as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the

principal national securities' exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System or, if such system is no longer in use, the principal other automated quotations system that may then be in use or, if the Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock as such person is selected from time to time by the Board of Directors of the Public REIT.

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

"Common Stock" shall mean the shares of common stock of the Public REIT.

"Common Units" shall mean all Units other than Preferred Units.

"Consent of the Limited Partners" shall mean the written consent of a Majority-In-Interest of the Limited Partners (or other specified group of Limited Partners), which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and may be given or withheld by a Majority-in-Interest of the Limited Partners (or such specified group of Limited Partners), unless otherwise expressly provided herein, in their sole and absolute discretion.

"Contributed Funds" shall have the meaning set forth in Section 4.3(a)(ii) hereof.

"Contributed Property" shall have the meaning set forth in Section 4.1 hereof.

"Contribution Agreements" shall mean all contribution and other agreements executed by the Partnership and/or the General Partner in connection with the issuance of Units.

"Contribution Date" shall have the meaning set forth in Section 8.3 hereof.

"Control" shall mean the ability, whether by the direct or indirect ownership of shares or other equity interests by contract or otherwise, to elect a majority of the directors of a corporation, to select the managing partner of a partnership, or otherwise to select, or have the power to remove and then select, a majority of those persons exercising governing authority over an Entity. In the case of a limited partnership, the sole general partner, all of the general partners to the extent each has equal management control and authority, or the managing general partner or managing general partners thereof shall be deemed to have control of such partnership and, in the case of a trust, any trustee thereof or any Person having the right to select any such trustee shall be deemed to have control of such trust.

"Conversion Factor" shall mean 0.98448404. The Conversion Factor shall be adjusted in the event that the Public REIT, (i) declares or pays a dividend on its outstanding shares of Common Stock in shares of Common Stock or makes a distribution to all holders of its outstanding shares of Common Stock in shares of Common Stock, (ii) subdivides its outstanding

shares of Common Stock, or (iii) combines its outstanding shares of Common Stock into a smaller number of shares. The Conversion Factor shall be adjusted by multiplying the Conversion Factor (as in effect immediately prior to such adjustment) by fraction, the numerator of which shall be the actual number of shares of Common Stock issued and outstanding on the record date for such dividend, distribution, subdivision or combination (determined without the below assumption), and the denominator of which shall be the number of shares of Common Stock issued and outstanding on the record date for such dividend, distribution, subdivision or combination (assuming for such purposes that such dividend, distribution, subdivision or combination has occurred as of such time). Any adjustment to the Conversion Factor shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

“CSA” shall mean that certain Contingent Stock Agreement, effective as of January 1, 1996, by The Rouse Company in favor of and for the benefit of the Holders (named in Schedule I thereto) and the Representatives (therein defined), as amended.

“Current Per Share Market Price” shall mean, as of any date, the average of the Closing Price for the five consecutive Trading Days ending on such date or the average of the Closing Price for any other period of Trading Days that the Public REIT deems appropriate with respect to any transaction or other event for which “Current Per Share Market Price” is determined (other than a redemption pursuant to any Rights Agreement unless otherwise provided therein); provided, however, that the Closing Price for any Trading Day or Trading Days that are included in any calculation of Current Per Share Market Price shall be adjusted to take into account any stock split, dividend, subdivision, combination and the like if Public REIT deems such adjustment to be appropriate.

“Demand Notice” shall have the meaning set forth in Section 12.2 hereof.

“Depreciation” shall mean, with respect to any asset of the Partnership for any fiscal year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Gross Asset Value and the adjusted tax basis of such asset, Depreciation shall mean “book depreciation, depletion or amortization” as determined under Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations.

“Entity” shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association or other entity.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time (or any corresponding provisions of succeeding laws).

“Exercise Notice” shall have the meaning set forth in the Bucksbaum Rights Agreement.

“Foreign Owner” shall mean a foreign person or a person that is directly or indirectly owned, in whole or in part by a foreign person as determined in accordance with Section 897(H)(4) of the Code and the Regulations promulgated thereunder.

“Funding Date” shall mean the date of consummation of any Funding Loan, offering of shares of Common Stock or other transaction pursuant to which the Public REIT, REIT Entities or the Affiliate Limited Partner raise Required Funds.

“Funding Loan Proceeds” shall mean the net cash proceeds received by the Public REIT, REIT Entities or the Affiliate Limited Partner in connection with any Funding Loan, after deduction of all costs and expenses incurred by the Public REIT, the REIT Entities or the Affiliate Limited Partner in connection with such Funding Loan.

“Funding Loan(s)” shall mean any borrowing or refinancing of borrowings by or on behalf of the Public REIT, the REIT Entities or the Affiliate Limited Partner from any lender for the purpose of advancing the Funding Loan Proceeds to the Partnership as a loan pursuant to Section 4.3(a) hereof.

“GAAP” shall mean generally accepted accounting principles.

“General Partner” shall mean GGP, Inc., f/k/a General Growth Properties, Inc., a Delaware corporation, its duly admitted successors and assigns and any other Person who is a general partner of the Partnership at the time of reference thereto.

“Gross Asset Value” shall mean, with respect to any asset of the Partnership, such asset’s adjusted basis for federal income tax purposes except as follows:

(a) the initial Gross Asset Value of (i) the assets contributed by each Partner to the Partnership prior to the date hereof is the gross fair market value of such contributed assets as indicated in the books and records of the Partnership as of the date hereof, and (ii) any asset hereafter contributed by a Partner, other than money, is the gross fair market value thereof as reasonably determined by the General Partner using such reasonable method of valuation as the General Partner may adopt; provided that the gross fair market value of any such assets hereafter contributed by the General Partner shall be the Acquisition Cost thereof (without reduction for any borrowings incurred by the General Partner in connection with the acquisition of such assets and assumed by the Partnership or, if such assumption was not possible, with respect to which borrowings the Partnership obligates itself to make payments to the General Partner in a like amount and on like terms);

(b) if the General Partner reasonably determines that an adjustment is necessary or appropriate to reflect the relative economic interests of the Partners, the Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the General Partner, as of the following times:

(i) a Capital Contribution (other than a de minimis Capital Contribution) to the Partnership by a new or existing Partner as consideration for Units;

(ii) the distribution by the Partnership to a Partner of more than a de minimis amount of Partnership property as consideration for the redemption of Units; and

(iii) the liquidation of the Partnership within the meaning of section 1.704-1(b)(2)(ii) (g) of the Regulations;

(c) the Gross Asset Values of Partnership assets distributed to any Partner shall be the gross fair market values of such assets (taking Section 7701(g) of the Code into account) as reasonably determined by the General Partner as of the date of distribution; and

(d) the Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations (See Exhibit B); provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph to the extent that the General Partner reasonably determines that an adjustment pursuant to paragraph (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d).

At all times, Gross Asset Values shall be adjusted by any Depreciation taken into account with respect to the Partnership's assets for purposes of computing Net Income and Net Loss. Any adjustment to the Gross Asset Values of Partnership property shall require an adjustment to the Partners' Capital Accounts; as for the manner in which such adjustments are allocated to the Capital Accounts, see paragraph (c) of the definition of Net Income and Net Loss in the case of adjustment by Depreciation, and paragraph (d) of said definition in all other cases.

"Immediate Family" shall mean with respect to any Person, such Person's spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law and children-in-law.

"Incentive Option" means an option to purchase Common Stock granted under the Stock Incentive Plan.

"Incentive Option Agreement" means the form of Incentive Option Agreement to be used under the Stock Incentive Plan.

"Indirect Owner" shall mean, in the case of an Obligated Partner that is an entity that is classified as a partnership or disregarded entity for federal income tax purposes, any person owning an equity interest in such Obligated Partner, and, in the case of any Indirect Owner that itself is an entity that is classified as a partnership or disregarded entity for federal income tax purposes, any person owning an equity interest in such entity.

"Second Restated Partnership Agreement" shall have the meaning set forth in the preliminary recitals hereto.

“Lien” shall mean any liens, security interests, mortgages, deeds of trust, charges, claims, encumbrances, pledges, options, rights of first offer or first refusal and any other rights or interests of others of any kind or nature, actual or contingent, or other similar encumbrances of any nature whatsoever.

“Limited Partner Representatives” shall have the meaning set forth in Section 6.11 hereof.

“Limited Partners” shall mean the Persons listed under the caption “Limited Partners” on Exhibit A hereto, their permitted successors or assigns or any Person who, at the time of reference thereto, is a limited partner of the Partnership.

“Liquidating Trustee” shall mean such individual or Entity as is selected as the Liquidating Trustee hereunder by the General Partner, which individual or Entity may include an Affiliate of the General Partner, provided such Liquidating Trustee agrees in writing to be bound by the terms of this Agreement. The Liquidating Trustee shall be empowered to give and receive notices, reports and payments in connection with the dissolution, liquidation and/or winding-up of the Partnership and shall hold and exercise such other rights and powers as are necessary or required to permit all parties to deal with the Liquidating Trustee in connection with the dissolution, liquidation and/or winding-up of the Partnership.

“Major Decisions” shall have the meaning set forth in Section 6.3 hereof.

“Majority-in-Interest of the Limited Partners” shall mean Limited Partner(s) (or specified group of Limited Partners) who hold in the aggregate more than fifty percent (50%) of the Percentage Interests then allocable to and held by the Limited Partners (or such specified group of Limited Partners), as a class (excluding any Units held by the General Partner, the Affiliate Limited Partner or any other Affiliate of the General Partner other than the Limited Partners as at April 1, 1998, their Affiliates and their successors and assigns, who shall not be excluded).

“Management Agreement” shall mean a property management agreement with respect to the property management of certain Properties entered into (a) with respect to any Property in which the Partnership directly holds or acquires ownership of a fee or leasehold interest, between the Partnership, as owner, and the Property Manager, or such other property manager as the General Partner shall engage, as manager, and (b) with respect to all Properties other than those described in (a) above, between each Property Partnership, as owner, and the Property Manager, or such other property manager as the General Partner shall engage, as such agreement may be amended, modified or supplemented from time to time.

“Minimum Gain Attributable to Partner Nonrecourse Debt” shall mean “partner nonrecourse debt minimum gain” as determined in accordance with Regulation Section 1.704-2(i)(2).

“Net Financing Proceeds” shall mean the cash proceeds received by the Partnership in connection with any borrowing or refinancing of borrowing by or on behalf of the Partnership or by or on behalf of any Property Partnership (whether or not secured), after deduction of all costs and expenses incurred by the Partnership or the Property Partnership in

connection with such borrowing, and after deduction of that portion of such proceeds used to repay any other indebtedness of the Partnership or Property Partnerships, or any interest or premium thereon.

“Net Income or Net Loss” shall mean, for each fiscal year or other applicable period, an amount equal to the Partnership’s net income or loss for such year or period as determined for federal income tax purposes by the Accountants, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a) of the Code shall be included in taxable income or loss), with the following adjustments: (a) by including as an item of gross income any tax-exempt income received by the Partnership (b) by treating as a deductible expense any expenditure of the Partnership described in Section 705(a)(2)(B) of the Code (including amounts paid or incurred to organize the partnership (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of interests in the Partnership and by treating deductions for any losses incurred in connection with the sale or exchange of Partnership property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code); (c) in lieu of depreciation, depletion, amortization, and other cost recovery deductions taken into account in computing total income or loss, there shall be taken into account Depreciation; (d) gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of such property rather than its adjusted tax basis; and (e) in the event of an adjustment of the Gross Asset Value of any Partnership asset which requires that the Capital Accounts of the Partnership be adjusted pursuant to Regulation Section 1.704-1(b)(2)(iv)(e), (f) and (m), the amount of such adjustment is to be taken into account as additional Net Income or Net Loss pursuant to Exhibit B.

“Net Operating Cash Flow” shall mean, with respect to any fiscal period of the Partnership, the excess, if any, of “Receipts” over “Expenditures.” For purposes hereof, the term “Receipts” means the sum of all cash receipts of the Partnership from all sources for such period, including Net Sale Proceeds and Net Financing Proceeds but excluding Capital Contributions, and any amounts held as reserves as of the last day of such period which the General Partner reasonably deems to be in excess of necessary reserves as determined below. The term “Expenditures” means the sum of (a) all cash expenses or expenditures of the Partnership for such period, (b) the amount of all payments of principal and interest on account of any indebtedness of the Partnership including payments of principal and interest on account of REIT Loans, or amounts due on such indebtedness during such period (in the case of clauses (a) and (b), excluding expenses or expenditures paid from previously established reserves or deducted in computing Net Financing Proceeds or Net Sales Proceeds), and (c) such additional cash reserves as of the last day of such period as the General Partner deems necessary for any capital or operating expenditure permitted hereunder.

“Net Sale Proceeds” means the cash proceeds received by the Partnership in connection with a sale of any asset by or on behalf of the Partnership or by or on behalf of a Property Partnership after deduction of any costs or expenses incurred by the Partnership or a Property Partnership, or payable specifically out of the proceeds of such sale (including, without limitation, any repayment of any indebtedness required to be repaid as a result of such sale or which the General Partner elects to repay out of the proceeds of such sale, together with accrued

interest and premium, if any, thereon and any sales commissions or other costs and expenses due and payable to any Person in connection with a sale, including to a Partner or its Affiliates).

“Nonrecourse Deductions” shall have the meaning set forth in Sections 1.704-2(b)(1) and (c) of the Regulations.

“Nonrecourse Liabilities” shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

“Obligated Partner” shall mean that or those Limited Partners listed as Obligated Partners on Exhibit C attached hereto and made a part hereof, as such Exhibit may be amended from time to time by the General Partner, whether by express amendment to this Agreement or by execution of a written instrument by and between any additional Obligated Partner being directly affected thereby and the General Partner acting on behalf of the Partnership and without the prior consent of the Limited Partners (other than the Obligated Partners being affected thereby).

“Offered Units” shall have the meaning set forth in the Bucksbaum Rights Agreement.

“Partner Nonrecourse Debt” shall mean a liability as defined in Regulations Section 1.704-2(b)(4).

“Partner Nonrecourse Deductions” shall have the meaning set forth in Section 1.704-2(i)(2) of the Regulations.

“Partners” shall mean the General Partner and the Limited Partners, their duly admitted successors or assigns or any Person who is a partner of the Partnership at the time of reference thereto.

“Partnership” shall have the meaning set forth in the preliminary recitals hereto.

“Partnership Minimum Gain” shall have the meaning set forth in Section 1.704-2(b)(2) of the Regulations.

“Partnership Record Date” shall mean the record date established by the General Partner for a distribution of Net Operating Cash Flow pursuant to Section 5.2 hereof, which record date shall be the same as the record date established by the Public REIT for the distribution to its stockholders of some or all of its indirect share of such distribution.

“Percentage Interest” shall mean, with respect to any Partner at any time, the percentage ownership interest of such Partner in the Partnership at such time, which percentage ownership interest shall be equal to the quotient of the number of Common Units owned by such Partner at such time divided by the aggregate number of issued and outstanding Common Units at such time, and any holder of Preferred Units shall have a 0% Percentage Interest in respect of such Preferred Units. The Percentage Interest of each Partner on the date hereof is set forth opposite its name on Exhibit A.

“Person” shall mean any individual or Entity.

“Precontribution Gain” shall have the meaning set forth in Exhibit B.

“Preferred Units” shall mean the Series B Preferred Units, Series D Preferred Units, Series E Preferred Units and Series F Preferred Units and any other series of preferred units of limited partnership interest in the Partnership that are established and issued from time to time in accordance with the terms hereof.

“Prime Rate” shall mean the prime rate announced from time to time by Wells Fargo Bank, N.A. or any successor thereof.

“Property” shall mean any Shopping Center Project in which the Partnership or any Property Partnership, directly or indirectly, acquires ownership of a fee or leasehold interest.

“Property Manager” shall mean General Growth Management, Inc., a Delaware corporation, or its permitted successors or assigns.

“Property Partnership” shall mean and include any partnership, limited liability company or other Entity in which the Partnership directly or indirectly is or becomes a partner, member or other equity participant and which has been or is formed for the purpose of directly or indirectly acquiring, developing or owning a Property at a proposed Property.

“Property Partnership Interests” shall mean and include the interest of the Partnership as a partner, member or other equity participant in any Property Partnership.

“Protected Amount” shall mean, with respect to any Obligated Partner, the amount set forth opposite the name of such Obligated Partner on Exhibit C hereto and made a part hereof as such Exhibit may be amended from time to time by an amendment to the Partnership Agreement or by execution of a written instrument by and between any Obligated Partners being affected thereby and the General Partner, acting on behalf of the Partnership and without the prior consent of the Limited Partners (other than the Obligated Partners being affected thereby); provided, however; that, in the case of an Obligated Partner that is an entity that is classified as a partnership or disregarded entity for federal income tax purposes, upon the date nine months after the death of any Indirect Owner in such Obligated Partner, or upon a fully taxable sale or exchange of all of an Indirect Owner’s equity interest in such Obligated Partner (i.e., a sale or exchange in which the transferee’s basis in the Indirect Owner’s equity interest in the Obligated Partner is not determined, in whole or in part, by reference to the Indirect Owner’s basis in the Obligated Partner), the Protected Amount of such Obligated Partner shall be reduced to the extent of the Indirect Owner’s allocable share of the Obligated Partner’s Protected Amount. The principles of the preceding sentence shall apply in the same manner in the case of any Indirect Owner that itself is an entity that is classified as a partnership or disregarded entity for federal income tax purposes.

“Public REIT” shall mean (a) General Growth Properties, Inc., a Delaware corporation whose shares of common stock are listed on the New York Stock Exchange substantially concurrently herewith, that is the successor registrant to old General Growth Properties, Inc. and will file reports under the Securities Exchange Act of 1934 in lieu of old

General Growth Properties, Inc. or (b) any Person in the future whose securities are publicly traded and holds directly or indirectly substantially all of the ownership interests of the Partnership currently owned by General Growth Properties, Inc.

“Qualified Individual” shall have the meaning set forth in Section 12.2 hereof.

“Recourse Liabilities” shall mean, as of the date of determination, the amount of indebtedness of the Partnership on that date other than Nonrecourse Liabilities and Partner Nonrecourse Debt.

“Regulations” shall mean the final, temporary or proposed Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Regulatory Allocations” shall have the meaning set forth in Exhibit B.

“REIT” shall mean a real estate investment trust as defined in Section 856 of the Code.

“REIT Entities” shall mean the Public REIT, GGP Real Estate Holding I, Inc., a Delaware corporation, GGP Real Estate Holding II, Inc., a Delaware corporation, and the General Partner.

“REIT Expenses” shall mean (i) costs and expenses relating to the formation and continuity of existence of the Public REIT and its subsidiaries (which subsidiaries shall, for purposes of this definition, be included within the definition of Public REIT), including taxes, fees and assessments associated therewith, any and all costs, expenses or fees payable to any director or trustee of the Public REIT or such subsidiaries, (ii) costs and expenses relating to any offer or registration of securities by the Public REIT and all statements, reports, fees and expenses incidental thereto, including underwriting discounts and selling commissions applicable to any such offer of securities, (iii) costs and expenses associated with the preparation and filing of any periodic reports by the Public REIT under federal, state or local laws or regulations, including filings with the SEC, (iv) costs and expenses associated with compliance by the Public REIT with laws, rules and regulations promulgated by any regulatory body, including the SEC, and (v) all other operating or administrative costs of the Public REIT incurred in the ordinary course of its business on behalf of the Partnership.

“REIT Loan” shall have the meaning set forth in Section 4.3(a) hereof.

“REIT Requirements” shall have the meaning set forth in Section 5.2 hereof.

“Requesting Party” shall have the meaning set forth in Section 12.2 hereof.

“Required Funds” shall have the meaning set forth in Section 4.3 hereof.

“Responding Party” shall have the meaning set forth in Section 12.2 hereof.

“Restricted Period” shall have the meaning set forth in Section 9.5 hereof.

“Restrictions Lapse Data” shall have the meaning set forth in Section 9.5 hereof.

“Rights” shall mean “Rights,” “Redemption Rights” or other similar rights as defined in the Rights Agreements.

“Rights Agreements” shall mean the Bucksbaum Rights Agreement and those certain Redemption Rights Agreements entered into before, on or after the date hereof by the Partnership, the General Partner and certain other Persons in connection with the issuance of Units to such other Persons, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Section 704 (c) Tax Items” shall have the meaning set forth in Exhibit B.

“Series B Preferred Units” shall mean the series of preferred units of the Partnership designated as 8.5% Series B Cumulative Convertible Preferred Units having such designations, preferences and other rights described in Schedule A.

“Series D Preferred Units” shall mean the series of preferred units of the Partnership designated as 6.5% Series D Cumulative Convertible Preferred Units having such designations, preferences and other rights described in Schedule B.

“Series E Preferred Units” shall mean the series of preferred units of the Partnership designated as 7% Series E Cumulative Convertible Preferred Units having such designations, preferences and other rights described in Schedule C.

“Series F Preferred Units” shall mean the series of preferred units of the Partnership designated as Series F Cumulative Preferred Units having such designations, preferences and other rights described in Schedule D.

“Shopping Center Project” shall mean any shopping center, including construction and improvement activities undertaken with respect thereto and off-site improvements, on-site improvements, structures, buildings and/or related parking and other facilities.

“Stock Incentive Plan” means the General Partner’s 1993 Stock Incentive Plan, as amended, 1998 Incentive Stock Plan, as amended, and 2003 Incentive Stock Plan, as amended.

“Stock Plans” shall mean the Stock Incentive Plan and the other option, stock purchase and/or dividend reinvestment plans of the Public REIT, General Partner or the Partnership that are in effect from time to time.

“Substituted Limited Partner” shall have the meaning set forth in Section 8.2 hereof.

“Tax Items” shall have the meaning set forth in Exhibit B.

“Trading Day” shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or Executive Order to close.

“Units” shall mean the partnership units in the Partnership established and issued from time to time in accordance with the terms hereof, including without limitation Common Units and Series B Preferred Units, Series D Preferred Units, Series E Preferred Units and Series F Preferred Units. The number and designation of all Units held by each Partner is set forth opposite such Partner’s name on Exhibit A.

1.2 Exhibits, Etc. References to an “Exhibit” or to a “Schedule” are, unless otherwise specified, to one of the Exhibits or Schedules attached to this Agreement, and references to an “Article” or a “Section” are, unless otherwise specified, to one of the Articles or Sections of this Agreement. Each Exhibit and Schedule attached hereto and referred to herein is hereby incorporated herein by reference.

ARTICLE II

Continuation

2.1 Continuation. The parties hereto do hereby continue the Partnership as a limited partnership pursuant to the provisions of the Act, and all other pertinent laws of the State of Delaware, for the purposes and upon the terms and conditions hereinafter set forth. The Partners agree that the rights and liabilities of the Partners shall be as provided in the Act except as otherwise herein expressly provided. The General Partner shall cause such notices, instruments, documents or certificates as may be required by applicable law or which may be necessary to enable the Partnership to conduct its business and to own its properties in the Partnership name to be filed or recorded in all appropriate public offices.

2.2 Name. The business of the Partnership shall continue to be conducted under the name of “GGP Limited Partnership” or such other name as the General Partner may select and all transactions of the Partnership, to the extent permitted by applicable law, shall be carried on and completed in such name.

2.3 Character of the Business. The purpose of the Partnership shall be to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange and otherwise dispose of or deal with Properties; to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange and otherwise dispose of or deal with real and personal property of all kinds; to exercise all of the powers of a partner, member or other equity participant in Property Partnerships; to acquire, own, deal with and dispose of Property Partnership Interests; to undertake such other activities as may be necessary, advisable, desirable or convenient to the business of the Partnership, and to engage in such other ancillary activities as shall be necessary or desirable to effectuate the foregoing purposes. The Partnership shall have all powers necessary or desirable to accomplish

the purposes enumerated. In connection with and without limiting the foregoing, but subject to all of the terms, covenants, conditions and limitations contained in this Agreement and any other agreement entered into by the Partnership, the Partnership shall have full power and authority, directly or through its interest in Property Partnerships, to enter into, perform and carry out contracts of any kind, to borrow money and to issue evidences of indebtedness, whether or not secured by mortgage, trust deed, pledge or other lien, and, directly or indirectly to acquire and construct additional Properties necessary or useful in connection with its business.

2.4 Location of the Principal Place of Business. The location of the principal place of business of the Partnership shall be at 110 North Wacker Drive, Chicago, Illinois 60606, or at such other location as shall be selected by the General Partner from time to time in its sole discretion.

2.5 Registered Agent and Registered Office. The Registered Agent of the Partnership shall be Prentice-Hall Corporation System, Inc. or such other Person as the General Partner may select in its sole discretion. The Registered Office of the Partnership shall be 32 Loockerman Square, Suite L-100, Dover, Delaware 19901 or such other location as the General Partner may select in its sole and absolute discretion.

ARTICLE III

Term

3.1 Commencement. The Partnership heretofore commenced business as a limited partnership upon the filing of the Certificate with the Secretary of State of the State of Delaware.

3.2 Dissolution. The Partnership shall continue until dissolved upon the occurrence of the earliest of the following events:

(a) The dissolution, termination, retirement or Bankruptcy of the General Partner unless the Partnership is continued as provided in Section 8.1 hereof; provided, however, none of the foregoing shall be deemed to have occurred on account of liquidation of the General Partner into one or more subsidiaries of the Public REIT or one of more subsidiaries thereof; and provided, further, that no event of dissolution shall have been deemed to occur by virtue of the Bankruptcy Cases;

(b) The election to dissolve the Partnership made in writing by the General Partner with the Consent of the Limited Partners;

(c) The sale or other disposition of all or substantially all the assets of the Partnership unless the General Partner, with the Consent of the Limited Partners, elects to continue the Partnership business for the purpose of the receipt and the collection of indebtedness or the collection of any other consideration to be received in exchange for the assets of the Partnership (which activities shall be deemed to be part of the winding up of the affairs of the Partnership); or

(d) Dissolution required by operation of law.

ARTICLE IV

Contributions to Capital

4.1 General Partner and Affiliate Limited Partner Capital Contribution. The General Partner and the Affiliate Limited Partner have contributed to the Partnership as their Capital Contribution the cash and property reflected in the Partnership's books and records as having been contributed by them. The gross fair market value of any property contributed by the General Partner or the Affiliate Limited Partner to the Partnership ("Contributed Property") after the date hereof, other than money, shall be the acquisition cost of such Contributed Property (the "Acquisition Cost"). The Acquisition Cost also shall include any costs and expenses incurred by the General Partner or the Affiliate Limited Partner in connection with such acquisition or contribution; provided, however, that in the event the Acquisition Cost of Contributed Property is financed by any borrowings by the REIT Entities or Affiliate Limited Partner, the Partnership shall assume any such obligations concurrently with the contribution of such property to the Partnership or, if impossible, shall obligate itself to the General Partner or the Affiliate Limited Partner, as applicable, in an amount and on terms equal such indebtedness, and the Acquisition Cost shall be reduced appropriately. If the General Partner or the Affiliate Limited Partner contributes Contributed Property to the Partnership, the General Partner or the Affiliate Limited Partner, as applicable, shall be deemed to have contributed to the Partnership as Contributed Funds pursuant to Section 4.3(a)(ii) hereof an amount equal to the Acquisition Cost of such Contributed Property.

4.2 Limited Partner Capital Contributions. Each Limited Partner (other than the Affiliate Limited Partner) has heretofore contributed, or is deemed to have contributed, as its Capital Contribution to the capital of the Partnership, the property reflected in the Partnership's books and records as having been contributed by it.

4.3 Additional Funds.

(a) If the General Partner determines that funds are required or desired for any proper Partnership purpose in excess of the funds anticipated to be available and the General Partner is not able or does not deem it advisable to cause the Partnership to borrow such funds or the REIT Entities or Affiliate Limited Partner otherwise raises any funds, including by issuance of new or sale of existing equity interests or securities (all of such funds, the "Required Funds"), the General Partner shall either:

(i) to the extent the REIT Entities or the Affiliate Limited Partner borrows all or any portion of the Required Funds by entering into a Funding Loan, such entity shall, on the Funding Date, lend (the "REIT Loan") to the Partnership the Funding Loan Proceeds on the same terms and conditions, including interest rate, repayment schedule and costs and expenses, as shall be applicable with respect to or incurred in connection with the Funding Loan; or

(ii) to the extent (x) the Public REIT issues shares of its Common Stock or other securities (other than notes issued in connection with a Funding Loan), (y) the other REIT Entities or Affiliate Limited Partner issue new equity

interests or securities to any Person not under the Control of, or not wholly owned (except for *de minimis* preferred stock), directly or indirectly, by, the Public REIT or (z) the Public REIT, directly or indirectly, sells any previously issued equity interests or securities in the other REIT Entities or the Affiliate Limited Partner to raise the Required Funds, the General Partner and/or Affiliate Limited Partner, as applicable, shall, on the Funding Date, contribute to the Partnership as an additional Capital Contribution the amount of the Required Funds so raised (“Contributed Funds”) (hereinafter, each Funding Date on which the General Partner and/or Affiliate Limited Partner, as applicable, so contributes Contributed Funds pursuant to this subparagraph (ii) is referred to as an “Adjustment Date”). In the event the General Partner and/or Affiliate Limited Partner advances Required Funds to the Partnership as Contributed Funds pursuant to this subparagraph (ii), the Partnership shall assume and pay (or reflect on its books as additional Contributed Funds) the expenses (including any applicable underwriting discounts) incurred by the REIT Entities or the Affiliate Limited Partner in connection with raising such Contributed Funds through a public offering of its securities or otherwise.

(b) Effective on each Adjustment Date and without the consent of any other Partner, the Partnership shall issue to the General Partner and/or Affiliate Limited Partner, as applicable, with respect to Contributed Funds relating to:

(i) an issuance by the Public REIT of Common Stock, the number of additional Common Units equal to the product of (x) the number of shares of Common Stock issued by the Public REIT in connection with obtaining such Contributed Funds, and (y) the Conversion Factor;

(ii) an issuance by the Public REIT of other equity interests or securities, Preferred Units with terms that are equivalent to the terms of such other equity interests or securities;

(iii) an issuance by the other REIT Entities or the Affiliate Limited Partner of equity interests or securities to any Person not under the Control of, or not wholly owned (except for *de minimis* preferred stock), directly or indirectly, by, the Public REIT, the number of Series F Preferred Units equal to a fraction, the numerator of which shall be the liquidation value of such equity securities and the denominator of which shall be \$1000; provided, the Public REIT shall cause the other REIT Entities and the Affiliate Limited Partner to restrict such issuances to equity interests or securities having substantially similar terms to the Series F Preferred Units; or

(iv) a sale, directly or indirectly, by the Public REIT of equity interests or securities in the other REIT Entities or the Affiliate Limited Partner, the number of additional Common Units equal to (x) the Conversion Factor multiplied by (y) the quotient of (1) the sale price of such equity interests divided by (2) the Current Per Share Market Price in respect of such transaction.

The General Partner shall be authorized on behalf of each of the Partners to amend this Agreement to reflect the issuance of Units in accordance with Sections 4.3 and 4.4 in the event that the General Partner deems such amendment to be desirable.

4.4 Stock Plans. If at any time or from time to time options granted in connection with the Stock Incentive Plan or any other Stock Plans are exercised in accordance with the terms thereof or shares of Common Stock are otherwise issued pursuant to any of the Stock Plans:

(a) the Public REIT, General Partner and/or Affiliate Limited Partner, as applicable, shall, as soon as practicable after such exercise, purchase or other issuance, contribute or cause to be contributed to the capital of the Partnership an amount equal to the exercise price or other purchase price paid to the Public REIT, General Partner and/or Affiliate Limited Partner, as applicable, by the exercising or purchasing party in connection with such exercise or issuance; and

(b) the Partnership shall issue to the General Partner and/or Affiliate Limited Partner, as applicable, with respect to any exercise of options or purchase of shares of Common Stock pursuant to the Stock Plans, the number of additional Common Units equal to the product of (i) the number of shares of Common Stock issued by the Public REIT in connection with such exercise, purchase or issuance, multiplied by (ii) the Conversion Factor.

4.5 No Third Party Beneficiary. No creditor or other third party having dealings with the Partnership shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the Partners herein set forth to make Capital Contributions or loans to the Partnership shall be deemed an asset of the Partnership for any purpose by any creditor or other third party, nor may such rights or obligations be sold, transferred or assigned by the Partnership or pledged or encumbered by the Partnership to, secure any debt or other obligation of the Partnership or of any of the Partners.

4.6 No Interest; No Return. No Partner shall be entitled to interest on its Capital Contribution or on such Partner's Capital Account. Except as provided herein or by law, no Partner shall have any right to demand or receive the return of its Capital Contribution from the Partnership.

4.7 Preferred Units. The Series B Preferred Units, Series D Preferred Units, and Series E Preferred Units and Series F Preferred Units have been established and have the rights, preferences, limitations and qualifications as are described in Schedule A, Schedule B, Schedule C and Schedule D, respectively, in addition to the applicable rights and preferences contained herein.

ARTICLE V

Allocations and Other Tax and Accounting Matters

5.1 Allocations. The Net Income, Net Loss and/or other Partnership items shall be allocated pursuant to the provisions of Exhibit B hereto.

5.2 Distributions With Respect to Common Units.

(a) Subject to the terms of the Preferred Units and after giving effect to the same, the General Partner shall, from time to time as determined by the General Partner (but in any event not less frequently than quarterly), cause the Partnership to distribute all or a portion of the remaining Net Operating Cash Flow to the holders of Common Units on the relevant Partnership Record Date in such amounts as the General Partner shall determine; provided, however, that all such distributions shall be made pro rata in accordance with the Partners' then Percentage Interests; and provided further, that notwithstanding anything to the contrary contained herein, the General Partner shall use its best efforts to cause the Partnership to distribute sufficient amounts to enable the REIT Entities to pay shareholder dividends that will (i) satisfy the requirements for qualifying as a REIT under the Code and Regulations ("REIT Requirements"), and (ii) avoid any federal income or excise tax liability of the REIT Entities.

(b) In no event may a Limited Partner receive a distribution of Net Operating Cash Flow in respect of a Unit that such Partner has exchanged for a share of Common Stock pursuant to a Rights Agreement on or prior to the relevant Partnership Record Date; rather, all such distributions shall be made to the General Partner. Upon the receipt by the General Partner of each Exercise Notice pursuant to which one or more Limited Partners exercise Rights in accordance with the provisions of the Bucksbaum Rights Agreement, the General Partner shall, unless the Public REIT is required or elects only to issue Common Stock to such exercising Limited Partners, cause the Partnership to distribute to the Partners, pro rata in accordance with their Percentage Interests on the date of delivery of such Exercise Notice, all (or such lesser portion as the General Partner shall reasonably determine to be prudent under the circumstances) of Net Operating Cash Flow, which distribution shall be made prior to the closing of the purchase and sale of the Offered Units specified in such Exercise Notice.

5.3 Books of Account. At all times during the continuance of the Partnership, the General Partner shall maintain or cause to be maintained full, true, complete and correct books of account in accordance with generally accepted accounting principles wherein shall be entered particulars of all monies, goods or effects belonging to or owing to or by the Partnership, or paid, received, sold or purchased in the course of the Partnership's business, and all of such other transactions, matters and things relating to the business of the Partnership as are usually entered in books of account kept by persons engaged in a business of a like kind and character. In addition, the Partnership shall keep all records as required to be kept pursuant to the Act. The books and records of account shall be kept at the principal office of the Partnership, and each Partner shall at all reasonable times have access to such books and records and the right to inspect the same.

5.4 Reports. The Public REIT shall cause to be submitted to the Limited Partners, promptly upon receipt of the same from the Accountants and in no event later than April 1 of each year, copies of Audited Financial Statements prepared on a consolidated basis for the Public REIT and the Partnership together with their consolidated subsidiaries, together with the reports thereon, and all supplementary schedules and information, prepared by the Accountants. The Public REIT shall also cause to be prepared such reports and/or information as are necessary for the REIT Entities to determine their qualification as a REIT and their compliance with REIT Requirements.

5.5 Audits. Not less frequently than annually, the books and records of the Partnership shall be audited by the Accountants. The General Partner shall, unless determined otherwise by the General Partner with the Consent of the Limited Partners, engage the Accountants to audit the books and records of the Property Partnerships.

5.6 Tax Elections and Returns.

(a) All elections required or permitted to be made by the Partnership under any applicable tax law shall be made by the General Partner in its sole discretion, including without limitation an election on behalf of the Partnership pursuant to Section 754 of the Code to adjust the basis of the Partnership property in the case of transfers of Units, and the General Partner shall not be required to make any such election.

(b) The General Partner shall cause the Accountants to prepare and file all state and federal tax returns on a timely basis. The General Partner shall cause the Accountants to prepare and submit to the Limited Partner Representatives on or before April 1 of each year for review all federal and state income tax returns of the Partnership and cause the Accountants for the Property Partnerships to submit to the Limited Partner Representatives on or before April 1 of each year for review all federal and state income tax returns of the Property Partnerships. If the Limited Partner Representatives determine that any modifications to the tax returns of the Partnership or any Property Partnership should be considered, the Limited Partner Representatives shall, within thirty (30) days following receipt of such tax returns from the Accountants or the General Partner, indicate to the General Partner the suggested revisions to the tax returns, which returns shall be resubmitted to the Limited Partner Representatives for their review (but not approval). The Limited Partner Representatives shall complete their review of the resubmitted returns within ten (10) days after receipt thereof from the Accountants or the General Partner. The General Partner shall consult in good faith with the Limited Partner Representatives regarding any such proposed modifications to the tax returns of the Partnership and/or the Property Partnerships. A statement of the allocation of Net Income or Net Loss of the Partnership shown on the annual income tax returns prepared by the Accountants and a statement of the allocation of Net Income or Net Loss shown on the income tax return, of the Property Partnerships shall be transmitted and delivered to the Limited Partner Representatives within ten (10) days of the receipt thereof by the Partnership. The General Partner shall be responsible for preparing and filing all federal and state tax returns for the Partnership and furnishing copies thereof to the Partners, together with required Partnership schedules showing allocations of tax items and copies

of the tax returns of all Property Partnerships, all within the period of time prescribed by law or by the provisions hereof.

5.7 Tax Matters Partner. The General Partner is hereby designated as the Tax Matters Partner within the meaning of section 6231(a)(7) of the Code for the Partnership; provided, however, (i) in exercising its authority as Tax Matters Partner it shall be limited by the provisions of this Agreement affecting tax aspects of the Partnership; (ii) the General Partner shall consult in good faith with the Limited Partner Representatives regarding the filing of a Code Section 6227(b) administrative adjustment request with respect to the Partnership or a Property before filing such request, it being understood, however, that the provisions hereof shall not be construed to limit the ability of any Partner, including the General Partner, to file an administrative adjustment request on its own behalf pursuant to Section 6227(a) of the Code; (iii) the General Partner shall consult in good faith with the Limited Partner Representatives regarding the filing of a petition for judicial review of an administrative adjustment request under Section 6228 of the Code, or a petition for judicial review of a final partnership administrative judgment under Section 6226 of the Code relating to the Partnership before filing such petition; (iv) the General Partner shall give prompt notice to the Limited Partner Representatives of the receipt of any written notice that the Internal Revenue Service or any state or local taxing authority intends to examine Partnership income tax returns for any year, receipt of written notice of the beginning of an administrative proceeding at the Partnership level relating to the Partnership under Section 6223 of the Code, receipt of written notice of the final Partnership administrative adjustment relating to the Partnership pursuant to Section 6223 of the Code, and receipt of any request from the Internal Revenue Service for waiver of any applicable statute of limitations with respect to the filing of any tax return by the Partnership; and (v) the General Partner shall promptly notify the Limited Partner Representatives if the General Partner does not intend to file for judicial review with respect to the Partnership. The General Partner, in acting on behalf of the Partnership as tax matters partner of a Property Partnership, shall afford the Limited Partners the same rights with respect to Property Partnership tax matters as afforded to the Limited Partners under this Section 5.7.

5.8 Withholding. Each Partner hereby authorizes the Partnership to withhold or pay on behalf of or with respect to such Partner any amount of federal, state, local or foreign taxes that the General Partner determines the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Partner pursuant to this Agreement, including without limitation any taxes required to be withheld or paid by the Partnership pursuant to Sections 1441, 1442, 1445 or 1446 of the Code. Any amount paid on behalf of or with respect to a partner shall constitute a loan by the Partnership to such Partner, which loan shall be due within fifteen (15) days after repayment is demanded of such Partner and shall be repaid through withholding of subsequent distributions to such Partner. Nothing in this Section 5.8 shall create any obligation on the General Partner to advance funds to the Partnership or to borrow funds in order to make payments on account of any liability of the Partnership under a withholding tax act. Any amounts payable by a Limited Partner hereunder shall bear interest at the lesser of (a) the Prime Rate and (b) the maximum lawful rate of interest on such obligation, such interest to accrue from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. To the extent the payment or accrual of withholding tax results in a federal, state or local tax credit to the Partnership, such credit shall be allocated to the Partner to whose distribution the tax is attributable.

5.9 Distributions with Respect to Preferred Units.

(a) The holders of Series B Preferred Units are entitled to quarterly, cumulative partnership distributions when, if and as declared, in an amount equal to the greater of (i) \$1.0625 per Series B Preferred Unit and (ii) the amount of regular quarterly cash distributions upon the number of Common Units into which such Series B Preferred Unit is then convertible, as more particularly described in Schedule A.

(b) The holders of Series D Preferred Units are entitled to quarterly, cumulative partnership distributions when, if and as declared, in an amount equal to the greater of (i) \$0.8125 per Series D Preferred Unit and (ii) the amount of regular quarterly cash distributions upon the number of Common Units into which such Series D Preferred Unit is then convertible, as more particularly described in Schedule B.

(c) The holders of Series E Preferred Units are entitled to quarterly, cumulative partnership distributions when, if and as declared, in an amount equal to the greater of (i) \$0.875 per Series E Preferred Unit and (ii) the amount of regular quarterly cash distributions upon the number of Common Units into which such Series E Preferred Unit is then convertible, as more particularly described in Schedule C.

(d) The holders of Series F Preferred Units are entitled to quarterly, cumulative partnership distributions when, if and as declared, in an amount equal to \$25, as more particularly described in Schedule D.

ARTICLE VI

Rights, Duties and Restrictions of the General Partner

6.1 Expenditures by Partnership. The General Partner is hereby authorized to pay compensation for accounting, administrative, legal, technical, management and other services rendered to the Partnership. All of the aforesaid expenditures shall be made on behalf of the Partnership and the General Partner shall be entitled to reimbursement by the Partnership for any expenditures incurred by it on behalf of the Partnership which shall be made other than out of the funds of the Partnership. The Partnership shall also assume and pay when due, all Administrative Expenses.

6.2 Powers and Duties of General Partner. The General Partner shall be responsible for the management of the Partnership's business and affairs. Except as otherwise herein expressly provided, and subject to the limitations contained in Section 6.3 hereof with respect to Major Decisions, the General Partner shall have, and is hereby granted, full and complete power, authority and discretion to take such action for and on behalf of the Partnership and in its name as the General Partner shall, in its sole and absolute discretion, deem necessary or appropriate to carry out the purposes for which the Partnership was organized. Except as otherwise expressly provided herein, and subject to Section 6.3 hereof but without limiting the foregoing grant of power, authority and discretion, the General Partner shall have the right, power and authority:

(a) To manage, control, invest, reinvest, acquire by purchase, lease or otherwise, sell, contract to purchase or sell, grant, obtain, or exercise options to purchase,

options to sell or conversion rights, assign, transfer, convey, deliver, endorse, exchange, pledge, mortgage, abandon, improve, repair, maintain, insure, lease for any term and otherwise deal with any and all property of whatsoever kind and nature, and wheresoever situated, in furtherance of the purposes of the Partnership;

(b) To acquire, directly or indirectly, interests in real estate of any kind and of any type, and any and all kinds of interests therein, and to determine the manner in which title thereto is to be held; to manage, insure against loss, protect and subdivide any of the real estate interests therein or parts thereof; to improve, develop or redevelop any such real estate; to participate in the ownership and development of any property; to dedicate for public use, to vacate any subdivisions or parts thereof, to resubdivide, to contract to sell, to grant options to purchase or lease, to sell on any terms; to convey, to mortgage, pledge or otherwise encumber said property, or any part thereof; to lease said property or any part thereof from time to time, upon any terms and for any period of time, and to renew or extend leases, to amend, change or modify the terms and provisions of any leases and to grant options to lease and options to renew leases and options to purchase; to partition or to exchange said real property, or any part thereof, for other real or personal property; to grant easements or charges of any kind; to release, convey or assign any right, title or interest in or about or easement appurtenant to said property or any part thereof; to construct and reconstruct, remodel, alter, repair, add to or take from buildings on said premises; to insure any Person having an interest in or responsibility for the care, management or repair of such property; to direct the trustee of any land trust to mortgage, lease, convey or contract to convey the real estate held in such land trust or to execute and deliver deeds, mortgages, notes and any and all documents pertaining to the property subject to such land trust or in any matter regarding such trust; to execute assignments of all or any part of the beneficial interest in such land trust;

(c) To employ, engage or contract with or dismiss from employment or engagement Persons to the extent deemed necessary by the General Partner for the operation and management of the Partnership business, including but not limited to, the engagement of the Property Manager pursuant to the Management Agreements and the employment or engagement of other contractors, subcontractors, engineers, architects, surveyors, mechanics, consultants, accountants, attorneys, insurance brokers, real estate brokers and others;

(d) To enter into contracts on behalf of the Partnership;

(e) To borrow money, procure loans and advances from any Person for Partnership purposes, and to apply for and secure, from any Person, credit or accommodations; to contract liabilities and obligations, direct or contingent and of every kind and nature with or without security; and to repay, discharge, settle, adjust, compromise or liquidate any such loan, advance, credit, obligation or liability;

(f) To pledge, hypothecate, mortgage, assign, deposit, deliver, enter into sale and leaseback arrangements or otherwise give as security or as additional or substitute security, or for sale or other disposition any and all Partnership property, tangible or intangible, including, but not limited to, real estate and beneficial interests in land trusts,

and to make substitutions thereof, and to receive any proceeds thereof upon the release or surrender thereof; to sign, execute and deliver any and all assignments, deeds and other contracts and instruments in writing; to authorize, give, make, procure, accept and receive moneys, payments, property, notices, demands, vouchers, receipts, releases, compromises and adjustments; to waive notices, demands, protests and authorize and execute waivers of every kind and nature; to enter into, make, execute, deliver and receive written agreements, undertakings and instruments of every kind and nature; to give oral instructions and make oral agreements; and generally to do any and all other acts and things incidental to any of the foregoing or with reference, to any dealings or transactions which any attorney may deem necessary, proper or advisable;

(g) To acquire and enter into any contract of insurance which the General Partner deems necessary or appropriate for the protection of the Partnership, for the conservation of the Partnership's assets or for any purpose convenient or beneficial to the Partnership;

(h) To conduct any and all banking transactions on behalf of the Partnership; to adjust and settle checking, savings and other accounts with such institutions as the General Partner shall deem appropriate; to draw, sign, execute, accept, endorse, guarantee, deliver, receive and pay any checks, drafts, bills of exchange, acceptances, notes, obligations, undertakings and other instruments for or relating to the payment of money in, into or from any account in the Partnership's name; to execute, procure, consent to and authorize extensions and renewals of the same; to make deposits and withdraw the same and to negotiate or discount commercial paper, acceptances, negotiable instruments, bills of exchange and dollar drafts;

(i) To demand, sue for, receive and otherwise take steps to collect or recover all debts, rents, proceeds, interests, dividends, goods, chattels, income from property, damages and all other property, to which the Partnership may be entitled or which are or may become due the Partnership from any Person; to commence, prosecute or enforce, or to defend, answer or oppose, contest and abandon all legal proceedings in which the Partnership is or may hereafter be interested; and to settle, compromise or submit to arbitration any accounts, debts, claims, disputes and matters which may arise between the Partnership and any other Person and to grant an extension of time for the payment or satisfaction thereof on any terms, with or without security;

(j) To make arrangements for financing, including the taking of all action deemed necessary or appropriate by the General Partner to cause any approved loans to be closed;

(k) To take all reasonable measures necessary to insure compliance by the Partnership with applicable arrangements, and other contractual obligations and arrangements entered into by the Partnership from time to time in accordance with the provisions of this Agreement, including periodic reports as required to lenders and using all due diligence to insure that the Partnership is in compliance with its contractual obligations;

- (l) To maintain the Partnership's books and records; and
- (m) To prepare and deliver, or cause to be prepared and delivered by the Partnership's Accountants, all financial and other reports with respect to the operations of the Partnership, and preparation and filing of all federal and state tax returns and reports.

Except as otherwise provided herein, to the extent the duties of the General Partner require expenditures of funds to be paid to third parties, the General Partner shall not have any obligations hereunder except to the extent that Partnership funds are reasonably available to it for the performance of such duties, and nothing herein contained shall be deemed to authorize or require General Partner, in its capacity as such, to expend its individual funds for payment to third parties or to undertake any individual liability or obligation on behalf of the Partnership.

6.3 Major Decisions. The General Partner shall not, without the prior Consent of the Limited Partners, on behalf of the Partnership, undertake any of the following actions (the "Major Decisions"):

- (a) Amend, modify or terminate this Agreement other than to reflect the admission of additional limited partners pursuant to Section 8.3 hereof or the issuance of additional Units pursuant to Section 4.3 hereof and other than as provided in other sections hereof.
- (b) Make a general assignment for the benefit of creditors or appoint or acquiesce in the appointment of a custodian, receiver or trustee for all or any part of the assets of the Partnership.
- (c) Take title to any personal or real property, other than in the name of the Partnership or a Property Partnership or pursuant to the provisions hereof.
- (d) Institute any proceeding for Bankruptcy on behalf of the Partnership.
- (e) Sell all or substantially all of the assets of the Partnership.
- (f) Dissolve the Partnership.

6.4 Actions with Respect to Certain Documents. Notwithstanding the provisions of Section 6.3 hereof to the contrary, whenever the consent, agreement, authorization or approval of the Partnership is required under any agreement to which the Bucksbaum Limited Partners and/or their Affiliates are parties in interest other than in their capacities as Limited Partners of the Partnership, the prior approval of a majority of the directors of the General Partner who are not Affiliates of the Bucksbaum Limited Partners shall be required.

6.5 Public REIT Participation. The Public REIT agrees that all business activities of the Public REIT, the Affiliated Limited Partner and the other REIT Entities, including activities pertaining to the acquisition, development and ownership of Properties, shall be conducted through the Partnership (other than the Public REIT's, Affiliated Limited Partner's or the other REIT Entities' direct or indirect interest of not more than one percent (1%) in Property Partnerships not owned through the Partnership). Without the Consent of the Limited Partners,

the Public REIT shall not, directly or indirectly, and shall cause the Affiliate Limited Partner and/or the other REIT Entities not to directly or indirectly, participate in or otherwise acquire any interest in any real or personal property unless the Partnership participates in, or otherwise acquires an interest in, such real or personal property at least to the extent of 99 times such proposed participation by the Public REIT, the Affiliate Limited Partner and/or the other REIT Entities, as applicable. The Public REIT agrees and agrees on behalf of the Affiliate Limited Partner and the other REIT Entities that all borrowings for the purpose of making distributions to its stockholders will be incurred by the Partnership or the Property Partnerships and the proceeds of such indebtedness will be included as Net Financing Proceeds hereunder.

6.6 Proscriptions. The General Partner shall not have the authority to:

- (a) Do any act in contravention of this Agreement or which would make it impossible to carry on the ordinary business of the Partnership;
- (b) Possess any Partnership property or assign rights in specific Partnership property for other than Partnership purposes; or
- (c) Do any act in contravention of applicable law.

Nothing herein contained shall impose any obligation on any Person or firm doing business with the Partnership to inquire as to whether or not the General Partner has properly exercised its authority in executing any contract, lease, mortgage, deed or other instrument or document on behalf of the Partnership, and any such third Person shall be fully protected in relying upon such authority.

6.7 Additional Partners. Additional Partners may be admitted to the Partnership only as provided in Section 8.3 hereof:

6.8 Title Holder. To the extent allowable under applicable law, title to all or any part of the properties of the Partnership may be held in the name of the Partnership or any other individual, corporation, partnership, trust or otherwise, the beneficial interest in which shall at all times be vested in the Partnership. Any such title holder shall perform any and all of its respective functions to the extent and upon such terms and conditions as may be determined from time to time by the General Partner.

6.9 Compensation of the General Partner. The General Partner shall not be entitled to any compensation for services rendered to the Partnership solely in its capacity as General Partner except with respect to reimbursement for those costs and expenses constituting Administrative Expenses.

6.10 Waiver and Indemnification.

- (a) Neither the General Partner nor any Person acting on its behalf (pursuant hereto, shall be liable, responsible or accountable in damages or otherwise to the Partnership or to any Partner for any acts or omissions performed or omitted to be performed by them within the scope of the authority conferred upon the General Partner by this Agreement and the Act, provided that the General Partner's or such other Person's

conduct or omission to act was taken in good faith and in the belief that such conduct or omission was in the best interests of the Partnership and, provided further, that the General Partner or such other Person shall not be guilty of fraud, misconduct or gross negligence. The Partnership shall, and hereby does, indemnify and hold harmless the General Partner and its Affiliates and any individual acting on their behalf from any loss, damage, claim or liability, including, but not limited to, reasonable attorneys' fees and expenses, incurred by them by reason of any act performed by them in accordance with the standards set forth above or in enforcing the provisions of this indemnity; provided, however, no Partner shall have any personal liability with respect to the foregoing indemnification, any such indemnification to be satisfied solely out of the assets of the Partnership.

(b) Any Person entitled to indemnification under this Agreement shall be entitled to receive, upon application therefor, advances to cover the costs of defending any proceeding against such Person; provided, however, that such advances shall be repaid to the Partnership, without interest, if such Person is found by a court of competent jurisdiction upon entry of a final judgment not be entitled to such indemnification, all rights of the indemnitee hereunder shall survive the dissolution of the Partnership; provided, however, that a claim for indemnification under this Agreement must be made by or on behalf of the Person seeking indemnification prior to the time the Partnership is liquidated hereunder. The indemnification rights contained in this Agreement shall be cumulative of, and in addition to, any and all rights, remedies and recourse to which the person seeking indemnification shall be entitled, whether at law or at equity. Indemnification pursuant to this Agreement shall be made solely and entirely from the assets of the Partnership and no Partner shall be liable therefor.

6.11 Limited Partner Representatives. A Majority-In-Interest of the Bucksbaum Limited Partners shall appoint one or more representatives ("Limited Partner Representatives"). A Majority-In-Interest of the Bucksbaum Limited Partners shall have the rights at any time, within their sole discretion, to replace any of the Limited Partner Representatives, to appoint a temporary substitute to act for any Limited Partner Representative unable to act, or to vest in only one of the Limited Partner Representatives the sole power to exercise rights of the Limited Partner Representatives thereunder. The Limited Partner Representatives shall be appointed by the Bucksbaum Limited Partners in writing, a copy of which shall be delivered to the General Partner. Any appointments of Limited Partner Representatives made hereunder shall remain effective until rescinded in a writing delivered to the General Partner and the General Partner shall have the right and authority to rely (and shall be fully protected in so doing) on the actions taken and directions given by such Limited Partner Representatives without any further evidence of their authority or further action by the Bucksbaum Limited Partners.

6.12 Operation in Accordance with REIT Requirements. The Partners acknowledge and agree that the Partnership shall be operated in a manner that will enable the REIT Entities to (a) satisfy the REIT Requirements and (b) avoid the imposition of any federal, income or excise tax liability. The Partnership shall avoid taking any action, or permitting any Property Partnership to take any action, which would result in the REIT Entities ceasing to satisfy the REIT Requirements or would result in the imposition of any federal income or excise tax liability on the REIT Entities. The determination as to whether the Partnership has operated in

the manner prescribed in this Section 6.12 shall be made without regard to any action or inaction of the General Partner with respect to distributions and the timing thereof.

ARTICLE VII

Dissolution, Liquidation and Winding-Up

7.1 Accounting. In the event of the dissolution, liquidation and winding-up of the Partnership, a proper accounting (which shall be certified) shall be made of the Capital Account of each Partner and of the Net Profits or Net Losses of the Partnership from the date of the last previous accounting to the date of dissolution. Financial statements presenting such accounting shall include a report of a certified public accountant selected by the Liquidating Trustee.

7.2 Distribution on Dissolution. In the event of the dissolution and liquidation of the Partnership for any reason, the assets of the Partnership shall be liquidated for distribution in the following rank and order:

- (a) Payment of creditors of the Partnership (other than Partners) in the order of priority as provided by law;
- (b) Establishment of reserves as provided by the General Partner to provide for contingent liabilities, if any;
- (c) Payment of debts of the Partnership to any, in the order of priority provided by law;
- (d) Payment to the holders of Preferred Units in accordance with the terms thereof; and
- (e) To the Partners holding Common Units in accordance with their respective Percentage Interests.

Whenever the Liquidating Trustee reasonably determines that any reserves established pursuant to paragraph (b) above are in excess of the reasonable requirements of the Partnership, the amount determined to be excess shall be distributed to the Partners in accordance with the above provisions.

7.3 Timing Requirements. In the event that the Partnership is “liquidated” within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, any and all distributions, to the Partners pursuant to Section 7.2(d) hereof shall be made no later than the later to occur of (i) the last day of the taxable year of the Partnership in which such liquidation occurs or (ii) ninety (90) days after the date of such liquidation.

7.4 Sale of Partnership Assets. In the event of the liquidation of the Partnership in accordance with the terms of this Agreement, the Liquidating Trustee may, with the Consent of the Limited Partners, sell Partnership or Property Partnership property if the Liquidating Trustee has in good faith solicited bids from unrelated third parties and obtained independent appraisals before making any such sale; provided, however, all sales, leases, encumbrances or transfers of

Partnership assets shall be made by the Liquidating Trustee with the prior Consent of the Limited Partners and solely on an “arm’s-length” basis, at the best price and on the best terms and conditions as the Liquidating Trustee in good faith believes are reasonably available at the time and under the circumstances and on a non-recourse basis to the Limited Partners. The liquidation of the Partnership shall not be deemed finally terminated until the Partnership shall have received cash payments in full with respect to obligations such as notes, installment sale contracts or other similar receivables received by the Partnership in connection with the sale of Partnership assets and all obligations of the Partnership have been satisfied or assumed by the General Partner. The Liquidating Trustee shall continue to act to enforce all of the rights of the Partnership pursuant to any such obligations until paid in full.

7.5 Distributions in Kind. In the event that it becomes necessary to make a distribution of Partnership property in kind, the General Partner may, with the Consent of the Limited Partners, transfer and convey such property to the distributees as tenants in common, subject to any liabilities attached thereto, so as to vest in them undivided interests in the whole of such property in proportion to their respective rights to share in the proceeds of the sale of such property (other than as a creditor) in accordance with the provisions of Section 7.2 hereof.

7.6 Documentation of Liquidation. Upon the completion of the dissolution and liquidation of the Partnership, the Partnership shall terminate and the Liquidating Trustee shall have the authority to execute and record any and all documents or instruments required to effect the dissolution, liquidation and termination of the partnership.

7.7 Liability of the Liquidating Trustee. The Liquidating Trustee shall be indemnified and held harmless by the Partnership from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever arising out of or incidental to the Liquidating Trustee’s taking of any action authorized under or within the scope of this Agreement; provided, however, that the Liquidating Trustee shall not be entitled to indemnification, and shall not be held harmless, where the claim, demand, liability, cost, damage or cause of action at issue arose out of:

(a) A matter entirely unrelated to the Liquidating Trustee’s action or conduct pursuant to the provisions of this Agreement; or

(b) The proven misconduct or negligence of the Liquidating Trustee.

7.8 Liquidation Preference of Preferred Units. With respect to liquidation of the Partnership:

(a) The holders of Series B Preferred Units shall have the rights and preferences described in Schedule A.

(b) The holders of Series D Preferred Units shall have the rights and preferences described in Schedule B.

(c) The holders of Series E Preferred Units shall have the rights and preferences described in Schedule C

(d) The holders of Series F Preferred Units shall have the rights and preferences described in Schedule D.

7.9 Negative Capital Accounts.

(a) Except as provided in the next sentence and Section 7.9(b), no Partner shall be liable to the Partnership or to any other partner for any deficit or negative balance which may exist in its Capital Account. Upon liquidation of any Obligated Partner's interest in the Partnership, whether pursuant to a liquidation of the Partnership or by means of a distribution to the Obligated Partner by the Partnership, if such Obligated Partner has a deficit balance in its Capital Account, after giving effect to all contributions, distributions, allocations and adjustments to Capital Accounts for all periods, each such Obligated Partner shall contribute to the capital of the Partnership an amount equal to its respective deficit balance. Each Obligated Partner having such an obligation to restore a deficit Capital Account shall satisfy such obligation by the end of the fiscal year of liquidation (or, if later, within ninety (90) days following the liquidation and dissolution of the Partnership). Any such contribution by an Obligated Partner shall be used to make payments to creditors of the Partnership and such Obligated Partners (i) shall not be subrogated to the rights of any such creditor against the General Partner, the Partnership, another Partner or any Person related thereto, and (ii) hereby waive any right to reimbursement, contribution or similar right to which such Obligated Partners might otherwise be entitled as a result of the performance of their obligations under this Agreement.

(b) Notwithstanding any other provision of this Agreement, an Obligated Partner other than Koury Corporation shall cease to be an Obligated Partner upon the earlier of (i) nine months after the death of such Obligated Partner or (ii) six months after (A) any date after the third anniversary date of the date of the Fourth Amendment to Second Amended and Restated Agreement of Limited Partnership of GGP Limited Partnership dated as of April 1, 1998, which is selected by the Obligated Partner as the date upon which such Obligated Partner's obligation hereunder shall terminate (and for which notice of such date shall be given at least 60 days prior to such selected date) or (B) an exchange of all of such Obligated Partner's remaining Units for shares of Common Stock or preferred stock of the Public REIT (pursuant to a Rights Agreement) or in an otherwise taxable sale or exchange of all of such Obligated Partner's Units provided that at the time of or during such six-month period following such event set forth in (ii)(A) or (B), there has not been: (X) an entry of decree or order for relief in respect of the Partnership by a court having jurisdiction over a substantial part of the Partnership's assets, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar Official) of the Partnership or of any substantial part of its property, ordering the winding up or liquidation of the Partnership's affairs, in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; or (Y) the commencement against the Partnership of an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; or (Z) the commencement by the Partnership of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or

any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the entry of an order for relief in an involuntary case under any such law or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Partnership or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors, or the failure of the Partnership generally to pay its debts as such debts become due or the taking of any action in furtherance of any of the foregoing. Following the passage of the six-month period after the event set forth in clause (ii)(A) or (B) of this paragraph, an Obligated Partner shall cease to be an Obligated Partner at the first time, if any, that all of the conditions set forth in (X) through (Z) above are no longer in existence.

(c) Notwithstanding any other provision of this Agreement, Koury Corporation shall cease to be an Obligated Partner immediately upon the earlier of (i) any date which is selected by Koury Corporation as the date upon which its status as an Obligated Partner hereunder shall terminate (and for which notice of such selected date shall be given at least 60 days prior to such selected date, but only if such selected date is not earlier than the first anniversary date of the last day of the Partnership's most recent completed tax year in which Koury Corporation's Protected Amount increased), (ii) an exchange of all of Koury Corporation's remaining Units for shares of Common Stock of the Public REIT (pursuant to a Rights Agreement) or in an otherwise taxable sale, or exchange of all of such Obligated Partner's Units; or (iii) the Partnership's termination, for a Partnership purposes, of Koury Corporation's status as an Obligated Partner on any date that follows March 5, 2017.

ARTICLE VIII

Transfer of Units

8.1 General Partner Transfer. The General Partner shall not withdraw from the Partnership and shall not sell, assign, pledge, encumber or otherwise dispose of all or any portion of its Units, either to a new General Partner or a Limited Partner, without the Consent of the Limited Partners. Upon any transfer of Units to a new General Partner in accordance with the provisions of this Section 8.1, the transferee General Partner shall become vested with the powers and rights of the transferor General Partner, and shall be liable for all obligations and responsible for all duties of the General Partner, once such transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Units so acquired. It is a condition to any transfer of Units to a new General Partner otherwise permitted hereunder that the transferee assumes by operation of law or express agreement all of the obligations of the transferor General Partner under this Agreement with respect to such transferred Units and no such transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor General Partner are assumed by a successor corporation by operation of law), shall relieve the transferor General Partner of its obligations under this Agreement without the Consent of the Limited Partners, in their reasonable discretion. In the event the General Partner withdraws from the Partnership in violation of this Agreement or otherwise, or dissolves or terminates or upon the Bankruptcy of

the General Partner, a Majority-in-Interest of the Limited Partners may elect to continue the Partnership business by selecting a substitute general partner. Notwithstanding the foregoing, the General Partner shall be permitted at any time, and from time to time, to transfer its Units to the Affiliate Limited Partner or liquidate into one or more subsidiaries of the Public REIT or one or more subsidiaries thereof without the Consent of the Limited Partners; provided, however, that such transfer or liquidation shall not materially change the proportionate direct or indirect ownership in the Partnership by the Public REIT and, in the event of the liquidation of the General Partner, the Affiliate Limited Partner (or its successor) shall select a new General Partner; provided further, such new General Partner shall be under the Control of the Public REIT.

8.2 Transfers by Limited Partners. Each Limited Partner shall, subject to the provisions of this Section 8.2 and Section 8.4 hereof, have the right to transfer all or a portion of its Units to any Person, whether or not in connection with the exercise of the Rights. It is a condition to any transfer otherwise permitted hereunder that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Limited Partner under this Agreement with respect to such transferred Units and no such transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Partner are assumed by a successor corporation by operation of law) shall relieve the transferor Partner of its obligations under this Agreement without the approval of the General Partner in its reasonable discretion. Upon such transfer, the transferee shall be admitted as a substituted limited partner as such term is defined in the Act (the “Substituted Limited Partner”) and shall succeed to all of the rights of the transferor Limited Partner under this Agreement in the place and stead of such transferor Limited Partner; provided, however, that notwithstanding the foregoing, any transferee of any transferred Units, to the extent such transferee is entitled to exercise Rights under the Rights Agreement, shall be subject to any and all ownership limitations contained in the Charter which may limit or restrict such transferee’s ability to exercise the Rights. Any transferee, whether or not admitted as a Substituted Limited Partner, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Limited Partner, no transferee, whether by a voluntary transfer, by operation of law or otherwise, shall have rights hereunder, other than to receive such portion of the distributions made by the Partnership as are allocable to the Units transferred. Notwithstanding the foregoing, without the Consent of the Limited Partners, the Affiliate Limited Partner shall not transfer its Units in the Partnership, and shall not suffer or permit the transfer or issuance of interests in itself, unless the transferee of such Units or interests is under the Control of the Public REIT and the Public REIT’s direct and indirect ownership interest in the Partnership is not materially altered.

8.3 Issuance of Additional Common Units.

(a) At any time without the consent of any Partner, but subject to the provisions of Section 8.4 hereof, the General Partner may, upon its determination that the issuance of additional Common Units (“Additional Units”) is in the best interests of the Partnership, cause the Partnership to issue Additional Units to and admit as a Limited Partner in the Partnership, any Person (the “Additional Partner”) in exchange for the contribution by such Person of cash and/or property desirable to further the purposes of the Partnership under Section 2.3 hereof. The number of Additional Units issued to any Additional Partner shall be equal to the product of the (a) Conversion Factor multiplied

by (b) the quotient of (i) the Gross Asset Value of the property contributed by the Additional Partner (net of liabilities assumed by the Partnership in connection with the contribution of such property to the Partnership or to which such property is subject) as of the date of contribution (the “Contribution Date”) divided by (ii) Current Per Share Market Price in respect of such transaction, and the General Partner may admit an Additional Partner to the Partnership upon such other terms as it deems appropriate. The General Partner shall be authorized on behalf of each of the Partners to amend this Agreement to reflect the admission of any Additional Partner in accordance with the provisions of this Section 8.3 in the event that the General Partner deems such amendment to be desirable, and the General Partner promptly shall deliver a copy of such amendment to each Limited Partner. Notwithstanding anything contained herein to the contrary, an Additional Partner that acquires Additional Units pursuant to this Section 8.3 shall not acquire any interest in and may not exercise or otherwise participate in any Rights pursuant to the Rights Agreements unless they are expressly granted such rights.

(b) (i) Upon issuance by either of the General Partner or the Public REIT of shares of its common stock pursuant to the CSA or in settlement of any dispute relating to the CSA, the Partnership shall issue to the General Partner an equal number of Common Units and (ii) upon issuance of shares of its preferred stock pursuant to the CSA, the Partnership shall issue to the General Partner an equal number of Preferred Units with terms that are equivalent to the terms of such shares of preferred stock. Notwithstanding anything to the contrary contained in the Partnership Agreement, if there are one or more actual or deemed distributions which would otherwise be treated as giving rise to a “disguised sale” under Section 707 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, such distributions shall be treated as having been made in reimbursement of the General Partner's preformation capital expenditures as described in Reg. 1.707-4 (d) and Rev. Rul. 2000-44 to the extent of such preformation capital expenditures.

8.4 Restrictions on Transfer. In addition to any other restrictions on transfer herein contained, in no event may any transfer or assignment of Units by any Partner be made (i) to any Person who lacks the legal right, power or capacity to own Units; (ii) in violation of any provision of any mortgage or trust deed (or the note or bond secured thereby) constituting a Lien against a Property or any part thereof, or other instrument, document or agreement to which the Partnership or any Property Partnership is a party or otherwise bound; (iii) in violation of applicable law; (iv) of any component portion of a Unit, such as the Capital Account, or rights to Net Operating Cash Flow, separate and apart from all other components of such Unit (other than such assignments of the right to receive distributions as the General Partner shall approve in writing which approval the General Partner may withhold in its sole discretion); (v) in the event such transfer would cause the REIT Entities to cease to comply with the REIT requirements; (vi) if such transfer would cause a termination of the Partnership for federal income tax purposes; (vii) if such transfer would, in the opinion of counsel to the Partnership, cause the Partnership to cease to be classified as a partnership for federal income tax purposes; (viii) if such transfer would, in the opinion of counsel to the Partnership, cause any assets of the Partnership to constitute assets of a benefit plan investor pursuant to 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended or (ix) if such transfer is effectuated through an “established securities market” or

“secondary market” (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code or such transfer causes the Partnership to become a “publicly traded partnership” as such term is defined in Section 7704(b) of the Code. Notwithstanding anything in this Agreement to the contrary:

(a) no Limited Partner admitted to the Partnership after June 29, 1998 may sell, assign or otherwise transfer its Units or other interest in the Partnership or any portion thereof to any Foreign Owner (and no interest in such Limited Partner or any Person that directly or indirectly owns an interest in such Limited Partner may be transferred if such Limited Partner shall become a Foreign Owner as the result of such transfer) without the prior written consent of the General Partner (which consent may be given or withheld in the sole discretion of the General Partner); and

(b) no other Limited Partner may sell, assign or otherwise transfer its Units or other interest in the Partnership or any portion thereof to any Foreign Owner (and no interest in such Limited Partner or any Person that directly or indirectly owns an interest in such Limited Partner may be transferred if such Limited Partner shall become a Foreign Owner as the result of such transfer) without providing written notice of the same to the General Partner. Any such written notice shall be received by the General Partner at least thirty days prior to any such sale, assignment or other transfer.

Any sale, assignment or other transfer of Units or other interests in the Partnership made in violation of this Agreement (including without limitation any sale, assignment or other transfer of Units made without giving the notice described above at the time described above) shall be null and void ab initio.

ARTICLE IX

Rights and Obligations of the Limited Partners

9.1 No Participation in Management. Except as expressly permitted hereunder, the Limited Partners shall not take part in the management of the Partnership’s business, transact any business in the Partnership’s name or have the power to sign documents for or otherwise bind the Partnership.

9.2 Bankruptcy of a Limited Partner. The Bankruptcy of any Limited Partner shall not cause a dissolution of Partnership, but the rights of such Limited Partner to share in the Net Profits or Net Losses of the Partnership and, to receive distributions of Partnership funds shall, on the happening of such event, devolve on its successors or assigns, subject to the terms and conditions of this Agreement, and the Partnership shall continue as a limited partnership. However, in no event shall such assignee(s) become a Substituted Limited Partner without the consent of the General Partner.

9.3 No Withdrawal. No Limited Partner may withdraw from the Partnership without the prior written consent of the General Partner, other than as expressly provided in this Agreement.

9.4 Duties and Conflicts. The General Partner recognizes that the Limited Partners and their Affiliates have or may hereafter have other business interests, activities and investments, some of which may be in conflict or competition with the business of the Partnership, and that such Persons are entitled to carry on such other business interests, activities and investments. The Limited Partners and their Affiliates may engage in or possess an interest in any other business or venture of any kind, independently or with others, on their own behalf or on behalf of other entities with which they are affiliated or associated, and such persons may engage in any activities, whether or not competitive with the Partnership, without any obligation to offer any interest in such activities to the Partnership or to any Partner. Neither the Partnership nor any Partner shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Partnership, shall not be deemed wrongful or improper.

ARTICLE X

Limited Partner Representations and Warranties

Each Limited Partner, severally, and not jointly and severally, represents and warrants to the Partnership and the General Partner as follows:

(a) Organization; Authority. The Limited Partner (i) in the case of a Person who is a natural person, has full power and authority to execute, deliver and perform this Agreement or (ii) in the case of a Person which is a corporation, limited liability company, partnership or trust, is a corporation, limited liability company, partnership, corporation or trust, as the case may be, duly formed, validly existing and in good standing (to the extent applicable) under the laws of its jurisdiction of formation with the requisite authority to execute, deliver and perform this Agreement.

(b) Due Authorization; Binding Agreement. The execution, delivery and performance of this Agreement by the Limited Partner has been duly and validly authorized by all necessary action of the Limited Partner in the case of a Limited Partner which is an Entity. This Agreement has been duly executed and delivered by the Limited Partner, or an authorized representative of the Limited Partner, and constitutes a legal, valid and binding obligation of the Limited Partner, enforceable against the Limited Partner in accordance with the terms hereof.

(c) Consents and Approvals. No consent, waiver, approval or authorization of, or filing, registration or qualification with, or notice to, any governmental unit or any other Person is required to be made, obtained or given by the Limited Partner in connection with the execution, delivery and performance of this Agreement.

(d) No Violation. None of the execution, delivery or performance of this Agreement by the Limited Partner does or will, with or without the giving of notice, lapse of time or both, (i) violate, conflict with or constitute a default under any term or condition of (A) the organizational documents of the Limited Partner or other agreement to which the Limited Partner is a party or by which it is bound or (B) any judgment, decree, order, statute, injunction, rule or regulation of a governmental unit applicable to

the Limited Partner or by which it or its assets or properties are bound or (ii) result in the creation of any Lien or other encumbrance upon the assets or properties of the Limited Partner.

ARTICLE XI

General Partner Representations and Warranties

The General Partner represents and warrants to the Partnership and the Limited Partners as follows:

(a) Organization; Authority. The General Partner is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware with full corporate power to execute, deliver and perform this Agreement.

(b) Due Authorization; Binding Agreement. The execution, delivery and performance of this Agreement by the General Partner has been duly and validly authorized by all necessary action of the General Partner. This Agreement has been duly executed and delivered by the General Partner, or an authorized representative of the General Partner, and constitutes a legal, valid and binding obligation of the General Partner, enforceable against the General Partner in accordance with the terms hereof.

(c) Consents and Approvals. No consent, waiver, approval or authorization of, or filing, registration or qualification with, or notice to, any governmental unit or any other person is required to be made, obtained or given by the General Partner in connection with the execution, delivery and performance of this Agreement other than consents, waivers, approvals or authorizations which have been obtained prior to the date hereof.

ARTICLE XII

Arbitration of Disputes

12.1 Arbitration. Notwithstanding anything to the contrary contained in this Agreement, all claims, disputes and controversies between the parties hereto (including, without limitation, any claims, disputes and controversies between the Partnership and any one or more of the Partners and any claims, disputes and controversies between any one or more Partners) arising out of or in connection with this Agreement or the Partnership relating to the validity, construction, performance, breach, enforcement or termination thereof, or otherwise, shall be resolved by binding arbitration in New York, New York, in accordance with this Article XII and, to the extent not inconsistent herewith, the Expedited Procedures and Commercial Arbitration Rules of the Arbitration Association.

12.2 Procedures. Any arbitration called for by this Article XII shall be conducted in accordance with the following procedures:

(a) The Partnership or any Partner (the “Requesting Party”) may demand arbitration pursuant to Section 12.1 hereof at any time by giving written notice of such

demand (the “Demand Notice”) to all other Partners and (if the Requesting Party is not the Partnership) to the Partnership which Demand Notice shall describe in reasonable detail the nature of the claim, dispute or controversy.

(b) Within fifteen (15) days after the giving of a Demand Notice, the Requesting Party, on the one hand, and each of the other Partners and/or the Partnership against whom the claim has been made or with respect to which a dispute has arisen (collectively, the “Responding Party”), on the other hand, shall select and designate in writing to the other party one reputable, disinterested individual (a “Qualified Individual”) willing to act as an arbitrator of the claim, dispute or controversy in question. Each of the Requesting Party and the Responding Party shall use their best efforts to select a present or former partner of a nationally known accounting firm having no affiliation with any of the parties as their respective Qualified Individual. Within fifteen (15) days after the foregoing selections have been made, the arbitrators so selected shall only select a present or former partner of a nationally known accounting firm having no affiliation with any of the parties as the third Qualified Individual willing to act as an arbitrator of the claim, dispute or controversy in question. In the event that the two arbitrators initially selected are unable to agree on a third arbitrator within the second fifteen (15) day period referred to above, then, on the application of either party, the American Arbitration Association shall promptly select and appoint a present or former partner of a nationally known accounting firm having no affiliation with any of the parties as the Qualified Individual to act as the third arbitrator. The three arbitrators selected pursuant to this subsection (b) shall constitute the arbitration panel for the arbitration in question.

(c) The presentations of the parties hereto in the arbitration proceeding shall be commenced and completed within sixty (60) days after the selection of the arbitration panel pursuant to subsection (B) above, and the arbitration panel shall render its decision in writing within thirty (30) days after the completion of such presentations. Any decision concurred in by any two (2) of the arbitrators shall constitute the decision of the arbitration panel, and unanimity shall not be required.

(d) The arbitration panel shall have the discretion to include in its decision a direction that all or part of the attorneys’ fees and costs of any party or parties and/or the costs of such arbitration be paid by any other party or parties. On the application of a party before or after the initial decision of the arbitration panel, and proof of its attorneys’ fees and costs, the arbitration panel shall order the other party to make any payments directed pursuant to the preceding sentence.

12.3 Binding Character. Any decision rendered by the arbitration panel pursuant to this Article XII shall be final and binding on the parties hereto, and judgment thereon may be entered by any state or federal court of competent jurisdiction.

12.4 Exclusivity. Arbitration shall be the exclusive method available for resolution of claims, disputes and controversies described in Section 12.1 hereof, and the Partnership and its Partners stipulate that the provisions hereof shall be a complete defense to any suit, action, or proceeding in any court or before any administrative or arbitration tribunal with respect to any

such claim, controversy or dispute. The provisions of this Article XII shall survive the dissolution of the Partnership.

12.5 No Alteration of Agreement. Nothing contained herein shall be deemed to give the arbitrators any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of this Partnership Agreement.

ARTICLE XIII

General Provisions

13.1 Notices. All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served, telecopied or sent by United States mail and shall be deemed to have been given when delivered in person, upon receipt of telecopy or three business days after deposit in United States mail, registered or certified, postage prepaid, and properly addressed, by or to the appropriate party. For purposes of this Section 13.1, the addresses of the parties hereto shall be as set forth in the books and records of the Partnership. The address of any party hereto may be changed by a notice in writing given in accordance with the provisions hereof. Notwithstanding anything to the contrary herein, no provision of this Partnership Agreement requiring notice of any event prior to the occurrence thereof shall apply to stock splits, subdivisions, dividends, combinations. or any other similar event occurring after the date hereof.

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

13.3 Effect and Interpretation. This Agreement shall be governed by and construed in conformity with the laws of the State of Delaware (without regard to its conflicts of law principles).

13.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

13.5 Partners Not Agents. Nothing contained herein shall be construed to constitute any Partner the agent of another Partner, except as specifically provided herein, or in any manner to limit the Partners in the carrying on of their own respective businesses or activities.

13.6 Entire Understanding; Etc. This Agreement, together with any and all Contribution Agreements and Rights Agreements, constitutes the entire agreement and understanding among the Partners and supersedes any prior understandings and/or written or oral agreements among them respecting the subject matter within (including without limitation the Second Restated Partnership Agreement except for the consents, approvals and waivers given therein, and the agreements by Partners to be bound by the provisions thereof, as the same is amended hereby, which shall continue in full force and effect).

13.7 Amendments. Except as otherwise provided herein, this Agreement may not be amended, and no provision may be waived, except by a written instrument signed by the General

Partner (and, in the case of amendments or waivers benefiting the Bucksbaum Limited Partners, approved on behalf of the General Partner by at least a majority or its directors who are not Affiliates of the Bucksbaum Limited Partners) and a Majority-In-Interest of the Limited Partners. Notwithstanding anything to the contrary contained herein, (a) without the written consent of a Limited Partner, this Agreement may not be amended to convert such Limited Partner's partnership interest in the Partnership to a general partnership interest (or otherwise adversely affect such Limited Partner's limited liability) and (b) without the written consent of a Limited Partner holding Common Units, this Agreement may not be amended to materially adversely affect such Limited Partner's rights to distributions or allocations in respect of such Common Units except in connection with the admission of Additional Partners or unless such amendment affects the Bucksbaum Limited Partners in the same manner on a Unit-for-Unit basis. The immediately preceding sentence of this Section 13.7 may not be amended to modify the approval rights of a Partner without such Partner's consent.

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

13.9 Trust Provision. This Agreement, to the extent executed by the trustee of a trust, is executed by such trustee solely as trustee and not in a separate capacity. Nothing herein contained shall create any liability on, or require the performance of any covenant by any such trustee individually, nor shall anything contained herein subject the individual personal property of any trustee to any liability.

13.10 Pronouns and Headings. As used herein, all pronouns shall include the masculine, feminine and neuter, and all defined terms shall include the singular and plural thereof wherever the context and facts require such construction. The headings, titles and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Any references in this Agreement to "including" shall be deemed to mean "including without limitation."

13.11 Assurances. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

13.12 Issuance of Certificates. The General Partner may, in its sole discretion, issue a certificate setting forth the name of any Partner and the number of Units owned by such Partner and, in such event, the General Partner shall establish such rules and regulations relating to issuances and reissuances of certificates upon transfer of Units, the division of Units among multiple certificates and the loss, theft, destruction or mutilation of certificates as the General Partner reasonably deems appropriate. Notwithstanding anything to the contrary contained herein or in any certificate, (a) no certificate issued by the Partnership shall constitute a certificated security under Article 8 of the Uniform Commercial Code or an instrument, (b) the issuance or existence of certificates shall not create any rights on the part of the holders of such certificates or other Persons that would not exist if such certificates had not been issued, (c) the

Partnership shall have no liability to holders of certificates or other persons that it would not have had if it had not issued such certificates, and (d) only those Persons shown on the Partnership's book and records as the registered owner of any particular Unit shall have any rights as a Limited Partner or otherwise with respect thereto.

13.13 November 20, 2003 Division of Common Units. On November 20, 2003, (a) the General Partner effected a three for one split of its common stock (the "Stock Split") and the Partnership effected a three for one split of the Common Units, such that each Common Unit then outstanding was deemed to be three Common Units, so that, as of such time, each holder of record of Common Units, automatically and without further action, was deemed to be the holder of two additional Common Units for each Common Unit held immediately prior to such time (the "Unit Split") and (b) there was no adjustment of the Conversion Factor on account of the Stock Split; provided, however, that for Common Units issued and outstanding on or prior to November 20, 2003 (the "Legacy Units"), (x) if the rights under any Specified Rights Agreement (as defined below) are exercised as to one or more Legacy Units, then, effective immediately prior to the redemption or purchase of such Legacy Units pursuant to such Specified Rights Agreement, the Unit Split shall be completely reversed as to such Legacy Units and each such Legacy Unit, automatically and without further action, shall be deemed to be one-third of a Common Unit and (y) if such Legacy Units are transferred to the General Partner (rather than the Partnership) pursuant to such Specified Rights Agreement, then, effective immediately following such transfer, the Unit Split shall be completely reinstated as to such Legacy Units and each such Legacy Unit, automatically and without further action, shall be deemed to be three Common Units. For purposes hereof, a "Specified Rights Agreement" is any Rights Agreement pursuant to which the "Conversion Factor" (or the equivalent) referred to therein is adjusted as the result of the Stock Split and such adjustment is not completely reversed as a result of the Unit Split. The purpose of the proviso contained in the first sentence of this paragraph is to ensure that there are not duplicative adjustments with respect to any Legacy Units on account of the Stock Split, and this Section 13.3 shall be interpreted and applied consistently therewith.

13.14 Performance by the Public REIT. The Public REIT shall cause the General Partner and the Affiliate Limited Partner to fulfill the obligations of the General Partner and Affiliate Limited Partner, as applicable, under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed as of the date and year first above written.

GENERAL PARTNER:

GGP, INC.,
a Delaware corporation

By: _____

Its: _____

AFFILIATE LIMITED PARTNER:

GGP LIMITED PARTNERSHIP II, a Delaware
limited partnership

By: GGP, Inc., a Delaware corporation, its
general partner

By: _____

Its: _____

**MAJORITY-IN-INTEREST OF
THE LIMITED PARTNERS:**

M.B. CAPITAL UNITS, LLC,
a Delaware limited liability company

By: M.B. CAPITAL PARTNERS III,
a South Dakota general partnership,
its sole member

By: General Trust Company,
as Trustee of MBA Trust,
a partner

By: _____
E. Michael Greaves,
Vice President

**MATTHEW BUCKSBAUM REVOCABLE
TRUST**

By: General Trust Company,
as Trustee

By: _____
E. Michael Greaves,
Vice President

Solely for the limited purpose set forth in Sections 4.3, 4.4, 5.4, 6.5, 8.1 and 13.14.

PUBLIC REIT:

GENERAL GROWTH PROPERTIES, INC.,
a Delaware corporation

By: _____

Its: _____

SCHEDULE A

1. **Definitions.** As used in this Schedule A, the following terms shall have the meanings set forth below, unless the context otherwise requires:

“**Distribution Period**” shall mean the quarterly period that is then the dividend period with respect to the Common Stock or, if no such dividend period is established, the calendar quarter shall be the Dividend Period; provided that (a) the initial distribution period shall commence on July 10, 2002 and end on and include September 30, 2002 and (b) the distribution period in which the final liquidation payment is made pursuant to Section 7.2 of the Third Amended and Restated Agreement of Limited Partnership shall commence on the first day following the immediately preceding Distribution Period and end on the date of such final liquidation payment.

“**Distribution Payment Date**” shall mean, with respect to any Distribution Period, the payment date for the distribution declared by the Public REIT on its shares of Common Stock for such Distribution Period or, if no such distribution payment date is established, the last business day of such Distribution Period.

“**Fair Market Value**” shall mean the average of the daily Closing Price during the five consecutive Trading Days selected by the General Partner commencing not more than 20 Trading Days before, and ending not later than, the day in question with respect to the issuance or distribution requiring such computation.

“**Fifteenth Anniversary Date**” shall mean July 10, 2017.

2. **Designation and Number; Etc.** The Series B Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Third Amended and Restated Agreement of Limited Partnership to the extent applicable). The authorized number of Series B Preferred Units shall be 1,426,392.6660. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Schedule A and any other provision of the Third Amended and Restated Agreement of Limited Partnership, the provisions of this Schedule A shall control. For purposes of this Amendment, the rights of the Series B Preferred Units shall be construed to include their rights under the Redemption Rights Agreement (Common Units) and Redemption Rights Agreement (Series B Preferred Units).

3. **Rank.** The Series B Preferred Units shall, with respect to the payment of distributions and the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, rank as follows:

(a) senior to all classes or series of Common Units and to all Units the terms of which provide that such Units shall rank junior to such Series B Preferred Units;

(b) on a parity with the Series D Preferred Units, the Series E Preferred Units and each other series of Preferred Units issued by the Partnership which does not provide by its express terms that it ranks junior in right of payment to the Series B Preferred Units with respect to payment of distributions or amounts upon liquidation, dissolution or winding-up; and

(c) junior to any class or series of Preferred Units issued by the Partnership that ranks senior to the Series B Preferred Units in accordance with Section 4 of this Schedule A.

4. **Voting.**

(a) Holders of Series B Preferred Units shall not have any voting rights, except as provided by applicable law and as described below in this Section 4.

(b) So long as any Series B Preferred Units remain outstanding, the Partnership shall not, without the affirmative vote or consent of the holders of at least a majority of the Series B Preferred Units outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize, create, issue or increase the authorized or issued amount of, any class or series of partnership interests in the Partnership ranking prior to the Series B Preferred Units with respect to the payment of distributions or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership or reclassify any Common Units into such partnership interests, or create, authorize or issue any obligation or security convertible or exchangeable into or evidencing the right to purchase any such partnership interests; or (ii) amend, alter or repeal the provisions of the Partnership Agreement, whether by merger or consolidation or otherwise (an “Event”), so as to materially and adversely affect any right, preference, privilege or voting power of the Series B Preferred Units or the holders thereof. Notwithstanding anything to the contrary contained herein, none of the following shall be deemed to materially and adversely affect any such right, preference, privilege or voting power or otherwise require the vote or consent of the holders of the Series B Preferred Units: (X) the occurrence of any Event so long as either (1) the Partnership is the surviving entity, such entity is the principal direct subsidiary of a publicly traded REIT whose common equity is traded on the New York Stock Exchange and the Series B Preferred Units remain outstanding with the terms thereof materially unchanged or (2) interests in an entity having substantially the same rights and terms as the Series B Preferred Units are substituted for the Series B Preferred Units and such entity is the principal direct subsidiary of a publicly traded REIT whose common equity is traded on the New York Stock Exchange, (Y) any increase in the amount of the authorized Preferred Units or Common Units or the creation or issuance of any other series or class of Preferred Units or Common Units or any increase in the amount of Common Units or any other series of Preferred Units, in each case ranking on a parity with or junior to the Series B Preferred Units with respect to payment of distributions and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership and (Z) the dissolution, liquidation and/or winding-up of the Partnership.

The foregoing voting provisions shall not apply if at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series B Preferred Units shall have been converted or redeemed.

For purposes of the foregoing provisions of this Section 4, each Series B Preferred Unit shall have one (1) vote. Except as otherwise required by applicable law or as set forth herein, the Series B Preferred Units shall not have any voting rights or powers and the consent of the holders thereof shall not be required for the taking of any action.

5. **Distributions.**

(a) With respect to each Distribution Period and subject to the rights of the holders of Preferred Units ranking senior to or on parity with the Series B Preferred Units, the holders of Series B Preferred Units shall be entitled to receive, when, as and if declared by the General Partner, out of assets of the Partnership legally available for the payment of distributions, quarterly cumulative cash distributions in an amount per Series B Preferred Unit equal to the greater of (i) \$1.0625 and (ii) the amount of the regular quarterly cash distribution for such Distribution Period upon the number of Common Units (or portion thereof) into which such Series B Preferred Unit is then convertible in accordance with Section 7 of this Schedule A (but, with respect to any Distribution Period ending after the Fifteenth Anniversary Date, no amount shall be paid in respect of clause (ii) of this paragraph in respect of the portion of such Distribution Period occurring after the Fifteenth Anniversary Date). Notwithstanding anything to the contrary contained herein, the amount of distributions described under each of clause (i) and (ii) of this paragraph for the initial Distribution Period, or any other period shorter than a full Distribution Period, shall be prorated and computed on the basis of twelve 30-day months and a 360-day year. The distributions upon the Series B Preferred Units for each Distribution Period shall, if and to the extent declared or authorized by the General Partner on behalf of the Partnership, be paid in arrears (without interest or other amount) on the Distribution Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not there are funds legally available for the payment thereof and whether or not such distributions are declared or authorized. The record date for distributions upon the Series B Preferred Units for any Distribution Period shall be the same as the record date for the distributions upon the Common Units for such Distribution Period (or, if no such record is set for the Common Units, the fifteenth day of the calendar month in which the applicable Distribution Payment Date falls). Accumulated and unpaid distributions for any past Distribution Periods to be declared and paid at any time, without reference to any Distribution Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the General Partner. Any distribution payment made upon the Series B Preferred Units shall first be credited against the earliest accumulated but unpaid distributions due with respect to such Units which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any distribution payment or payments on the Series B Preferred Units, whether or not in arrears, including, without limitation, any distribution payment that is deferred pursuant to Section 5(g) of this Schedule A.

(b) No distribution on the Series B Preferred Units shall be declared by the General Partner or paid or set apart for payment by the Partnership at such time as the terms and provisions of any agreement of the Partnership, including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or if such declaration or payment shall be restricted or prohibited by law. Notwithstanding the foregoing, distributions on the Series B Preferred Units shall accumulate whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) of this Schedule A, so long as any Series B Preferred Units are outstanding, (i) no distributions (other than in Common Units or other Units ranking junior to the Series B Preferred Units as to payment of distributions and

amounts upon liquidation, dissolution or winding-up of the Partnership) shall be declared or paid or set apart for payment upon the Common Units or any other class or series of partnership interests in the Partnership or Units ranking, as to payment of distributions or amounts distributable upon liquidation, dissolution or winding-up of the Partnership, on a parity with or junior to the Series B Preferred Units, for any period and (ii) no Common Units or other Units ranking junior to or on a parity with the Series B Preferred Units as to payment of distributions or amounts upon liquidation, dissolution or winding-up of the Partnership, shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Units) by the Partnership (except by conversion into or exchange for other Units ranking junior to the Series B Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership or by redemptions pursuant to Rights Agreements) unless, in the case of either clause (i) or (ii), full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series B Preferred Units for all Distribution Periods ending on or prior to the distribution payment date for the Common Units or such other class or series of Unit or the date of such redemption, purchase or other acquisition.

(d) When distributions are not paid in full (or a sum sufficient for such full payment is not set apart for such payment) upon the Series B Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series B Preferred Units, all distributions declared upon the Series B Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series B Preferred Units shall be declared pro rata so that the amount of distributions declared per Unit of Series B Preferred Units and such other partnership interests in the Partnership or Units shall in all cases bear to each other the same ratio that accrued distributions per Unit on the Series B Preferred Units and such other partnership interests in the Partnership or Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such Units do not have cumulative distributions) bear to each other.

(e) Holders of Series B Preferred Units shall not be entitled to any distributions, whether payable in cash, property or Units, in excess of the cumulative distributions described in Section 5(a) above.

(f) Distributions with respect to the Series B Preferred Units are intended to qualify as permitted distributions of cash that are not treated as a disguised sale within the meaning of Treasury Regulation §1.707-4 and the provisions of this Schedule A shall be construed and applied consistently with such Treasury Regulations.

(g) Notwithstanding anything to the contrary contained herein (but subject to the last sentence of Section 5(a) hereof), if the distributions with respect to the Series B Preferred Units made on or prior to the second anniversary of the issuance of the Series B Preferred Units would result in any holder of Series B Preferred Units receiving, an annual return on such holder's "unreturned capital" (as defined for purposes of Treasury Regulation Section 1.707-4(a)) for a fiscal year (treating the fiscal year in which such second anniversary occurs as ending on such date) in excess of the Safe Harbor Rate (as defined below), then the distributions to such

holder in excess of such Safe Harbor Rate will be deferred, will cumulate and will be paid, if and to the extent declared or authorized by the General Partner on behalf of the Partnership and subject, to the provisions of Section 5(b) hereof, on the earlier to occur of (i) the disposition of the Series B Preferred Units to which such deferred distributions relate in a transaction in which the disposing holder recognizes taxable gain thereon or (ii) the first distribution payment date with respect to the Series B Preferred Units following the second anniversary of the issuance of the Series B Preferred Units. For purposes of the foregoing, the "Safe Harbor Rate" shall equal 150% of the highest applicable federal rate, based on annual compounding, in effect for purposes of Section 1274(d) of the Code at any time between the date of the issuance of the Series B Preferred Units and the date on which the relevant distribution payment is made. Notwithstanding anything to the contrary contained herein, any distributions that are deferred under this Section 5(g) shall be deemed to have been paid in full for purposes of Sections 5(c) and (d) of this Schedule A until the end of the Distribution Period during which they are to be paid as provided above.

(h) For any quarterly period, any amounts paid with respect to the Series B Preferred Units in excess of the amount that would have been paid with respect to such Units for such period had they been converted into Common Units in accordance with the terms of Section 7 of this Schedule A are intended to constitute guaranteed payments within the meaning of Section 707(c) of the Code and shall not be treated as distributions for purposes of allocating Net Income and Net Loss or otherwise maintaining Capital Accounts.

6. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, before any payment or distribution of the assets of the Partnership (whether capital or surplus) shall be made to or set apart for the holders of Common Units or any other partnership interests in the Partnership or Units ranking junior to the Series B Preferred Units as to the distribution of assets upon the liquidation, dissolution or winding-up of the Partnership, the holders of the Series B Preferred Units shall, with respect to each such Unit, be entitled to receive, out of the assets of the Partnership available for distribution to Partners after payment or provision for payment of all debts and other liabilities of the Partnership, an amount equal to the greater of (i) \$50.00, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution and (ii) the amount that a holder of such Series B Preferred Unit would have received upon final distribution in respect of the number of Common Units into which such Series B Preferred Unit was convertible immediately prior to such date of final distribution (but no amount shall be paid in respect of the foregoing clause (ii) after the Fifteenth Anniversary Date) if, upon any such voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, the assets of the Partnership, or proceeds thereof, distributable among the holders of the Series B Preferred Units are insufficient to pay in full the preferential amount aforesaid on the Series B Preferred Units and liquidating payments on any other Units or partnership interests in the Partnership of any class or series ranking, as to payment of distributions and amounts upon the liquidation, dissolution or winding-up of the Partnership, on a parity with the Series B Preferred Units, then such assets, or the proceeds thereof, shall be distributed among the holders of Series B Preferred Units and any such other Units or partnership interests in the Partnership ratably in accordance with the respective amounts that would be payable on such Series B Preferred Units and such

other Units or partnership interests in the Partnership if all amounts payable thereon were paid in full. For the purposes of this Section 6, none of (i) a consolidation or merger of the Partnership with or into another entity, (ii) a merger of another entity with or into the Partnership or (iii) a sale, lease or conveyance of all or substantially all of the Partnership's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Partnership.

(b) Written notice of such liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series B Preferred Units at the respective addresses of such holders as the same shall appear on the transfer records of the Partnership.

(c) After payment of the full amount of liquidating distributions to which they are entitled as provided in Section 6(a) of this Schedule A, the holders of Series B Preferred Units shall have no right or claim to any of the remaining assets of the Partnership.

7. **Conversion.** Holders of Series B Preferred Units shall have the right to convert all or a portion of such Units into Common Units, as follows:

(a) A holder of Series B Preferred Units shall have the right, at such holder's option, at any time (subject to the proviso contained in the immediately succeeding sentence), to convert any whole number of Series B Preferred Units, in whole or in part, into Common Units. Each Series B Preferred Unit shall be convertible into the number of Common Units determined by dividing (i) the \$50.00 face amount per Unit, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the end of the last Distribution Period (but without duplication of the distributions, if any, which the holder of such Series B Preferred Unit is entitled to receive for such last Distribution Period pursuant to the third paragraph of Section 7(b) of this Schedule A or in respect of the Common Units into which such Series B Preferred Unit is converted) by (ii) a conversion price of \$16.6667 per Common Unit (equivalent to a conversion rate of three Common Units for each Series B Preferred Unit)¹, subject to adjustment as described in Section 7(c) hereof (the "Conversion Price"); provided, however, that the right to convert Series B Preferred Units may not be exercised after the Fifteenth Anniversary Date. No fractional Common Units will be issued upon any conversion of Series B Preferred Units. Instead, the number of Common Units to be issued upon each conversion shall be rounded to the nearest whole number of Common Units.

(b) To exercise the conversion right, the holder of each Series B Preferred Unit to be converted shall execute and deliver to the General Partner, at the principal office of the Partnership, a written notice (the "Conversion Notice") indicating that the holder thereof elects to convert such Series B Preferred Unit. Unless the Units issuable on conversion are to be issued in the same name as the name in which such Series B Preferred Unit is registered, each Series B Preferred Unit surrendered for conversion shall be accompanied by instruments of transfer, in form reasonably satisfactory to the Partnership, duly executed by the holder or such

¹ The conversion price of \$16.6667 per Common Unit takes into consideration the Common Unit split of the Partnership on November 20, 2003.

holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Partnership demonstrating that such taxes have been paid).

As promptly as practicable after delivery of the Conversion Notice as aforesaid, the Partnership shall amend the Partnership Agreement to reflect the conversion and the issuance of Common Units issuable upon the conversion of such Series B Preferred Units in accordance with the provisions of this Section 7. In addition, the Partnership shall deliver to the holder at its address as reflected on the records of the Partnership, a copy of such amendment.

A holder of Series B Preferred Units at the close of business on the record date for any Distribution Period shall be entitled to receive the distribution payable on such Units on the corresponding Distribution Payment Date notwithstanding the conversion of such Series B Preferred Units following such record date and prior to such Distribution Payment Date and shall have no right to receive any distribution for such Distribution Period in respect of the Common Units into which such Series B Preferred Units were converted. Except as provided herein, the Partnership shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted Series B Preferred Units or for distributions on the Common Units that are issued upon such conversion.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the Conversion Notice is received by the Partnership as aforesaid, and the person or persons in whose name or names any Common Units shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such Units at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date unless the transfer books of the Partnership shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day on which such transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such Units have been surrendered and such notice received by the Partnership.

(c) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Partnership shall, after the date on which the Series B Preferred Units are first issued (the "Issue Date"), (A) pay or make a distribution to holders of its partnership interests or Units in Common Units, (B) subdivide its outstanding Common Units into a greater number of Units or distribute Common Units to the holders thereof, (C) combine its outstanding Common Units into a smaller number of Units or (D) issue any partnership interests or Units by reclassification of its Common Units, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of holders entitled to receive such distribution or at the opening of business on the day next following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series B Preferred Unit thereafter surrendered for conversion shall be entitled to receive the number of Common Units or other partnership interests or securities that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series B Preferred Unit been

converted immediately prior to the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in subsection (g) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Partnership shall issue after the Issue Date rights, options or warrants to all holders of Common Units entitling them to subscribe for or purchase Common Units (or securities convertible into or exchangeable for Common Units) at a price per Unit less than the Fair Market Value per Common Unit on the record date for the determination of holders of Common Units entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the opening of business on the day following the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of Common Units that the aggregate proceeds to the Partnership from the exercise of such rights, options or warrants for Common Units would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of additional Common Units offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in subsection (g) below). In determining whether any-rights, options or warrants entitle the holders of Common Units to subscribe for or purchase Common Units at less than the Fair Market Value, there shall be taken into account any consideration received by the Partnership upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined in good faith by the Board of the General Partner.

(iii) If the Partnership shall distribute after the Issue Date to all holders of Common Units any other securities or evidences of its indebtedness or assets (excluding those rights, options and warrants referred to in and treated under subsection (ii) above, and excluding distributions paid exclusively in cash) (any of the foregoing being hereinafter in this subsection (iii) called the "Securities"), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of holders of Common Units entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Unit on the record date mentioned below less the then fair market value (as determined in good faith by the Board of the General Partner) of the portion of the Securities so distributed applicable to the Common Unit, and the denominator of which shall be the Fair Market Value per Common Unit on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the

business day next following (except as provided in subsection (g) below) the record date for the determination of holders of Common Units entitled to receive such distribution. For the purposes of this subsection (iii), a distribution in the form of a Security, which is distributed not only to the holders of the Common Units on the date fixed for the determination of holders of Common Units entitled to such distribution of such Security, but also is distributed with each Common Unit delivered to a person converting a Series B Preferred Unit after such determination date, shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series B Preferred Unit would no longer be entitled to receive such Security with a Common Unit, a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be “the date fixed for the determination of the holders of Common Units entitled to receive such distribution” and “the record date” within the meaning of the two preceding sentences).

(iv) No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this Section 7 (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Units. Notwithstanding any other provisions of this Section 7, the Partnership shall not be required to make any adjustment to the Conversion Price for the issuance of any Common Units pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Partnership and the investment of additional optional amounts in Common Units under such plan. All calculations under this Section 7 shall be made to the nearest cent (with \$.005 being rounded upward) or to the nearest one-tenth of a Unit (with .05 of a Unit being rounded upward), as the case may be. Anything in this subsection (c) to the contrary notwithstanding, the Partnership shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this subsection (c), as it in its discretion shall determine to be advisable in order that any Unit distributions, subdivision of Units, reclassification or combination of Units, distribution of rights, options or warrants to purchase Units or securities, or a distribution consisting of other assets (other than cash distributions) hereafter made by the Partnership to its holders of Units shall not be taxable but any such adjustment shall not adversely affect the value of the Series B Preferred Units.

(d) If the Partnership shall be a party to any transaction (including, without limitation, a merger, consolidation, self tender offer for all or substantially all of the Common Units, sale of all or substantially all of the Partnership’s assets or recapitalization of the Common Units and excluding any transaction as to which subsection (c)(i) of this Section 7 applies) (each of the foregoing being referred to herein as a “Transaction”), in each case as a result of which Common Units shall be converted into the right to receive other partnership interests, shares, stock, securities or other property (including cash or any combination thereof), each Series B Preferred Unit which is not converted into the right to receive other partnership interests, shares,

stock, securities or other property in connection with such Transaction shall thereafter be convertible into the kind and amount of shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Units into which one Series B Preferred Unit was convertible immediately prior to such Transaction, assuming such holder of Common Units is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a “Constituent Person”), or an affiliate of a Constituent Person. The Partnership shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (d), and it shall not consent or agree to the occurrence of any Transaction until the Partnership has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series B Preferred Units that will contain provisions enabling the holders of Series B Preferred Units that remain outstanding after such Transaction to convert into the consideration received by holders of Common Units at the Conversion Price in effect immediately prior to such Transaction (with the holder having the option to elect the type of consideration if a choice was offered in the Transaction). The provisions of this subsection (d) shall similarly apply to successive Transactions.

(e) If:

(i) the Partnership shall declare a distribution on the Common Units (other than a cash distribution) or there shall be a reclassification, subdivision or combination of Common Units; or

(ii) the Partnership shall authorize the granting to the holders of the Common Units of rights, options or warrants to subscribe for or purchase any Units of any class or any other rights, options or warrants; or

(iii) there shall be any reclassification of the Common Units or any consolidation or merger to which the Partnership is a party and for which approval of any partners of the Partnership is required, involving the conversion or exchange of Common Units into securities or other property, or a self tender offer by the Partnership for all or substantially all of the Common Units, or the sale or transfer of all or substantially all of the assets of the Partnership as an entirety; or

(iv) there shall occur the voluntary or involuntary liquidation, dissolution or winding-up of the Partnership;

then the Partnership shall cause to be mailed to the holders of the Series B Preferred Units at their addresses as shown on the records of the Partnership, as promptly as possible a notice stating (A) the date on which a record is to be taken for the purpose of such distribution of rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Units of record to be entitled to such distribution of rights, options or warrants are to be determined or (B) the date on which such reclassification, subdivision, combination, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Units of record shall be entitled to exchange their Common Units for securities or other property, if any,

deliverable upon such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(f) Whenever the Conversion Price is adjusted as herein provided, the Partnership shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series B Preferred Unit at such holder's last address as shown on the records of the Partnership.

(g) In any case in which subsection (c) of this Section 7 provides that an adjustment shall become effective on the date next following the record date for an event, the Partnership may defer until the occurrence of such event issuing to the holder of any Series B Preferred Unit converted after such record date and before the occurrence of such event the additional Common Units issuable upon such conversion by reason of the adjustment required by such event over and above the Common Units issuable upon such conversion before giving effect to such adjustment.

(h) For purposes of this Section 7, the number of Common Units at any time outstanding shall not include any Common Units then owned or held by or for the account of the Partnership. The Partnership shall not make any distribution on Common Units held in the treasury of the Partnership.

(i) If any action or transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this Section 7, only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Partnership shall take any action affecting the Common Units, other than action described in this Section 7, that in the reasonable judgment of the General Partner would materially and adversely affect the conversion rights of the holders of the Series B Preferred Units, the Conversion Price for the Series B Preferred Units may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the General Partner determines to be equitable in the circumstances.

(k) The Partnership covenants that Common Units issued upon conversion of the Series B Preferred Units shall be validly issued, fully paid and nonassessable and the holder thereof shall be entitled to rights of a holder of Common Units specified in the Partnership Agreement. Prior to the delivery of any securities that the Partnership shall be obligated to deliver upon conversion of the Series B Preferred Units, the Partnership shall endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof, by any governmental authority.

(l) The Partnership will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Units or other securities or property on conversion of the Series B Preferred Units pursuant hereto; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any

transfer involved in the issue or delivery of Common Units or other securities or property in a name other than that of the holder of the Series B Preferred Units to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Partnership the amount of any such tax or established, to the reasonable satisfaction of the Partnership, that such tax has been paid.

(m) Notwithstanding anything to the contrary contained herein, the adjustment provisions contained in this Section 7 shall be applied so that there is no duplication of adjustments made pursuant to any other document.

SCHEDULE B

1. **Definitions.** As used in this Schedule B, the following terms shall have the meanings set forth below, unless the context otherwise requires:

“**Common Unit Value**” shall mean, with respect to any trading day, the trading price of a share of Common Stock (calculated based on the average of the intra-day high and low and subject to adjustment in the event that the exchange ratio between Common Units and shares of Common Stock is not one-to-one or other adjustments if the kind or amount of securities into which Common Units can be converted or exchanged (as provided in the Redemption Rights Agreement, dated the date hereof) changes after the date hereof).

“**Distribution Payment Date**” shall mean, with respect to any Distribution Period, the payment date for the distribution declared by the General Partner on its Common Units for such Distribution Period or, if no such distribution payment date is established, the last business day of the first full month following such Distribution Period.

“**Distribution Period**” shall mean the quarterly period that is then the distribution period with respect to the Common Units or, if no such distribution period is established, the calendar quarter shall be the Distribution Period; provided that (a) the initial Distribution Period shall commence on December 11, 2003 and end on and include December 31, 2003 and (b) the Distribution Period in which the final liquidation payment is made pursuant to Section 7.2 of the Third Amended and Restated Agreement of Limited Partnership shall commence on the first day following the immediately preceding Distribution Period and end on the date of such final liquidation payment.

“**Fair Market Value**” shall mean the average of the daily Closing Price during the ten consecutive Trading Days ending on the business day immediately preceding the day in question with respect to the issuance or distribution requiring such computation (subject to appropriate adjustment in the event that the exchange ratio between Common Units and shares of Common Stock is not one-to-one).

“**Relevant Distribution Periods**” shall mean (i) each of the three (3) consecutive Distribution Periods the last of which ends during the 90-day period referred to in the last paragraph of Section 7(b) and (ii) the next immediately following Distribution Period after the third Distribution Period described in clause (i) above.

“**Tenth Anniversary Date**” shall mean December 11, 2013.

2. **Designation and Number; Etc.** The Series D Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Third Amended and Restated Agreement of Limited Partnership to the extent applicable). The authorized number of Series D Preferred Units shall be 532,749.6574. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Schedule B and any other provision of the Third Amended and Restated Agreement of Limited Partnership, the provisions of this Schedule B shall control.

3. **Rank.** The Series D Preferred Units shall, with respect to the payment of distributions and the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, rank as follows:

(a) senior to all classes or series of Common Units and to all Units the terms of which provide that such Units shall rank junior to the Series D Preferred Units;

(b) on a parity with the Series B Preferred Units, Series E Preferred Units and each other series of Preferred Units issued by the Partnership which does not provide by its express terms that it ranks junior or senior in right of payments to the Series D Preferred Units with respect to payment of distributions or amounts upon liquidation, dissolution or winding-up; and

(c) junior to any class or series of Preferred Units issued by the Partnership that ranks senior to the Series D Preferred Units and has been approved in accordance with Section 4 of this Schedule B.

4. **Voting.**

(a) Holders of Series D Preferred Units shall not have any voting rights, except as required by applicable law or as described below in this Section 4.

(b) So long as any Series D Preferred Units remain outstanding, the Partnership shall not, without the affirmative vote or consent of the holders of at least a majority of the Series D Preferred Units outstanding at the time, given in person or by proxy, either in voting or at a meeting (such series voting separately as a class), (i) authorize, create, issue or increase the authorized or issued amount of, any class or series of partnership interests in the Partnership ranking senior to the Series B Preferred Units with respect to the payment of distributions or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership or reclassify any Common Units into such partnership interests, or create, authorize or issue any obligation or security convertible or exchangeable into or evidencing the right to purchase any such partnership interests; or (ii) amend, alter or repeal the provisions of the Partnership Agreement, whether by merger or consolidation or otherwise (an "Event"), so as to negate the provisions of clause (i) or (ii) of this paragraph or so as to materially and adversely affect any special right, preference, privilege or voting power of the Series D Preferred Units or the holders thereof that is contained in this Schedule B. Notwithstanding anything to the contrary contained herein, each of the following shall be deemed not to (i) materially and adversely affect any such special right, preference, privilege or voting power or (ii) otherwise require the vote or consent of the holders of the Series D Preferred Units: (X) the occurrence of any merger, consolidation, entity conversion, unit exchange, recapitalization of the Common Units or other business combination or reorganization, so long as either (1) the Partnership is the surviving entity and the Series D Preferred Units remain outstanding with the terms thereof materially unchanged or (2) if the Partnership is not the surviving entity in such transaction, interests in an entity having substantially the same rights and terms with respect to rights to distributions, voting, redemption and conversion as the Series D Preferred Units are exchanged or substituted for the Series D Preferred Units without any income, gain or loss expected to be recognized by the holder upon the exchange or substitution

for federal income tax purposes (and with the terms of the Common Units or such other securities for which the Series D Preferred Units (or the substitute or exchanged security therefor) are convertible or redeemable materially the same with respect to rights to distributions, voting and redemption), (Y) any increase in the amount of the authorized Preferred Units or Common Units or the creation or issuance of any other series or class of Preferred Units or Common Units or any increase in the amount of Common Units or any other series of Preferred Units, in each case so long as such Units rank on a parity with or junior to the Series D Preferred Units with respect to payment of distributions and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership and (Z) the dissolution, liquidation and/or winding up of the Partnership.

The foregoing voting provisions shall not apply if at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series D Preferred Units shall have been converted or redeemed.

For purposes of the foregoing provisions of this Section 4, each Series D Preferred Unit shall have one (1) vote.

Except as otherwise required by applicable law or as set forth herein, the Series D Preferred Units shall not have any voting right or powers and the consent of the holders thereof shall not be required for the taking of any action.

5. Distributions.

(a) With respect to each Distribution Period and subject to the rights of the holders of Preferred Units ranking senior to or on parity with the Series D Preferred Units, the holders of Series D Preferred Units shall be entitled to receive, when, as and if declared by the General Partner, out of assets of the Partnership legally available for the payment of distributions, quarterly cumulative cash distributions in an amount per Series D Preferred Unit equal to the greater of (i) \$0.8125 (the “Base Quarterly Distribution”) and (ii) the amount of the regular quarterly cash distribution for such Distribution Period upon the number of Common Units (or portion thereof) into which such Series D Preferred Unit is then convertible in accordance with Section 7 of this Schedule B. Notwithstanding anything to the contrary contained herein, the amount of distributions described under each of clause (i) and (ii) of this paragraph for the initial Distribution Period, or any other Period shorter than a full Distribution Period, shall be prorated and computed on the basis of twelve 30-day months and a 360-day year. Such distributions shall with respect to each Series D Preferred Unit, accrue from its issue date, whether or not in, or with respect to, any Distribution Period or Periods (A) the distributions described above are declared, (B) the Partnership is contractually prohibited from paying such distributions or (C) there shall be assets of the Partners legally available for the payment of such distributions. The distributions upon the Series D Preferred Units for each Distribution Period shall, if and to the extent declared or authorized by the General Partner on behalf of the Partnership, be paid in arrears (without interest or other amount) on the Distribution Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not in, or with respect to, any Distribution Period or Periods (X) the distributions are declared, (Y) the Partnership is contractually prohibited from paying such distributions or (Z) there shall be assets of the Partnership legally available for the payment of such distributions. The record date for

distributions upon the Series D Preferred Units for any Distribution Period shall be the same as the record date, for the distributions upon the Common Units for such Distribution Period (or, if no such record date is set for the Common Units, the fifteenth day of the calendar month in which the applicable Distribution Payment Date falls if prior to such Distribution Payment Date otherwise, the fifteenth day of the immediately preceding calendar month). Accumulated and unpaid distributions for any past Distribution Periods may be declared and paid at any time, without reference to any Distribution Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the General Partner. Any distribution payment made upon the Series D Preferred Units shall first be credited against the earliest accrued but unpaid distributions due with respect to such Units which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any distribution payment or payments on the Series D Preferred Units, whether or not in arrears.

(b) No distribution on the Series D Preferred Units shall be declared by the General Partner or paid or set apart for payment by the Partnership at such time as the terms and provisions of any bona fide agreement of the Partnership, including any agreement relating to bona fide indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, of a default thereunder, or if such declaration or payment shall be restricted or prohibited by law (and such failure to pay distributions on the Series D Preferred Units shall prohibit other distributions by the Partnership as described in Sections 5(c) or (d) of this Schedule B). Notwithstanding the foregoing, distributions on the Series D Preferred Units shall accumulate as provided herein whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) of this Schedule B, so long as any Series D Preferred Units are outstanding, (i) no distributions (other than in Common Units or other Units ranking junior to the Series D Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership) shall be declared or paid or set apart for payment upon the Common Units or any other class or series of partnership interests in the Partnership or Units ranking, as to payment of distributions or amounts distributable upon liquidation, dissolution or winding-up of the Partnership, on a parity with or junior to the Series D Preferred Units, for any period and (ii) no Common Units or other Units ranking junior to, or on a parity with the Series D Preferred Units as to payment of distributions or amounts upon liquidation, dissolution or winding-up of the Partnership shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Units) by the Partnership (except by conversion into or exchange for other Units ranking junior to the Series D Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership or by redemptions pursuant to Rights Agreements) unless, in the case of either clause (i) or (ii), full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the Series D Preferred Units for all Distribution Periods ending on or prior to the distribution payment date for the Common Units or such other class or series of Unit or the date of such redemption, purchase or other acquisition.

(d) When distributions are not paid in full (or a sum sufficient for such full payment is not set apart for such payment) upon the Series D Preferred Units and any other

partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series D Preferred Units, all distributions declared upon the Series D Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series D Preferred Units shall be declared pro rata so that the amount of distributions declared per Unit of Series D Preferred Units and such other partnership interests in the Partnership or Units shall in all cases bear to each other the same ratio that accrued and unpaid distributions per Unit on the Series D Preferred Units and such other partnership interests in the Partnership or Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such Units do not have cumulative distributions) bear to each other.

(e) Holders of Series D Preferred Units shall not be entitled to any distributions, whether payable in cash, property or Units, in excess of the cumulative distributions described in Section 5(a) above.

(f) For any quarterly period, any amounts paid with respect to the Series D Preferred Units in excess of the amount that would have been paid with respect to such Units for such period had they been converted into Common Units in accordance with the terms of Section 7 of this Schedule B are intended to constitute guaranteed payments within the meaning of Section 707(c) of the Code and shall not be treated as distributions for purposes of allocating Net Income and Net Loss or otherwise maintaining Capital Accounts.

6. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, before any payment or distribution of the assets of the Partnership (whether capital or surplus) shall be made to or set apart for the holders of Common Units or any other partnership interests in the Partnership or Units ranking junior to the Series D Preferred Units as to the distribution of assets upon the liquidation, dissolution or winding-up of the Partnership, the holders of the Series D Preferred Units shall, with respect to each such Unit, be entitled to receive, out of the assets of the Partnership available for distribution to Partners after payment or provision for payment of all debts and other liabilities of the Partnership and subject to the rights of the holders of any series of Preferred Units ranking senior to or on parity with the Series D Preferred Units with respect to payment of amounts upon liquidation, dissolution or winding-up of the Partnership, an amount equal to \$50, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution (including all accumulated and unpaid distributions). If upon any such voluntary or involuntary dissolution or winding-up of the Partnership, the assets of the Partnership, or proceeds thereof distributable among the holders of the Series D Preferred Units are insufficient to pay in full the preferential amount aforesaid on the Series D Preferred Units and liquidating payment on any other Units or partnership interests in the Partnership of any class or series ranking as to payment of distributions and amounts upon the liquidation, dissolution or winding-up of the Partnership, on a parity with the Series D Preferred Units, then such assets, or the proceeds thereof, shall be distributed among the holders of Series D Preferred Units and any such other Units or partnership interests in the Partnership ratably in accordance with the respective amounts that would be payable on such Series D Preferred Units and such other Units or partnership interests in the Partnership if all amounts payable thereon were paid in full. For the purposes of this

Section 6, none of (i) a consolidation or merger of the Partnership with or into another entity, (ii) a merger of another entity with or into the Partnership or (iii) a sale, lease or conveyance of all or substantially all of the Partnership's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Partnership.

(b) Written notice of such liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series D Preferred Units at the respective addresses of such holders as the same shall appear on the transfer records of the Partnership.

(c) After payment of the full amount of liquidating distributions to which they are entitled as provided in Section 6(a) of this Schedule B, the holders of Series D Preferred Units shall have no right or claim to any of the remaining assets of the Partnership.

7. **Conversion.** Holders of Series D Preferred Units shall have the right to convert all or a portion of such Units into Common Units, as follows:

(a) A holder of Series D Preferred Units shall have the right at such holder's option, at any time, to convert any whole number of Series D Preferred Units into fully paid and non-assessable Common Units; provided, however, that the conversion right may not be exercised at any one time by a holder of Series D Preferred Units with respect to less than 1,000 Series D Preferred Units (or all the Series D Preferred Units then owned by such holder if such holder owns less than 1,000 Series D Preferred Units). Each Series D Preferred Unit shall be convertible into the number of Common Units determined by dividing (i) the \$50 base liquidation preference per Series D Preferred Unit plus, an amount equal to all accumulated and unpaid distributions (whether or not earned or declared) with respect thereto by (ii) a conversion price of \$33.151875 per Common Unit (equivalent to an initial conversion rate of 1.508210 Common Units for each Series D Preferred Unit), subject to adjustment as described in Section 7(c) hereof (the "Conversion Price").

(b) To exercise the conversion right, the holder of each Series D Preferred Unit to be converted shall execute and deliver to the General Partner, at the principal office of the Partnership, a written notice (the "Conversion Notice") indicating that the holder thereof elects to convert such Series D Preferred Unit and containing representations and warranties of such holder that (i) such holder has good and marketable title to such Series D Preferred Unit, free and clear of all liens, claims and encumbrances, (ii) such holder is an accredited investor as defined in Regulation D under the Securities Act of 1933, as amended, and has such knowledge and experience in financial and business matters such that such holder is capable of evaluating the merits and risks of receiving and owning the Common Units that may be issued to it in exchange for such Series D Preferred Unit, (iii) such holder is able to bear the economic risk of such ownership and (iv) such Common Units to be acquired by such holder pursuant to this Agreement would be acquired by such holder for its own account, for investment purposes only and not with a view to, and with no present intention of, selling or distributing the same in violation of federal or state securities laws. Unless the Units issuable on conversion are to be issued in the same name as the name in which such Series D Preferred Unit is registered, each

Series D Preferred Unit surrendered for conversion shall be accompanied by instruments of transfer, in form reasonably satisfactory to the Partnership, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Partnership demonstrating that such taxes have been paid).

As promptly as practicable after delivery of the Conversion Notice as aforesaid, the Partnership shall amend the Partnership Agreement to reflect the conversion and the issuance of Common Units issuable upon the conversion of such Series D Preferred Units in accordance with the provisions of this Section 7. In addition, the Partnership shall deliver to the holder at its address as reflected on the records of the Partnership, a copy of such amendment.

A holder of Series D Preferred Units at the close of business on the record date for any Distribution Period shall be entitled to receive the distribution payable on such Units on the corresponding Distribution Payment Date notwithstanding the conversion of such Series D Preferred Units following such record date and prior to such Distribution Payment Date and shall have no right to receive any distribution for such Distribution Period in respect of the Common Units into which such Series D Preferred Units were converted. Except as provided herein, the Partnership shall make no payment or allowance for unpaid distributions, whether or not in arrears, on converted Series D Preferred Units or for distributions on the Common Units that are issued upon such conversion in the event that a holder of Series D Preferred Units converts its Series D Preferred Units into Common Units on or prior to the record date for the initial Distribution Period, the distribution for such Distribution Period in respect of such Common Units shall be prorated and computed on the basis of twelve 30-day months and a 360-day year.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the Conversion Notice is received by the Partnership as aforesaid, and the person or persons in whose name or names any Common Units shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such Units at such time on such date and such conversion shall be at the Conversion Price in effect at such time and on such date unless the transfer books of the Partnership shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record at the close of business on the next succeeding day, on which such transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such Units have been surrendered and such notice received by the Partnership.

Notwithstanding anything to the contrary contained herein, all holders of Preferred Units shall be deemed to have delivered a Conversion Notice (and therefore exercised their conversion rights effective as of the time specified in the next sentence) as to all Series D Preferred Units if (a) with respect to any period of 90 consecutive calendar days following the Tenth Anniversary Date, the Common Unit Value exceeds on each trading day during such 90-day period the Conversion Price then in effect and (b) the amount of the distribution (as calculated in accordance with Section 5(a)(ii) of this Schedule B) for each of the four (4) Relevant Distribution Periods upon the number of Common Units (or portion thereof) into which a Series D Preferred Unit is then convertible in accordance with this Section 7 exceeds the Base Quarterly Distribution. The forced conversion referred to in this paragraph shall be effective at the close of business on the Distribution Payment Date for the last Relevant Distribution Period.

(c) The Conversion Price shall be adjusted from time to time as follows:

(i) If the Partnership shall, after the date on which the Series D Preferred Unit are first issued (the "Issue Date"), (A) pay or make a distribution to holders of its partnership interests or Units in Common Units, (B) subdivide its outstanding Common Units into a greater number of Units or distribute Common Units to the holders thereof, (C) combine its outstanding Common Units into a smaller number of Units, or (D) issue any partnership interests or Units by reclassification of its Common Units, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of holders entitled to receive such distribution or at the opening of business on the day next following the day on which such subdivision, combination or reclassification becomes effective, as the case may be, shall be adjusted so that the holder of any Series D Preferred Unit thereafter surrendered for conversion shall be entitled to receive the number of Common Units or other partnership interests or securities that such holder would have owned or have been entitled to receive after the happening of any of the events described above had such Series Preferred Unit been converted immediately prior to the close of business on the record date in the case of a distribution or the effective date in the case of a subdivision, combination or reclassification. An adjustment made pursuant to this subsection (i) shall become effective immediately after the opening of business on the day next following the record date (except as provided in subsection (g) below) in the case of a distribution and shall become effective immediately after the opening of business on the day next following the effective date in the case of a subdivision, combination or reclassification.

(ii) If the Partnership shall issue after the Issue Date rights, options or warrants to all holders of Common Units entitling them to subscribe for or purchase Common Units (or securities convertible into or exchangeable for Common Units) at a price per unit less than the Fair Market Value per Common Unit on the record date for the determination of holders of Common Units entitled to receive such rights, options or warrants, then the Conversion Price in effect at the opening of business on the day next following such record date shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for such determination by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of Common Units that the aggregate proceeds to the Partnership from the exercise of such rights, options or warrants for Common Units would purchase at such Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of additional Common Units offered for subscription or purchase pursuant to such rights, options or warrants. Such adjustment shall become effective immediately after the opening of business on the day next following such record date (except as provided in subsection (g) below). In determining whether any rights, options or warrants entitle the holders of Common Units to subscribe for or purchase Common Units at less than the Fair Market Value, there shall be taken into account any consideration received by the Partnership upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined in good faith by the Board of the General Partner.

(iii) If the Partnership shall distribute after the Issue Date to all holders of Common Units any other securities or evidences of its indebtedness or assets (excluding those rights, options, warrants, securities and other assets referred to in and treated under subsection (i) or (ii) above, and excluding distributions paid exclusively in cash) (any of the foregoing being hereinafter in this subsection (iii) called the “Securities”), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of holders of Common Units entitled to receive such distribution by (II) a fraction, the numerator of which shall be the Fair Market Value per Common Unit on the record date mentioned below less the then fair market value (as determined in good faith by the Board of the General Partner) of the portion of the Securities so distributed applicable to one Common Unit, and the denominator of which shall be the Fair Market Value per Common Unit on the record date mentioned below. Such adjustment shall become effective immediately at the opening of business on the business day next following (except as provided in subsection (g) below) the record date for the determination of holders of Common Units entitled to receive such distribution. For the purposes of this subsection (iii), a distribution in the form of a Security, which is distributed not only to the holders of the Common Units on the date fixed for the determination of holders of Common Units entitled to such distribution of such Security, but also is distributed with each Common Unit delivered to a person converting a Series D Preferred Unit after such determination date (together with distributions thereon paid to the holders of Common Units prior thereto), shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series D Preferred Unit would no longer be entitled to receive such Security with a Common Unit, a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be “the date fixed for the determination of the holders of Common Units entitled to receive such distribution” and “the record date” within the meaning of the two preceding sentences).

(iv) Notwithstanding the foregoing, no adjustment shall be made pursuant to the preceding clauses (i) and (iii) that would result in an increase in the Conversion Price. No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this Section 7 (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Units. Notwithstanding any other provisions of this Section 7, the Partnership shall not be required to make any adjustment to the Conversion Price for the issuance of (i) any Common Units pursuant to any plan providing for the reinvestment of distributions or interest payable on securities of the Partnership and the investment of additional optional amounts in Common Units under such plan or (ii) any options, rights or Common Units pursuant to or on account of any unit or stock option, unit or stock purchase or any unit or stock-based compensation plan

maintained by the Partnership or the General Partner. All calculations under this Section 7 shall be made to the nearest cent (with \$.005 being rounded upward) or to the nearest one-tenth of a Unit (with .05 of a Unit being rounded upward), as the case may be.

(d) If the Partnership shall be a party to any transaction (including, without limitation, a merger, consolidation, entity conversion, unit exchange, self tender offer for all or substantially all of the Common Units, sale of all or substantially all of the Partnership's assets or recapitalization of the Common Units or other business combination or reorganization and excluding any transaction as to which subsection (c)(i) of this Section 7 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Units shall be exchanged for or converted into partnership interests, shares, stock, securities or other property (including cash or any combination thereof), each Series D Preferred Unit which is not converted into the right to receive partnership interests, shares, stock, securities or other property in connection with such Transaction (and thus remains outstanding) shall thereafter be convertible into the kind and amount of partnership interests, shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Units into which one Series D Preferred Unit (including all distributions (whether or not earned or declared) accumulated and unpaid thereon) was convertible immediately prior to such Transaction, assuming such holder of Common Units is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person. In the event that holders of Common Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such transaction the General Partner shall give prompt written notice to each Series D Preferred Unit holder of such election, and each Series D Preferred Unit holder shall also have the right to elect by written notice to the General Partner, the form or type of consideration to be received upon conversion of each Series D Preferred Unit held by such holder following consummation of such Transaction. If a holder of Series D Preferred Units fails to make such an election, such holder (and any of its transferees) shall receive upon conversion of each Series D Preferred Unit held by such holder (or by any of its transferees) the same consideration that a holder of that number of Common Units into which one Series D Preferred Unit was convertible immediately prior to such Transaction would receive if such Common Unit holder failed to make such an election. The Partnership shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (d), and it shall not consent or agree to the occurrence of any Transaction until the Partnership has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series D Preferred Units that will contain provisions enabling the holders of Series D Preferred Units that remain outstanding after such Transaction to convert into the consideration received by holders of Common Units at the Conversion Price in effect immediately prior to such Transaction (with the holder having the option to elect the type of consideration if a choice is offered in the Transaction as specified above). The provisions of this subsection (d) shall similarly apply to successive Transactions.

(e) If:

(i) the Partnership shall authorize the granting to the holders of the Common Units of rights, options or warrants to subscribe for or purchase any Units of any class or any other rights, options or warrants; or

(ii) there shall be any reclassification of the Common Units (other than as described in clause (c)(i) of this Section 7) or any consolidation or merger to which the Partnership is a party and for which approval of any partners of the Partnership is required, involving the conversion or exchange of Common Units into securities or other property, or a unit exchange involving the conversion or exchange of Common Units into securities or other property, a self tender offer by the Partnership for all or substantially all of the Common Units, or the sale or transfer of all or substantially all of the assets of the Partnership as an entirety, or

(iii) there shall occur the voluntary or involuntary liquidation, dissolution or winding-up of the Partnership;

then the Partnership shall cause to be mailed to the holders of the Series D Preferred Units at their addresses as shown on the records of the Partnership, as promptly as possible a notice stating (A) the date on which a record is to be taken for the purpose of such distribution of rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Units of record to be entitled to such distribution of rights, options or warrants are to be determined or (B) the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Units of record shall be entitled to exchange their Common Units for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(f) Whenever the Conversion Price is adjusted as herein provided, the Partnership shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the effective date such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series D Preferred Unit at such holder's last address as shown on the records of the Partnership.

(g) In any case in which subsection (c) of this Section 7 provides that an adjustment shall become effective on the date next following the record date for an event, the Partnership may defer until the occurrence of such event issuing to the holder of any Series D Preferred Unit converted after such record date and before the occurrence of such event the additional Common Units issuable upon such conversion by reason of the adjustment required by such event over and above the Common Units issuable upon such conversion before giving effect to such adjustment.

(h) For purposes of this Section 7, the number of Common Units at any time outstanding shall not include any Common Units then owned or held by or for the account of the

Partnership. The Partnership shall not make any distribution on Common Units held in the treasury of the Partnership.

(i) If any action or transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this Section 3, only one adjustment shall be made, and such adjustment shall be the amount of adjustment that has the highest absolute value.

(j) If the Partnership shall take any action affecting the Common Units, other than action described in this Section 7, that in the reasonable judgment of the Partnership would materially affect the conversion rights of the holders of the Series D Preferred Units, the Conversion Price for the Series D Preferred Units may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the General Partner, determines to be equitable in the circumstances.

(k) The Partnership covenants that Common Units issued upon conversion of the Series D Preferred Units shall be validly issued, fully paid and non-assessable and the holder thereof shall be entitled to rights of a holder of Common Units specified in the Partnership Agreement. Prior to the delivery of any securities that the Partnership shall be obligated to deliver upon conversion of the Series D Preferred Units, the Partnership shall endeavor to comply with federal and state laws and regulations in respect thereof.

(l) The Partnership will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Units or other securities or property on conversion of the Series D Preferred Units, pursuant hereto; provided, however, that the Company, shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Units or other securities or property in a name other than that of the holder of the Series D Preferred Units to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Partnership the amount of any such tax or established, to the reasonable satisfaction of the Partnership, that such tax has been paid.

(m) Notwithstanding anything to the contrary contained herein, (i) the adjustment provisions contained in this Section 7 shall be applied so that there is no duplication of adjustments made pursuant to any other document and (ii) no adjustment under any provision hereof shall be made on account of (A) the stock split approved by the stockholders of the General Partner on November 20, 2003 or (B) the split of the Common Units that occurred on November 20, 2003.

SCHEDULE C

1. **Definitions.** As used in this Schedule C, the following terms shall have the meanings set forth below, unless the context otherwise requires:

“**Common Unit Value**” shall mean, with respect to any trading day, the value of a Common Unit, which shall equal the trading price of a share of Common Stock (calculated based on the average of the intra-day high and low and subject to adjustment in the event that the exchange ratio between Common Units and shares of Common Stock is not one-to-one or other adjustments if the kind or amount of securities into which Common Units can be converted or exchanged (as provided in the Redemption Rights Agreement, dated the date hereof) changes after the date hereof).

“**Distribution Payment Date**” shall mean, with respect to any Distribution Period, the payment date for the distribution declared by the General Partner on its Common Units for such Distribution Period or, if no such distribution payment date is established, the last business day of the first full month following such Distribution Period.

“**Distribution Period**” shall mean the quarterly period that is then the distribution period with respect to the Common Units or, if no such distribution period is established, the calendar quarter shall be the Distribution Period; provided that (a) the initial Distribution Period shall commence on March 5, 2004 and end on and include March 31, 2004 and (b) the Distribution Period in which the final liquidation payment is made pursuant to Section 7.2 of the Third Amended and Restated Agreement of Limited Partnership, as amended, shall commence on the first day following the immediately preceding Distribution Period and end on the date of such final liquidation payment.

“**Fair Market Value**” shall mean, as of any day, the average of the Common Unit Value for the ten consecutive Trading Days ending on the business day immediately preceding the day in question with respect to the issuance or distribution requiring such computation.

“**Relevant Distribution Periods**” shall mean (i) each of the three (3) consecutive Distribution Periods the last of which ends during the 90-day period referred to in the last paragraph of Section 7(b) and (ii) the next immediately following Distribution Period after the third Distribution Period described in clause (i) above.

“**Tenth Anniversary Date**” shall mean March 5, 2014.

2. **Designation and Number; Etc.** The Series E Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Third Amended and Restated Agreement of Limited Partnership to the extent applicable). The authorized number of Series E Preferred Units shall be 502,657.8128. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Schedule C and any other provision of the Third Amended and Restated Agreement of Limited Partnership, the provisions of this Schedule C shall control.

3. **Rank.** The Series E Preferred Units shall, with respect to the payment of distributions and the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, rank as follows:

(a) senior to all classes or series of Common Units and to all Units the terms of which provide that such Units shall rank junior to the Series E Preferred Units;

(b) on a parity with the Series B Preferred Units, Series D Preferred Units and each other series of Preferred Units issued by the Partnership which does not provide by its express terms that it ranks junior or senior in right of payment to the Series E Preferred Units with respect to payment of distributions or amounts upon liquidation, dissolution or winding-up; and

(c) junior to any class or series of Preferred Units issued by the Partnership that ranks senior to the Series E Preferred Units and has been approved in accordance with Section 4 of this Schedule C.

4. **Voting.**

(a) Holders of Series E Preferred Units shall not have any voting rights, except as described below in this Section 4.

(b) So long as any Series E Preferred Units remain outstanding, the Partnership shall not, without the affirmative vote or consent of the holders of at least a majority of the Series E Preferred Units outstanding at the time, given in person or by proxy, either in writing or at a meeting (such series voting separately as a class), (i) authorize, create, issue or increase the authorized or issued amount of any class or series of partnership interests in the Partnership ranking senior to the Series E Preferred Units with respect to the payment of distributions or the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership or reclassify any Common Units or other Preferred Units into such partnership interests, or create, authorize or issue any obligation or security convertible or exchangeable into or evidencing the right to purchase any such partnership interests; or (ii) amend, alter or repeal the provisions of the Third Amended and Restated Agreement of Limited Partnership, as amended, whether by merger or consolidation or otherwise (an “Event”), so as to (A) negate the provisions of clause (i) or (ii) of this paragraph, (B) materially and adversely affect the right of the holders of Series E Preferred Units to transfer such Units unless the amendment also applies to the holders of all other Units, (C) give the holders of any partnership interest a right to the payment of distributions from the Partnership or a right to the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership that ranks senior to the Series E Preferred Units or (D) materially and adversely affect any right, preference, privilege or voting power of the Series E Preferred Units or the holders thereof contained in this Schedule C. Notwithstanding anything to the contrary contained herein, each of the following shall be deemed not to (i) materially and adversely affect any such right, preference, privilege or voting power or (ii) otherwise require the vote or consent of the holders of the Series E Preferred Units: (X) the occurrence of any merger, consolidation, entity conversion, unit exchange, recapitalization of the Common Units or other business combination or reorganization, so long as either (1) the Partnership is the surviving entity and the Series E Preferred Units remain outstanding with the terms thereof materially unchanged (including

without limitation the terms with respect to distributions, voting, redemption and conversion), or (2) if the Partnership is not the surviving entity in such transaction, interests in an entity having substantially the same rights and terms (including without limitation rights to distributions, voting, redemption and conversion) as the Series E Preferred Units are exchanged or substituted for the Series E Preferred Units (and with the terms of the Common Units or such other securities for which the Series E Preferred Units (or the substitute or exchanged security therefor) are convertible or redeemable materially the same with respect to rights to distributions, voting and redemption), (Y) any increase in the amount of the authorized Preferred Units or Common Units or the creation or issuance of any other series or class of Preferred Units or Common Units or any increase in the amount of Common Units or any other series of Preferred Units, in each case so long as such Units rank on a parity with or junior to the Series E Preferred Units with respect to the payment of distributions and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership and (Z) a sale or other disposition of all or substantially all of the Partnership's assets (by merger or otherwise) if, in connection with such transaction, the holders of Series E Preferred Units have the opportunity to surrender all of the issued and outstanding Series E Preferred Units in exchange for a cash payment equal to the amount that such holders would be entitled to receive in respect thereof upon a liquidation, dissolution or winding-up of the Partnership (such surrender and payment to be made contemporaneously with the closing of such transaction) and any resulting dissolution, liquidation and/or winding-up of the Partnership.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series E Preferred Units shall have been converted or redeemed.

For purposes of the foregoing provisions of this Section 4, each Series E Preferred Unit shall have one (1) vote.

Except as otherwise required by applicable law or as set forth herein, the Series E Preferred Units shall not have any voting rights or powers and the consent of the holders thereof shall not be required for the taking of any action.

5. Distributions.

(a) With respect to each Distribution Period and subject to the rights of the holders of Preferred Units ranking senior to or on parity with the Series E Preferred Units, the holders of Series E Preferred Units shall be entitled to receive, when, as and if declared by the General Partner, out of assets of the Partnership legally available for the payment of the distributions, quarterly cumulative cash distributions in an amount per Series E Preferred Unit equal to the greater of (i) \$0.875 (the "Base Quarterly Distribution") and (ii) the amount of the regular quarterly cash distribution paid for such Distribution Period upon the number of Common Units (or portion thereof) into which such Series E Preferred Unit is then convertible in accordance with Section 7 of this Schedule C. Notwithstanding anything to the contrary contained herein, the amount of distributions described under each of clause (i) and (ii) of this paragraph for the initial Distribution Period, or any other period shorter than a full Distribution Period, shall be prorated and computed based on the actual number of days in such Distribution Period relative to the actual number of days in the calendar quarter of which the Distribution Period is a part. Such

distributions shall, with respect to each Series E Preferred Unit, accrue from its issue date, whether or not in, or with respect to, any Distribution Period or Periods (A) the distributions described above are declared, (B) the Partnership is contractually prohibited from paying such distributions or (C) there shall be assets of the Partnership legally available for the payment of such distributions. The distributions upon the Series E Preferred Units for each Distribution Period shall, if and to the extent declared or authorized by the General Partner on behalf of the Partnership, be paid in arrears (without interest or other amount) on the Distribution Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not in, or with respect to, any Distribution Period or Periods (X) the distributions are declared, (Y) the Partnership is contractually prohibited from paying such distributions or (Z) there shall be assets of the Partnership legally available for the payment of such distributions (and shall not constitute accumulated distributions prior to such date). The record date for distributions upon the Series E Preferred Units for any Distribution Period shall be the same as the record date for the distributions upon the Common Units for such Distribution Period (or, if no such record date is set for the Common Units, the fifteenth day of the calendar month in which the applicable Distribution Payment Date falls if prior to such Distribution Payment Date; otherwise, the fifteenth day of the immediately preceding calendar month). Accumulated and unpaid distributions for any past Distribution Periods may be declared and paid at any time, without reference to any Distribution Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the General Partner. Any distribution payment made upon the Series E Preferred Units shall first be credited against the earliest accrued but unpaid distributions due with respect to such Units which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any distribution payment or payments on the Series E Preferred Units, whether or not in arrears.

(b) No distribution on the Series E Preferred Units shall be declared by the General Partner or paid or set apart for payment by the Partnership at such time as and to the extent that the terms and provisions of any bona fide agreement of the Partnership, including any agreement relating to bona fide indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or to the extent that such declaration of payment shall be restricted or prohibited by law (and such failure to pay distributions on the Series E Preferred Units shall prohibit other distributions by the Partnership as described in Sections 5(c) or (d) of this Schedule C). Notwithstanding the foregoing, distributions on the Series E Preferred Units shall accumulate as provided herein whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) of this Schedule C, so long as any Series E Preferred Units are outstanding, (i) no cash or non-cash distributions (other than in Common Units or other Units ranking junior to the Series E Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership) shall be declared or paid or set apart for payment upon the Common Units or any other class or series of partnership interests in the Partnership or Units ranking, as to payment of distributions or amounts distributable upon liquidation, dissolution or winding-up of the Partnership, on a parity with or junior to the Series E Preferred Units, for any period and (ii) no Common Units or other Units ranking junior to or on a parity with the Series E Preferred Units as to payment of distributions or amounts upon liquidation, dissolution or winding-up of the Partnership shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made

available for a sinking fund for the redemption of any such Units) by the Partnership (except by conversion into or exchange for other Units ranking junior to the Series E Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership or by redemptions pursuant to Rights Agreements) unless, in the case of either clause (i) or (ii), full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment in the next 30 days on the Series E Preferred Units for all Distribution Periods ending on or prior to the distribution payment date for the Common Units or such other class or series of Unit or the date of such redemption, purchase or other acquisition.

(d) When distributions are not paid in full (or a sum sufficient for such full payment is not set apart for such payment in the next 30 days) upon the Series E Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series E Preferred Units, all distributions declared upon the Series E Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series E Preferred Units shall be declared or paid pro rata so that the amount of distributions declared per Unit of Series E Preferred Units and such other partnership interests in the Partnership or Units shall in all cases bear to each other the same ratio that accrued and unpaid distributions per Unit on the Series E Preferred Units and such other partnership interests in the Partnership or Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such Units do not have cumulative distributions) bear to each other.

(e) Except as set forth in Section 6 of this Schedule C, holders of Series E Preferred Units shall not be entitled to any distributions, whether payable in cash, property or Units, in excess of the cumulative distributions described in Section 5(a) of this Schedule C.

(f) Distributions with respect to the Series E Preferred Units are intended to qualify as permitted distributions of cash that are not treated as a disguised sale within the meaning of Treasury Regulation §1.707-4 and the provisions of this Schedule C shall be construed and applied consistently with such Treasury Regulations.

6. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, before any payment or distribution of the assets of the Partnership (whether capital or surplus) shall be made to or set apart for the holders of Common Units or any other partnership interests in the Partnership or Units ranking junior to the Series E Preferred Units as to the distribution of assets upon the liquidation, dissolution or winding-up of the Partnership, the holders of the Series E Preferred Units shall, with respect to each such Unit, be entitled to receive, out of the assets of the Partnership available for distribution to Partners after payment or provision for payment of all debts and other liabilities of the Partnership and subject to the rights of the holders of any series of Preferred Units ranking senior to or on parity with the Series E Preferred Units with respect to payment of amounts upon liquidation, dissolution or winding-up of the Partnership, an amount equal to the greater of (i) \$50, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution (including all accumulated and unpaid distributions) and (ii) the amount that a holder

of such Series E Preferred Unit would have received upon final distribution in respect of the number of Common Units into which such Series E Preferred Unit (including all accumulated and unpaid distributions (whether or not earned or declared) with respect thereto) was convertible immediately prior to such date of final distribution. If, upon any such voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, the assets of the Partnership, or proceeds thereof, distributable among the holders of the Series E Preferred Units are insufficient to pay in full the preferential amount aforesaid on the Series E Preferred Units and liquidating payments on any other Units or partnership interests in the Partnership of any class or series ranking, as to payment of distributions and amounts upon the liquidation, dissolution or winding-up of the Partnership, on a parity with the Series E Preferred Units, then such assets, or the proceeds thereof, shall be distributed among the holders of Series E Preferred Units and any such other Units or partnership interests in the Partnership ratably in accordance with the respective amounts that would be payable on such Series E Preferred Units and such other Units or partnership interests in the Partnership if all amounts payable thereon were paid in full. For the purposes of this Section 6, none of (i) a consolidation or merger of the Partnership with or into another entity, (ii) a merger of another entity with or into the Partnership or (iii) a sale, lease or conveyance of all or substantially all of the Partnership's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Partnership (unless all or substantially all of the proceeds thereof are distributed by the Partnership, in which case a liquidation, dissolution or winding-up of the Partnership shall be deemed to have occurred).

(b) Written notice of such liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series E Preferred Units at the respective addresses of such holders as the same shall appear on the transfer records of the Partnership.

(c) After payment of the full amount of liquidating distributions to which they are entitled as provided in Section 6(a) of this Schedule C, the holders of Series E Preferred Units shall have no right or claim to any of the remaining assets of the Partnership.

7. **Conversion.** Holders of Series E Preferred Units shall have the right to convert all or a portion of such Units into Common Units, as follows:

(a) A holder of Series E Preferred Units shall have the right, at such holder's option, at any time, to convert any whole number of Series E Preferred Units into fully paid and non-assessable Common Units; provided, however, that the conversion right may not be exercised at any one time by a holder of Series E Preferred Units with respect to less than 1,000 Series E Preferred Units (or all the Series E Preferred Units then owned by such holder if such holder owns less than 1,000 Series E Preferred Units). Each Series E Preferred Unit shall be convertible into the number of Common Units determined by dividing (i) the \$50 base liquidation preference per Series E Preferred Unit, plus an amount equal to all accumulated and unpaid distributions (whether or not earned or declared) with respect thereto by (ii) a conversion price of \$38.51 per Common Unit (equivalent to an initial conversion rate of 1.298364 Common Units for each Series E Preferred Unit), subject to adjustment as described in Section 7(c) hereof (the "Conversion Price").

(b) To exercise the conversion right, the holder of each Series E Preferred Unit to be converted shall execute and deliver to the General Partner, at the principal office of the Partnership, a written notice (the "Conversion Notice") indicating that the holder thereof elects to convert such Series E Preferred Unit and containing representations and warranties of such holder that (i) such holder has good and marketable title to such Series E Preferred Unit, free and clear of all liens, claims and encumbrances, (ii) such holder is an accredited investor as defined in Regulation D under the Securities Act of 1933, as amended, and has such knowledge and experience in financial and business matters such that such holder is capable of evaluating the merits and risks of receiving and owning the Common Units that may be issued to it in exchange for such Series E Preferred Unit, (iii) such holder is able to bear the economic risk of such ownership and (iv) such Common Units to be acquired by such holder pursuant to this Agreement would be acquired by such holder for its own account, for investment purposes only and not with a view to, and with no present intention of, selling or distributing the same in violation of federal or state securities laws. Unless the Units issuable on conversion are to be issued in the same name as the name in which such Series E Preferred Unit is registered, each Series E Preferred Unit surrendered for conversion shall be accompanied by instruments of transfer, in form reasonably satisfactory to the Partnership, duly executed by the holder or such holder's duly authorized attorney and an amount sufficient to pay any transfer or similar tax (or evidence reasonably satisfactory to the Partnership demonstrating that such taxes have been paid).

As promptly as practicable after delivery of the Conversion Notice as aforesaid, the Partnership shall amend the Partnership Agreement to reflect the conversion and the issuance of Common Units issuable upon the conversion of such Series E Preferred Units in accordance with the provisions of this Section 7. In addition, the Partnership shall deliver to the holder at its address as reflected on the records of the Partnership, a copy of such amendment.

A holder of Series E Preferred Units at the close of business on the record date for any Distribution Period shall be entitled to receive the distribution payable on such Units on the corresponding Distribution Payment Date notwithstanding the conversion of such Series E Preferred Units following such record date and prior to such Distribution Payment Date and shall have no right to receive any distribution for such Distribution Period in respect of the Common Units into which such Series E Preferred Units were converted. Except as provided herein, the Partnership shall make no payment or allowance for unpaid distributions, whether of not in arrears, on converted Series E Preferred Units or for distributions on the Common Units that are issued upon such conversion. In the event that a holder of Series E Preferred Units converts its Series E Preferred Units into Common Units on or prior to the record date for the initial Distribution Period, the distribution for such Distribution Period in respect of such Common Units shall be prorated and computed on the basis of twelve 30-day months and a 360-day year.

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the Conversion Notice is received by the Partnership as aforesaid, and the person or persons, in whose name or names any Common Units shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such Units at such time on such date, and such conversion shall be at the Conversion Price in effect at such time and on such date unless the transfer books of the Partnership shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of

record immediately prior to the close of business on the next succeeding day on which such transfer books are open, but such conversion shall be at the Conversion Price in effect on the date on which such Units have been surrendered and such notice received by the Partnership.

Notwithstanding anything to the contrary contained herein, all holders of Series E Preferred Units shall be deemed to have delivered a Conversion Notice (and therefore exercised their conversion rights effective as of the time specified in the next sentence) as to all Series E Preferred Units if (a) with respect to any period of 90 consecutive calendar days following the Tenth Anniversary Date, the Common Unit Value exceeds on each trading day during such 90-day period the Conversion Price then in effect and (b) the amount of the distribution (as calculated in accordance with Section 5(a)(ii) of this Schedule C) for each of the four (4) Relevant Distribution Periods upon the number of Common Units (or portion thereof) into which a Series E Preferred Unit is then convertible in accordance with this Section 7 exceeds the Base Quarterly Distribution. The forced conversion referred to in this paragraph shall be effective at the close of business on the Distribution Payment Date for the last Relevant Distribution Period.

(c) The Conversion Price shall be adjusted from time to time as-follows:

1. If the Partnership shall, after the date on which the Series E Preferred Units are first issued (the "Issue Date"), (A) pay or make a distribution to holders of its partnership interests Units in Common Units, (B) subdivide its outstanding Common Units into a greater number of Units or distribute Common Units to the holders thereof, (C) combine its outstanding Common Units into a smaller number of Units, or (D) issue any partnership interests or Units by reclassification of its Common Units, the Conversion Price shall be adjusted so that the conversion rights of the holder of any Series E Preferred Unit are not diluted or expanded thereby.

2. If the Partnership shall issue after the Issue Date rights, options or warrants to all holders of Common Units entitling them to subscribe for or purchase Common Units (or securities convertible into or exchangeable for Common Units) at a price per Unit less than the Fair Market Value on the record date for the determination of holders of Common Units entitled to receive such rights, options or warrants, then the Conversion Price shall be adjusted to equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to adjustment by (II) a fraction, the numerator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of Common Units that the aggregate proceeds to the Partnership from the exercise of such rights, options or warrants for Common Units would purchase at a price per Unit equal to the Fair Market Value, and the denominator of which shall be the sum of (A) the number of Common Units outstanding at the close of business on the date fixed for such determination and (B) the number of additional Common Units offered for subscription or purchase pursuant to such rights, options or warrants. In determining whether any rights, options or warrants entitle the holder of Common Units to subscribe for or purchase Common Units at a price per Unit less than the Fair Market Value, there shall be taken into account any consideration received by the Partnership upon issuance and upon exercise of such rights, options or warrants, the value of such consideration, if other than cash, to be determined in good faith by the Board of the General Partner.

3. If the Partnership shall distribute after the Issue Date to all holders of Common Units any other securities or evidences of its indebtedness or assets (excluding those rights, options, warrants, securities and other assets referred to in and treated under subsection (i) or (ii) above, and excluding distributions paid exclusively in cash) (any of the foregoing being hereinafter in this subsection (iii) called the “Securities”), then in each case the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (I) the Conversion Price in effect immediately prior to the adjustment by (II) a fraction, the numerator of which shall be the Fair Market Value on the record date for the determination of holders of Common Units entitled to receive such distribution less the then fair market value (as determined in good faith by the General Partner) of the portion of the Securities so distributed applicable to one Common Unit, and the denominator of which shall be the Fair Market Value on the record date mentioned above. For the purposes of this subsection (iii), a distribution in the form of a Security, which is distributed not only to the holders of the Common Units on the date fixed for the determination of holders of Common Units entitled to such distribution of such Security, but also is distributed with each Common Unit delivered to a person converting a Series E Preferred Unit after such determination date (together with distributions thereon paid to the holders of Common Units prior thereto), shall not require an adjustment of the Conversion Price pursuant to this subsection (iii); provided that on the date, if any, on which a person converting a Series E Preferred Unit would no longer be entitled to receive such Security with a Common Unit, a distribution of such Securities shall be deemed to have occurred, and the Conversion Price shall be adjusted as provided in this subsection (iii) (and such day shall be deemed to be “the date fixed for the determination of the holders of Common Units entitled to receive such distribution” and “the record date” within the meaning of the preceding sentence).

4. Notwithstanding the foregoing, no adjustment shall be made pursuant to the preceding clauses (ii) and (iii) that would result in an increase in the Conversion Price. No adjustment in the Conversion Price shall be required unless such adjustment would require a cumulative increase or decrease of at least 1% in such price; provided, however, that any adjustments that by reason of this subsection (iv) are not required to be made shall be carried forward and taken into account in any subsequent adjustment until made; and provided, further, that any adjustment shall be required and made in accordance with the provisions of this Section 7 (other than this subsection (iv)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of Common Units. Notwithstanding any other provisions of this Section 7, the Partnership shall not be required to make any adjustment to the Conversion Price for the issuance of (i) any Common Units on account of any plan providing for the reinvestment of distributions or interest payable on securities of the Partnership or the General Partner and the investment of additional optional amounts under such plan or (ii) any options, rights or Common Units pursuant to or on account of any unit or stock option, unit or stock purchase or any unit or stock-based compensation plan maintained by the Partnership or the General Partner. All calculations under this Section 7 shall be made to the nearest cent (with \$.005 being rounded upward) or to the nearest one-tenth of a Unit (with .05 of a Unit being rounded upward), as the case may be.

(d) If the Partnership shall be a party to any transaction (including, without limitation, a merger, consolidation, entity conversion, unit exchange, self tender offer for all or substantially all of the Common Units, sale of all or substantially all of the Partnership's assets or recapitalization of the Common Units or other business combination or reorganization and excluding any transaction as to which subsection (c)(i) of this Section 7 applies) (each of the foregoing being referred to herein as a "Transaction"), in each case as a result of which Common Units shall be exchanged for or converted into partnership interests, shares, stock, securities or other properties (including cash or any combination thereof), each Series E Preferred Unit which is not converted into the right to receive partnership interests, shares, stock, securities or other property in connection with such Transaction (and thus remains outstanding) shall thereafter be convertible into the kind and amount of partnership interests, shares, stock, securities and other property (including cash or any combination thereof) receivable upon the consummation of such Transaction by a holder of that number of Common Units into which one Series E Preferred Unit (including all distributions (whether or not earned or declared) accumulated and unpaid thereon) was convertible immediately prior to such Transaction, assuming such holder of Common Units is not a Person with which the Partnership consolidated or into which the Partnership merged or which merged into the Partnership or to which such sale or transfer was made, as the case may be (a "Constituent Person"), or an affiliate of a Constituent Person. In the event that holders of Common Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such transaction the General Partner shall give prompt written notice to each Series E Preferred Unit holder of such election, and each Series E Preferred Unit holder shall also have the right to elect, by written notice to the General Partner, the form or type or consideration to be received upon conversion of each Series E Preferred Unit held by such holder following consummation of such Transaction. If a holder of Series E Preferred Units fails to make such an election, such holder (and any of its transferees) shall receive upon conversion of each Series E Preferred Unit held by such holder (or by any of its transferees) the same consideration that a holder of that number of Common Units into which one Series E Preferred Unit was convertible immediately prior to such Transaction would receive if such Common Unit holder failed to make such an election. The Partnership shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this subsection (d), and it shall not consent or agree to the occurrence of any Transaction until the Partnership has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series E Preferred Units that will contain provisions enabling the holders of Series E Preferred Units that remain outstanding after such Transaction to convert into the consideration received by holders of Common Units at the Conversion Price in effect immediately prior to such Transaction (with the holder having the option to elect the type of consideration if a choice is offered in the Transaction as specified above). The provisions of this subsection (d) shall similarly apply to successive Transactions.

(e) If:

1. the Partnership shall declare a distribution on the Common Units (other than a regular quarterly cash distribution or a distribution in Common Units); or
2. the Partnership shall authorize the granting to the holders of the Common Units of rights, options or warrants to subscribe for or purchase any Units of any class or any other rights, options or warrants; or

3. there shall be any reclassification of the Common Units (other than a distribution in Common Units or a subdivision or combination of Common Units) or any consolidation or merger to which the Partnership is a party and for which approval of any partners of the Partnership is required, involving the conversion or exchange of Common Units into securities or other property, or a unit exchange involving the conversion or exchange of Common Units into securities or other property, a self tender offer by the Partnership for all or substantially all of the Common Units, or the sale or transfer of all or substantially all of the assets of the Partnership as an entirety; or

4. there shall occur the voluntary or involuntary liquidation, dissolution or winding-up of the Partnership;

then the Partnership shall caused to be mailed to the holders of the Series E Preferred Units at their addresses as shown on the records of the Partnership, as promptly as possible a prior notice stating (A) the date on which a record is to be taken for the purpose of such distribution or grant, or, if a record is not to be taken, the date as of which the holders of Common Units of record to be entitled to such distribution or grant are to be determined or (B) the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Units of record shall be entitled to exchange their Common Units for securities or other property, if any, deliverable upon such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution or winding-up. Failure to give or receive such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7.

(f) Whenever the Conversion Price is adjusted as herein provided, the Partnership shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and shall mail such notice of such adjustment of the Conversion Price to the holder of each Series E Preferred Unit at such holder's last address as shown on the records of the Partnership.

(g) Any adjustment to the Conversion Price pursuant to subsection (c) of this Section 7 with respect to any event shall become effective at such time as is necessary to prevent dilution or expansion of the conversion rights on account of such event.

(h) For purposes of this Section 7, the number of Common Units at any time outstanding shall not include any Common Units then owned or held by or for the account of the Partnership. The Partnership shall not make any distribution on Common Units held in the treasury of the Partnership.

(i) If any action or transaction would require adjustment of the Conversion Price pursuant to more than one subsection of this Section 7, only one adjustment shall be made, and such adjustment shall be the amount of adjustment that results in the lowest absolute value of the Conversion Price.

(j) If the Partnership shall take any action affecting the Common Units, other than action described in this Section 7, that in the reasonable judgment of the Partnership would materially affect the conversion rights of the holders of the Series E Preferred Units, the

Conversion Price for the Series E Preferred Units may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the General Partner, determines to be equitable in the circumstances.

(k) The Partnership covenants that Common Units issued upon conversion of the Series E Preferred Units shall be validly issued, fully paid and non-assessable and the holder thereof shall be entitled to rights of a holder of Common Units specified in the Partnership Agreement. Prior to the delivery of any securities that the Partnership shall be obligated to deliver upon conversion of the Series E Preferred Units, the Partnership shall endeavor to comply with all federal and state laws and regulations in respect thereof.

(l) The Partnership will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of Common Units or other securities or property on conversion of the Series E Preferred Units pursuant hereto; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of Common Units or other securities or property in a name other than that of the holder of the Series E Preferred Units to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Partnership the amount of any such tax or established, to the reasonable satisfaction of the Partnership, that such tax has been paid.

(m) Notwithstanding anything to the contrary contained herein, the adjustment provisions contained in this Section 7 shall be applied so that there is no duplication of adjustments made pursuant to any other document.

SCHEDULE D

1. **Definitions.** As used in this Schedule D, the following terms shall have the meanings set forth below, unless the context otherwise requires:

“**Distribution Payment Date**” shall mean, with respect to any Distribution Period, the payment date for the distribution declared by the General Partner on its Common Units for such Distribution Period or, if no such distribution payment date is established, the last business day of the first full month following such Distribution Period.

“**Distribution Period**” shall mean the quarterly period that is then the distribution period with respect to the Common Units or, if no such distribution period is established, the calendar quarter shall be the Distribution Period; provided that the Distribution Period in which the final liquidation payment is made pursuant to Section 7.2 of the Third Amended and Restated Agreement of Limited Partnership, as amended, shall commence on the first day following the immediately preceding Distribution Period and end on the date of such final liquidation payment.

2. **Designation and Number; Etc.** The Series F Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Third Amended and Restated Agreement of Limited Partnership to the extent applicable). The authorized number of Series F Preferred Units shall be 1,000. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Schedule D and any other provision of the Third Amended and Restated Agreement of Limited Partnership, the provisions of this Schedule D shall control.

3. **Rank.** The Series F Preferred Units shall, with respect to the payment of distributions and the distribution of amounts upon voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, rank as follows:

(a) senior to all classes or series of Common Units and to all Units the terms of which provide that such Units shall rank junior to the Series F Preferred Units;

(b) on a parity with the Series B Preferred Units, Series D Preferred Units, Series E Preferred Units and each other series of Preferred Units issued by the Partnership which does not provide by its express terms that it ranks junior or senior in right of payment to the Series F Preferred Units with respect to payment of distributions or amounts upon liquidation, dissolution or winding-up; and

(c) junior to any class or series of Preferred Units issued by the Partnership that ranks senior to the Series F Preferred Units.

4. **Voting.** Holders of Series F Preferred Units shall not have any voting rights, except as required by law.

5. **Distributions.**

(a) With respect to each Distribution Period and subject to the rights of the holders of Preferred Units ranking senior to or on parity with the Series F Preferred Units, the holders of Series F Preferred Units shall be entitled to receive, when, as and if declared by the General Partner, out of assets of the Partnership legally available for the payment of the distributions, quarterly cumulative cash distributions in an amount per Series F Preferred Unit equal to \$25. Notwithstanding anything to the contrary contained herein, the amount of distributions described under this paragraph for the initial Distribution Period, or any other period shorter than a full Distribution Period, shall be prorated and computed based on the actual number of days in such Distribution Period relative to the actual number of days in the calendar quarter of which the Distribution Period is a part. Such distributions shall, with respect to each Series F Preferred Unit, accrue from its issue date, whether or not in, or with respect to, any Distribution Period or Periods (A) the distributions described above are declared, (B) the Partnership is contractually prohibited from paying such distributions or (C) there shall be assets of the Partnership legally available for the payment of such distributions. The distributions upon the Series F Preferred Units for each Distribution Period shall, if and to the extent declared or authorized by the General Partner on behalf of the Partnership, be paid in arrears (without interest or other amount) on the Distribution Payment Date with respect thereto, and, if not paid on such date, shall accumulate, whether or not in, or with respect to, any Distribution Period or Periods (X) the distributions are declared, (Y) the Partnership is contractually prohibited from paying such distributions or (Z) there shall be assets of the Partnership legally available for the payment of such distributions (and shall not constitute accumulated distributions prior to such date). The record date for distributions upon the Series F Preferred Units for any Distribution Period shall be the same as the record date for the distributions upon the Common Units for such Distribution Period (or, if no such record date is set for the Common Units, the fifteenth day of the calendar month in which the applicable Distribution Payment Date falls if prior to such Distribution Payment Date; otherwise, the fifteenth day of the immediately preceding calendar month). Accumulated and unpaid distributions for any past Distribution Periods may be declared and paid at any time, without reference to any Distribution Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the General Partner. Any distribution payment made upon the Series F Preferred Units shall first be credited against the earliest accrued but unpaid distributions due with respect to such Units which remains payable. No interest, or sum of money in lieu of interest, shall be owing or payable in respect of any distribution payment or payments on the Series F Preferred Units, whether or not in arrears.

(b) No distribution on the Series F Preferred Units shall be declared by the General Partner or paid or set apart for payment by the Partnership at such time as and to the extent that the terms and provisions of any bona fide agreement of the Partnership, including any agreement relating to bona fide indebtedness, prohibits such declaration, payment or setting apart for payment or provides that such declaration, payment or setting apart for payment would constitute a breach thereof, or a default thereunder, or to the extent that such declaration of payment shall be restricted or prohibited by law (and such failure to pay distributions on the Series F Preferred Units shall prohibit other distributions by the Partnership as described in Sections 5(c) or (d) of this Schedule D). Notwithstanding the foregoing, distributions on the Series F Preferred Units shall accumulate as provided herein whether or not any of the foregoing restrictions exist.

(c) Except as provided in Section 5(d) of this Schedule C, so long as any Series F Preferred Units are outstanding, (i) no cash or non-cash distributions (other than in Common Units or other Units ranking junior to the Series F Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership) shall be declared or paid or set apart for payment upon the Common Units or any other class or series of partnership interests in the Partnership or Units ranking, as to payment of distributions or amounts distributable upon liquidation, dissolution or winding-up of the Partnership, on a parity with or junior to the Series F Preferred Units, for any period and (ii) no Common Units or other Units ranking junior to or on a parity with the Series F Preferred Units as to payment of distributions or amounts upon liquidation, dissolution or winding-up of the Partnership shall be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such Units) by the Partnership (except by conversion into or exchange for other Units ranking junior to the Series F Preferred Units as to payment of distributions and amounts upon liquidation, dissolution or winding-up of the Partnership or by redemptions pursuant to Rights Agreements) unless, in the case of either clause (i) or (ii), full cumulative distributions have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment in the next 30 days on the Series F Preferred Units for all Distribution Periods ending on or prior to the distribution payment date for the Common Units or such other class or series of Unit or the date of such redemption, purchase or other acquisition.

(d) When distributions are not paid in full (or a sum sufficient for such full payment is not set apart for such payment in the next 30 days) upon the Series F Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series F Preferred Units, all distributions declared upon the Series F Preferred Units and any other partnership interests in the Partnership or Units ranking on a parity as to payment of distributions with the Series F Preferred Units shall be declared or paid pro rata so that the amount of distributions declared per Unit of Series F Preferred Units and such other partnership interests in the Partnership or Units shall in all cases bear to each other the same ratio that accrued and unpaid distributions per Unit on the Series F Preferred Units and such other partnership interests in the Partnership or Units (which shall not include any accumulation in respect of unpaid distributions for prior distribution periods if such Units do not have cumulative distributions) bear to each other.

(e) Except as set forth in Section 6 of this Schedule D, holders of Series F Preferred Units shall not be entitled to any distributions, whether payable in cash, property or Units, in excess of the cumulative distributions described in Section 5(a) of this Schedule D.

(f) Distributions with respect to the Series F Preferred Units are intended to qualify as permitted distributions of cash that are not treated as a disguised sale within the meaning of Treasury Regulation §1.707-4 and the provisions of this Schedule D shall be construed and applied consistently with such Treasury Regulations.

6. **Liquidation Preference.**

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, before any payment or distribution of the assets of the Partnership (whether

capital or surplus) shall be made to or set apart for the holders of Common Units or any other partnership interests in the Partnership or Units ranking junior to the Series F Preferred Units as to the distribution of assets upon the liquidation, dissolution or winding-up of the Partnership, the holders of the Series F Preferred Units shall, with respect to each such Unit, be entitled to receive, out of the assets of the Partnership available for distribution to Partners after payment or provision for payment of all debts and other liabilities of the Partnership and subject to the rights of the holders of any series of Preferred Units ranking senior to or on parity with the Series F Preferred Units with respect to payment of amounts upon liquidation, dissolution or winding-up of the Partnership, an amount equal to \$1000, plus an amount equal to all distributions (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution (including all accumulated and unpaid distributions). If, upon any such voluntary or involuntary liquidation, dissolution or winding-up of the Partnership, the assets of the Partnership, or proceeds thereof, distributable among the holders of the Series F Preferred Units are insufficient to pay in full the preferential amount aforesaid on the Series F Preferred Units and liquidating payments on any other Units or partnership interests in the Partnership of any class or series ranking, as to payment of distributions and amounts upon the liquidation, dissolution or winding-up of the Partnership, on a parity with the Series F Preferred Units, then such assets, or the proceeds thereof, shall be distributed among the holders of Series F Preferred Units and any such other Units or partnership interests in the Partnership ratably in accordance with the respective amounts that would be payable on such Series F Preferred Units and such other Units or partnership interests in the Partnership if all amounts payable thereon were paid in full. For the purposes of this Section 6, none of (i) a consolidation or merger of the Partnership with or into another entity, (ii) a merger of another entity with or into the Partnership or (iii) a sale, lease or conveyance of all or substantially all of the Partnership's assets, properties or business shall be deemed to be a liquidation, dissolution or winding-up of the Partnership (unless all or substantially all of the proceeds thereof are distributed by the Partnership, in which case a liquidation, dissolution or winding-up of the Partnership shall be deemed to have occurred).

(b) Written notice of such liquidation, dissolution or winding-up of the Partnership, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series F Preferred Units at the respective addresses of such holders as the same shall appear on the transfer records of the Partnership.

(c) After payment of the full amount of liquidating distributions to which they are entitled as provided in Section 6(a) of this Schedule D, the holders of Series F Preferred Units shall have no right or claim to any of the remaining assets of the Partnership.

7. Redemption.

Notwithstanding anything to the contrary contained in this Schedule D or the Third Amended and Restated Agreement of Limited Partnership, other than preferences in favor of the Series B Preferred Units, Series D Preferred Units and Series E Preferred Units, the Partnership may, from time to time and at any time, redeem any or all of the Series F Preferred Units for an amount equal to \$1000, plus an amount equal to all distributions (whether or not earned or

declared) accrued and unpaid thereon to the date of such redemption (including all accumulated and unpaid distributions).

EXHIBIT A

[List of Unit Holders]

EXHIBIT B

Allocations

1. Allocation of Net Income and Net Loss.

(a) Net Income. Except as otherwise provided herein, Net Income for any fiscal year or other applicable period shall be allocated in the following order and priority:

1. First, to the General Partner to the extent the cumulative Net Loss allocated to the General Partner pursuant to subparagraph (b)(5) below exceeds the cumulative Net Income allocated to the General Partner pursuant to this subparagraph (a)(1);

2. Second, to each Partner in proportion to and to the extent of the amount by which the cumulative Net Loss allocated to such Partner pursuant to subparagraph (b)(4) exceeds the cumulative Net Income allocated to such Partner pursuant to this subparagraph (a)(2);

3. Third, to the General Partner until the cumulative Net Income allocated to the General Partner pursuant to this subparagraph (a)(3) equals the cumulative Net Loss allocated to the General Partner pursuant to subparagraph (b)(3);

4. Fourth, to each holder of Preferred Units other than the Series D Preferred Units to the extent of and in proportion to the excess of (I) the cumulative amount of distributions made in respect of such Preferred Units, reduced by in the case of the Series B Preferred Units the cumulative Common Unit Reallocated Amounts, and increased by in the case of the Series B Preferred Units the cumulative Series B Preferred Unit Reallocated Amounts, pursuant to the provisos below, over (II) the cumulative amount of Net Income allocated to each holder of Preferred Units pursuant to this subparagraph (a)(4) and subparagraph (a)(5) for such period and all prior periods reduced by the cumulative amount of Net Loss allocated to such holder of Preferred Units pursuant to subparagraph (b)(2) below for all prior periods; provided, however, that in the event the cumulative Net Income allocable to the holders of the Common Units pursuant to this subparagraph (a)(4) and subparagraph (a)(5) below for such period and all prior periods (before application of this proviso for such period) exceeds the cumulative distributions made to the holders of Common Units with respect to such Units for such period and all prior periods, the Series B Preferred Unit Reallocated Amount shall be reallocated pro rata to the holders of Series B Preferred Units; and

5. Thereafter, to the holders of Common Units pro rata in accordance with their Percentage Interests; provided, however, that in the event the cumulative distributions made to the holders of Common Units with respect to such Units for such period and all prior periods exceed the cumulative Net Income allocable to the holders of the Common Units pursuant to subparagraph (a)(4) and this subparagraph (a)(5) for such period and all prior periods (before application of this proviso for such period), the Common Unit Reallocated Amount shall be reallocated pro rata to the holders of Common Units.

The term “Common Unit Reallocated Amount” shall mean an amount equal to the difference between (I) the amount of Net Income allocable to the Series B Preferred Units pursuant to subparagraph (a)(4) with respect to such fiscal year or other period, and (II) the product obtained by multiplying (A) a fraction, the numerator of which is the number of the Common Units into which the Series B Preferred Units are convertible and the denominator of which is the sum of the number of Common Units into which the Series B Preferred Units are convertible plus the number of Common Units and (B) the sum of (i) the Net Income allocable to the Series B Preferred Units pursuant to subparagraph (a)(4) with respect to such fiscal year or other period and (ii) the Net Income allocable to the Common Units pursuant to subparagraph (a)(5) with respect to such fiscal year or other period. The Common Unit Reallocated Amount shall be calculated based on the amounts of Net Income allocable under subparagraphs (a)(4) and (a)(5) prior to the application of the provisos contained in such subparagraphs with respect to such fiscal year or other period.

The term “Series B Preferred Unit Reallocated Amount” shall mean the difference between (I) the amount of Net Income allocable to the Common Units pursuant to subparagraph (a)(5) with respect to such fiscal year or other period, and (II) the product obtained by multiplying (A) a fraction, the numerator of which is the number of Common Units and the denominator of which is the sum of the number of Common Units into which the Series B Preferred Units are convertible plus the number of Common Units and (B) the sum of (i) Net Income allocable to the Series B Preferred Units pursuant to subparagraph (a)(4) with respect to such fiscal year or other period and (ii) the Net Income allocable to the Common Units pursuant to this subparagraph (a)(5) with respect to such fiscal year or other period; provided, however, that to the extent the allocation of the Series B Preferred Unit Reallocated Amount to the holders of Series B Preferred Units would cause such holders on a cumulative basis to have been allocated Net Income in excess of distributions, the Series B Preferred Unit Reallocated Amount shall be reduced by such excess. The Series B Preferred Unit Reallocated Amount shall be calculated based on the amounts of Net Income allocable pursuant to subparagraphs (a)(4) and (a)(5) prior to the application of the provisos contained in such subparagraphs with respect to such fiscal year or other period.

It is the intention of the parties that the application of subparagraphs (a)(4) and (a)(5) above will result in corresponding return of capital distributions (per Unit) to the Series B Preferred Units (on an as-converted basis) and Common Units on a cumulative basis and shall be applied and interpreted consistently therewith.

In allocating Net Income for each fiscal year or period, for all purposes of this Section 1(a) (including for purposes of determining the “Percentage Interests” of the holders of both the Common Units and the Series D Preferred Units), the holders of the Series D Preferred Units shall be treated as though they held that number of Common Units into which their Series D Preferred Units were convertible, as determined from time to time during such fiscal year or period.

(b) Net Loss. Except as otherwise provided herein, Net Loss of the Partnership for each fiscal year or other applicable period shall be allocated as follows:

1. First, to the holders of Common Units, in proportion to their respective Percentage Interests provided that the Net Loss allocated to a holder of Common Units pursuant to this Section (b)(1) shall not exceed the maximum amount of Net Loss that can be allocated without causing a holder of Common Units to have an Adjusted Capital Account Deficit (excluding for this purpose any increase to such Adjusted Capital Account Deficit for a holder's actual obligation to fund a deficit Capital Account balance, including the obligation of an Obligated Partner to fund a deficit Capital Account Balance pursuant to Section 7.8 hereof and also excluding for this purpose the balance of such holder's Capital Account attributable to such holder's Preferred Units, if any);

2. Second, to the holders of Preferred Units in proportion to each such holder's Capital Account balance in such Preferred Units, provided that the Net Loss allocated to a holder of Preferred Units pursuant to this Section (b)(2) shall not exceed the maximum amount of Net Loss that can be allocated without causing any holder of Preferred Units to have an Adjusted Capital Account Deficit (excluding for this purpose any increase to such Adjusted Capital Account Deficit for a holder's actual obligation to fund a deficit Capital Account balance, including the obligation of an Obligated Partner to fund a deficit Capital Account Balance pursuant to Section 7.8 hereof);

3. Third, to the General Partner, until the General Partner's Adjusted Capital Account Deficit (excluding for this purpose any increase to such Adjusted Capital Account Deficit for the obligation of the General Partner to actually fund a deficit Capital Account balance, including any deemed obligation pursuant to Regulation Section 1.704-(1)(b)(2)(ii)(c)) equals the excess of (i) the amount of Recourse Liabilities over (ii) the Aggregate Protected Amount;

4. Fourth, to the Obligated Partners, in proportion to their respective Protected Amounts, until such time as the Obligated Partners have been allocated an aggregate amount of Net Loss pursuant to this subparagraph (b)(4) equal to the Aggregate Protected Amount; and

5. Thereafter, to the General Partner.

2. Special Allocations.

Notwithstanding any provisions of paragraph 1 of this Exhibit B, the following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback (Nonrecourse Liabilities). If there is a net decrease in Partnership Minimum Gain for any Partnership fiscal year (except as a result of conversion or refinancing of Partnership indebtedness, certain capital contributions or revaluation of the Partnership property as further outlined in Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(f). This paragraph (a) is intended to comply with the minimum gain chargeback requirement in said section of the Regulations and shall be interpreted consistently

therewith. Allocations pursuant to this paragraph (a) shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant hereto.

(b) Minimum Gain Attributable to Partner Nonrecourse Debt. If there is a net decrease in Minimum Gain Attributable to Partner Nonrecourse Debt during any fiscal year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain revaluations of Partnership property as further outlined in Regulation Section 1.704-2(i)(4)), each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Partner's share of the net decrease in the Minimum Gain Attributable to Partner Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(i)(4) and (j)(2). This paragraph (b) is intended to comply with the minimum gain chargeback requirement with respect to Partner Nonrecourse Debt contained in said section of the Regulations and shall be interpreted consistently therewith. Allocations pursuant to this paragraph (b) shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant hereto.

(c) Qualified Income Offset. In the event a Limited Partner unexpectedly receives any adjustments, allocations or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Limited Partner has an Adjusted Capital Account Deficit, items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This paragraph (c) is intended to constitute a "qualified income offset" under Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any fiscal year or other applicable period shall be specially allocated to the Partner that bears the economic risk of loss for the debt (i.e., the Partner Nonrecourse Debt) in respect of which such Partner Nonrecourse Deductions are attributable (as determined under Regulation Section 1.704-2(b)(4) and (i)(1)).

(e) Allocations With Respect to Preferred Unit Redemptions. After giving effect to the special allocations set forth above, Net Income of the Partnership shall be allocated to the holders of Preferred Units, at the time of redemption of such Preferred Units (other than in the case of a redemption occurring pursuant to a final liquidation of the Partnership), in an amount equal to the portion of any redemption distribution that exceeds the Liquidation Preference Amount (other than any accrued but unpaid distribution thereon) per Preferred Unit established for such Preferred Unit in the applicable Preferred Unit designation. The character of the items of Net Income allocated to the holders of Preferred Units pursuant to this subparagraph (e) shall proportionately reflect the relative amounts of the items of Partnership income and gain as determined for federal income tax purposes under Section 703(a) of the Code.

(f) Tax Treatment of Conversion of Preferred Units. Upon conversion of a Preferred Unit(s) into Common Unit(s), the Company will specially allocate to the converting Partner any Net Income or Net Loss attributable to an adjustment of Gross Asset Values under subparagraph (b) of the definition of "Gross Asset Value" until the portion of such Partner's Capital Account attributable to each Common Unit received upon conversion equals the Capital Account

attributable to a Common Unit at the time of conversion. To the extent that such allocation is insufficient to bring the portion of the Capital Account attributable to each Common Unit received upon conversion by the converting Partner to the Capital Account attributable to a Common Unit at the time of conversion, a portion of the Capital Account of the non-converting Partners will be shifted, pro rata in accordance with their relative Capital Account balances, to the converted Partner and such transaction shall be treated by the Partnership and the Converting Partner as a transaction defined in Section 721 of the Code.

(g) Curative Allocations. The Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss, and deduction among the Partners so that, to the extent possible, the cumulative net amount of allocations of Partnership items under paragraphs 1 and 2 of this Exhibit B shall be equal to the net amount that would have been allocated to each Partner if the Regulatory Allocations had not occurred. This subparagraph (g) is intended to minimize to the extent possible and to the extent necessary any economic distortions which may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith. For purposes hereof, "Regulatory Allocations" shall mean the allocations provided under subparagraphs 2(a) through (d).

3. Tax Allocations.

(a) Generally. Subject to paragraphs (b) and (c) hereof, items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "Tax Items") shall be allocated among the Partners on the same basis as their respective book items.

(b) Sections 1245/1250 Recapture. If any portion of gain from the sale of property is treated as gain which is ordinary income by virtue of the application of Code Sections 1245 or 1250 ("Affected Gain"), then (A) such Affected Gain shall be allocated among the Partners in the same proportion that the depreciation and amortization deductions giving rise to the Affected Gain were allocated and (B) other Tax Items of gain of the same character that would have been recognized, but for the application of Code Sections 1245 and/or 1250, shall be allocated away from those Partners who are allocated Affected Gain pursuant to Clause (A) so that, to the extent possible, the other Partners are allocated the same amount, and type, of capital gain that would have been allocated to them had Code Sections 1245 and/or 1250 not applied. For purposes hereof, in order to determine the proportionate allocations of depreciation and amortization deductions for each fiscal year or other applicable period, such deductions shall be deemed allocated on the same basis as Net Income and Net Loss for such respective period.

(c) Allocations Respecting Section 704(c) and Revaluations; Curative Allocations Resulting from the Ceiling Rule. Notwithstanding paragraph (b) hereof, Tax Items with respect to Partnership property that is subject to Code Section 704(c) and/or Regulation Section 1.704-1(b)(2)(iv)(f) (collectively "Section 704(c) Tax Items") shall be allocated in accordance with said Code section and/or Regulation Section 1.704-1(b)(4)(i), as the case may be. The allocation of Tax Items shall be in accordance with the "traditional method" set forth in Treas. Reg. §1.704-3(b)(1), unless otherwise determined by the General Partner, and shall be subject to the ceiling rule stated in Regulation Section 1.704-3(b)(1). The General Partner is authorized to specially allocate Tax Items (other than Section 704(c) Tax Items) to cure for the effect of the ceiling rule. The intent of this Section 3(c) is that each Partner who contributed to the capital of the

Partnership a partnership interest in an existing Property Partnership will bear, through reduced allocations of depreciation and increased allocations of gain or other items, the tax detriments associated with any precontribution gain and this Section 3(c) shall be interpreted consistently with such intent.

4. Allocations Upon Final Liquidation.

With respect to the fiscal year in which the final liquidation of the Partnership occurs in accordance with Section 7.2 of the Agreement, and notwithstanding any other provision of Sections 1, 2, or 3 hereof, items of Partnership income, gain, loss and deduction shall be specially allocated to the Partners in such amounts and priorities as are necessary so that the positive capital accounts of the Partners shall, as closely as possible, equal the amounts that will be distributed to the Partners pursuant to Section 7.2.

EXHIBIT C

[Obligated Partners]

EXHIBIT 10

**THIRD AMENDED AND RESTATED
OPERATING AGREEMENT
OF
GGPLP L.L.C.**

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THIRD AMENDED AND RESTATED

OPERATING AGREEMENT

OF

GGPLP L.L.C.

THIS THIRD AMENDED AND RESTATED OPERATING AGREEMENT is made and entered into this [] day of [], 2010, by and among the undersigned parties.

W I T N E S S E T H:

WHEREAS, a Delaware limited liability company known as GGPLP L.L.C. (the “Company”) exists pursuant to the Delaware Limited Liability Company Act and that certain Second Amended and Restated Operating Agreement dated as of April 17, 2002, as amended by that certain First Amendment thereto dated April 23, 2002, that certain Second Amendment thereto dated May 13, 2002, that certain Third Amendment thereto dated October 30, 2002, that certain Fourth Amendment thereto dated April 7, 2003, that certain Fifth Amendment dated April 11, 2003, that certain Sixth Amendment thereto dated November 12, 2003, that certain Seventh Amendment thereto dated May 25, 2005, that certain Eighth Amendment thereto dated April 23, 2007, that certain Ninth Amendment thereto dated March 9, 2009, that certain Tenth Amendment thereto dated May 13, 2010 and that certain Amendment dated August 2, 2010 (the “Original Agreement”); and

WHEREAS, on April 16, 2009, the Company, GGP Limited Partnership, a Delaware limited partnership, (the “Managing Member”), and certain Affiliates filed voluntary petitions for relief under title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Chapter 11 Cases”);

WHEREAS, in connection with the Company and the Managing Member’s emergence from the Chapter 11 Cases, the Company will redeem the Common Units held by certain Members (the “Redemption”); and

WHEREAS, upon the Redemption the Managing Member will own all of the outstanding Common Units and desires to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Managing Member, intending legally to be bound, does hereby amend and restate the Original Agreement to read in its entirety as follows:

ARTICLE I

Definitions; Etc.

1.1 Definitions. Except as otherwise herein expressly provided, the following terms and phrases shall have the meanings set forth below (such definitions to be equally applicable to the singular and plural forms of the terms so defined):

“Accountants” shall mean the firm or firms of independent certified public accountants selected by the Managing Member on behalf of the Company and the Property Partnerships.

“Act” shall mean the Limited Liability Company Act as enacted in the State of Delaware, as the same has been amended and as the same may hereafter be amended from time to time.

“Adjusted Capital Account Deficit” shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of any relevant fiscal year and after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Member is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(o)(5) of the Regulations; and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the requirements of the alternate test for economic effect contained in Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“Administrative Expenses” shall mean (i) all administrative and operating costs and expenses incurred by the Company, (ii) all administrative, operating and other costs and expenses incurred by the Property Partnerships, which expenses are being assumed by the Company pursuant to Section 6.1, (iii) a pro rata portion (as determined in the reasonable judgment of the Managing Member) of administrative costs and expenses of the Managing Member and GGPI, including salaries paid to officers of the Managing Member and GGPI and accounting and legal expenses undertaken by the Managing Member and GGPI on behalf or for the benefit of the Company, and (iv) to the extent not included in clause (iii) above, a pro rata portion (as determined in the reasonable discretion of the Managing Member) of REIT Expenses.

“Affiliate” shall mean, with respect to any Member (or as to any other Person the affiliates of whom are relevant for purposes of any of the provisions of this Agreement), (i) any member of the Immediate Family of such Member; (ii) any trustee or beneficiary of a Member; (iii) any legal representative, successor, or assignee of such Member or any Person referred to in the preceding clauses (i) and (ii); (iv) any trustee of any trust for the benefit of such Member or any Person referred to in the preceding clauses (i) through (iii); or (v) any Person which directly

or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Member or any Person referred to in the preceding clauses (i) through (iv).

“Agreement” shall mean this Third Amended and Restated Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

“Bankruptcy” shall mean, with respect to any Member or the Company, (i) the commencement by such Member or the Company of any proceeding seeking relief under any provision or chapter of the federal Bankruptcy Code or any other federal or state law relating to insolvency, bankruptcy or reorganization, (ii) an adjudication that such Member or the Company is insolvent or bankrupt, (iii) the entry of an order for relief under the federal Bankruptcy Code with respect to such Member or the Company, (iv) the filing of any such petition or the commencement of any such case or proceeding against such Member or the Company, unless such petition and the case or proceeding initiated thereby are dismissed within ninety (90) days from the date of such filing, (v) the filing of an answer by such Member or the Company admitting the allegations of any such petition, (vi) the appointment of a trustee, receiver or custodian for all or substantially all of the assets of such Member or the Company unless such appointment is vacated or dismissed within ninety (90) days from the date of such appointment but not less than five (5) days before the proposed sale of any assets of such Member or the Company, (vii) the insolvency of such Member or the Company or the execution by such Member or the Company of a general assignment for the benefit of creditors, (viii) the convening by such Member or the Company of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts, (ix) the failure of such Member or the Company to pay its debts as they mature, (x) the levy, attachment, execution or other seizure of substantially all of the assets of such Member or the Company where such seizure is not discharged within thirty (30) days thereafter, or (xi) the admission by such Member or the Company in writing of its inability to pay its debts as they mature or that it is generally not paying its debts as they become due.

“Business Day” shall mean a day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

“Capital Account” shall mean, with respect to any Member, the separate “book” account which the Company shall establish and maintain for such Member in accordance with Section 704(b) of the Code and Section 1.704-1(b)(2)(iv) of the Regulations and such other provisions of Section 1.704-1(b) of the Regulations that must be complied with in order for the Capital Accounts to be determined in accordance with the provisions of said Regulations. In furtherance of the foregoing, the Capital Accounts shall be maintained in compliance with Section 1.704-1(b)(2)(iv) of the Regulations; and the provisions hereof shall be interpreted and applied in a manner consistent therewith. In the event that any Units are transferred in accordance with the terms of this Agreement, the Capital Account, at the time of the transfer, of the transferor attributable to the transferred Units shall carry over to the transferee.

“Capital Contribution” shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any property other than money contributed to the Company

with respect to the Units held by such Member (net of liabilities to which such property is subject).

“Certificate” shall mean the Certificate of Formation establishing the Company, as filed with the office of the Delaware Secretary of State, as it may be amended from time to time in accordance with the terms of this Agreement and the Act.

“Charter” shall mean the certificate of incorporation of GGPI, as filed with the office of the Delaware Secretary of State, as it may be amended from time to time.

“Closing Price” shall mean, with respect to any Common Shares on any date, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and ask prices, regular way, in either case as reported in the principal consolidated transaction reporting system if the Common Shares are listed or admitted to trading on the New York Stock Exchange or, if the Common Shares are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Shares are listed or admitted to trading or, if the Common Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System or, if such system is no longer in use, the principal other automated quotations system that may then be in use or, if the Common Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Shares as such person is selected from time to time by the Board of Directors of GGPI.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Common Shares” shall mean the shares of the common stock, par value \$.01 per share, of GGPI.

“Common Unit Record Date” shall mean the record date established by the Managing Member for a distribution of Net Operating Cash Flow pursuant to Section 5.2.

“Common Units” shall mean all Units other than Preferred Units.

“Company” shall have the meaning set forth in the preliminary recitals hereto.

“Consent of the Holders of Common Units” shall mean the written consent of the holders of a Majority-In-Interest of the Common Units, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and may be given or withheld by the holders of a Majority-In-Interest of the Common Units, unless otherwise expressly provided herein, in their sole and absolute discretion.

“Control” shall have the meaning provided in the regulations promulgated under the Securities Exchange Act of 1934, as amended.

“Current Per Share Market Price” shall mean, as of any date, the average of the Closing Price for the twenty consecutive Trading Days ending on such date.

“DAI” shall mean DA Retail Investments, LLC, a Delaware limited liability company.

“DAI Contribution Obligation” shall mean the obligation of DAI to make a Capital Contribution pursuant to Section 7.8 hereof.

“Demand Notice” shall have the meaning set forth in Section 9.2.

“Depreciation” shall mean, with respect to any asset of the Company for any fiscal year or other period, the depreciation, depletion or amortization, as the case may be, allowed or allowable for Federal income tax purposes in respect of such asset for such fiscal year or other period; provided, however, that if there is a difference between the Gross Asset Value and the adjusted tax basis of such asset, Depreciation shall mean “book depreciation, depletion or amortization” as determined under Section 1.704-1(b)(2)(iv)(g)(3) of the Regulations.

“Entity” shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association or Other entity.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time (or any corresponding provisions of succeeding laws).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Exculpatory Liabilities” shall mean Company liabilities with respect to which both of the following conditions are met: (i) the creditor’s right to repayment is not limited to specified assets of the Company (i.e., the liability constitutes a recourse obligation of the Company), and (ii) no Member or related person bears the economic risk of loss for such liability (as determined pursuant to Section 1.752-2 of the Regulations, except that for this purpose the DAI Contribution Obligation shall be disregarded).

“Financial Statements” shall mean financial statements (balance sheet, statement of income, statement of partners’ equity and statement of cash flows) prepared in accordance with generally accepted accounting principles.

“GAAP” shall mean generally accepted accounting principles in the United States as in effect from time to time.

“GGPI” shall mean General Growth Properties, Inc., a Delaware corporation.¹

“Gross Asset Value” shall mean, with respect to any asset of the Company, such asset’s adjusted basis for Federal income tax purposes, except as follows:

¹ This will be “New GGP”, post-Effective Date.

(a) the initial Gross Asset Value of (i) the assets contributed by each Member to the Company prior to the date hereof is the gross fair market value of such contributed assets as indicated in the books and records of the Company as of the date hereof, and (ii) any asset hereafter contributed by a Member (including the Managing Member), other than money, is the gross fair market value thereof as reasonably determined by the Managing Member using such reasonable method of valuation as the Managing Member may adopt;

(b) if the Managing Member reasonably determines that an adjustment is necessary or appropriate to reflect the relative economic interests of the Members, the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Managing Member, as of the following times:

(i) a Capital Contribution (other than a de minimis Capital Contribution) to the Company by a new or existing Member as consideration for Units; and

(ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for the redemption of Units;

(c) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Managing Member, upon liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations;

(d) the Gross Asset Values of Company assets distributed to any Member shall be the gross fair market values of such assets (taking Section 7701(g) of the Code into account) as reasonably determined by the Managing Member as of the date of distribution; and

(e) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations (See Exhibit A); provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph to the extent that the Managing Member reasonably determines that an adjustment pursuant to paragraph (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d).

At all times, Gross Asset Values shall be adjusted by any Depreciation taken into account with respect to the Company's assets for purposes of computing Net Income and Net Loss. Any adjustment to the Gross Asset Values of Company property shall require an adjustment to the Members' Capital Accounts; as for the manner in which such adjustments are allocated to the Capital Accounts, see paragraph (c) of the definition of Net Income and Net Loss in the case of adjustment by Depreciation, and paragraph (e) of said definition in all other cases.

“Gross Asset Value Available to Pay Recourse Liabilities and Exculpatory Liabilities” shall be determined upon liquidation of the Company and shall mean the excess of (i) the aggregate Gross Asset Value of all Company assets (not including the DAI Contribution Obligation or any similar capital contribution obligation or capital account restoration obligation of any other Member), except that for this purpose Code Section 7701(g) shall not be applied in determining the fair market value of an asset solely because it is subject to or available to satisfy one or more Exculpatory Liabilities, over (ii) the aggregate amount of all Nonrecourse Liabilities other than Exculpatory Liabilities.

“Immediate Family” shall mean, with respect to any Person, such Person’s spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law and children-in-law.

“Lien” shall mean any liens, security interests, mortgages, deeds of trust, charges, claims, encumbrances, pledges, options, rights of first offer or first refusal and any other rights or interests of others of any kind or nature, actual or contingent, or other similar encumbrances of any nature whatsoever.

“Liquidating Trustee” shall mean such individual or Entity as is selected as the Liquidating Trustee hereunder by the Managing Member, which individual or Entity may include the Managing Member or an Affiliate of the Managing Member, provided such Liquidating Trustee agrees in writing to be bound by the terms of this Agreement. The Liquidating Trustee shall be empowered to give and receive notices, reports and payments in connection with the dissolution, liquidation and/or winding-up of the Company and shall hold and exercise such other rights and powers as are necessary or required to permit all parties to deal with the Liquidating Trustee in connection with the dissolution, liquidation and/or winding-up of the Company.

“Majority-In-Interest of the Common Units” shall mean holders of more than fifty percent (50%) of then issued and outstanding Common Units.

“Management Agreement” shall mean a property management agreement with respect to the property management of certain Properties entered into (a) with respect to any Property in which the Company directly holds or acquires ownership of a fee or leasehold interest, between the Company, as owner, and the Property Manager, or such other property manager as the Managing Member shall engage, as manager, and (b) with respect to all Properties other than those described in (a) above, between each Property Partnership, as owner, and the Property Manager, or such other property manager as the Managing Member shall engage, as such agreement may be amended, modified or supplemented from time to time.

“Managing Member” shall mean GGP Limited Partnership, a Delaware limited partnership, its duly admitted successors and assigns and any other Person who is a Managing Member of the Company at the time of reference thereto. The Managing Member may not be removed as Managing Member for any reason.

“Members” shall mean the Persons listed under the caption “Members” on Schedule A hereto, their permitted successors or assigns or any Person who, at the time of reference thereto,

is a member of the Company, including the holders of Common Units and Preferred Units on the date thereof.

“Minimum Gain Attributable to Partner Nonrecourse Debt” shall mean “partner nonrecourse debt minimum gain” as determined in accordance with Regulation Section 1.704-2(i)(2).

“Net Financing Proceeds” shall mean the cash proceeds received by the Company in connection with any borrowing or refinancing of borrowing by or on behalf of the Company or by or on behalf of any Property Partnership (whether or not secured), after deduction of all costs and expenses incurred by the Company or the Property Partnership in connection with such borrowing, and after deduction of that portion of such proceeds used to repay any other indebtedness of the Company or Property Partnerships, or any interest or premium thereon.

“Net Income or Net Loss” shall mean, for each fiscal year or other applicable period, an amount equal to the Company’s net income or loss for such year or period as determined for federal income tax purposes by the Accountants, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a) of the Code shall be included in taxable income or loss), with the following adjustments: (a) by including as an item of gross income any tax-exempt income received by the Company; (b) by treating as a deductible expense any expenditure of the Company described in Section 705(a)(2)(B) of the Code (including amounts paid or incurred to organize the Company (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of interests in the Company and by treating deductions for any losses incurred in connection with the sale or exchange of Company property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code); (c) in lieu of depreciation, depletion, amortization, and other cost recovery deductions taken into account in computing total income or loss, there shall be taken into account Depreciation; (d) gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of such property rather than its adjusted tax basis; and (e) in the event of an adjustment of the Gross Asset Value of any Company asset which requires that the Capital Accounts of the Company be adjusted pursuant to Regulation Section 1.704-1(b)(2)(iv)(e), (f) and (m), the amount of such adjustment is to be taken into account as additional Net Income or Net Loss pursuant to Exhibit A.

“Net Operating Cash Flow” shall mean, with respect to any fiscal period of the Company, the excess, if any, of “Receipts” over “Expenditures.” For purposes hereof, the term “Receipts” means the sum of all cash receipts of the Company from all sources for such period, including Net Sale Proceeds and Net Financing Proceeds but excluding Capital Contributions, and any amounts held as reserves as of the last day of such period which the Managing Member reasonably deems to be in excess of necessary reserves as determined below. The term “Expenditures” means the sum of (a) all cash expenses or expenditures of the Company for such period, (b) the amount of all payments of principal and interest on account of any indebtedness of the Company, or amounts due on such indebtedness during such period (in the case of clauses (a) and (b), excluding expenses or expenditures paid from previously established reserves or deducted in computing Net Financing Proceeds or Net Sales Proceeds), and (c) such additional

cash reserves as of the last day of such period as the Managing Member deems necessary for any capital or operating expenditure permitted hereunder.

“Net Sale Proceeds” means the cash proceeds received by the Company in connection with a sale of any asset by or on behalf of the Company or by or on behalf of a Property Partnership after deduction of any costs or expenses incurred by the Company or a Property Partnership, or payable specifically out of the proceeds of such sale (including, without limitation, any repayment of any indebtedness required to be repaid as a result of such sale or which the Managing Member elects to repay out of the proceeds of such sale, together with accrued interest and premium, if any, thereon and any sales commissions or other costs and expenses due and payable to any Person in connection with a sale, including to a Member or its Affiliates).

“Nonrecourse Deductions” shall have the meaning set forth in Sections 1.704-2(b)(1) and (c) of the Regulations.

“Nonrecourse Liabilities” shall have the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

“Original Agreement” shall have the meaning set forth in the preliminary recitals hereto.

“Partner Nonrecourse Deductions” shall have the meaning set forth in Section 1.704-2(i)(2) of the Regulations.

“Partnership Minimum Gain” shall have the meaning set forth in Section 1.704-2(b)(2) of the Regulations.

“Person” or “person” shall mean any individual or Entity.

“Preferred Units” shall mean the Series C Preferred Units and any other series of preferred units of membership interest in the Company that are established and issued from time to time in accordance with the terms hereof.

“Prime Rate” shall mean the prime rate announced from time to time by Wells Fargo Bank, N.A. or any successor thereof.

“Property” shall mean a Shopping Center Project in which the Company or any Property Partnership, directly or indirectly, acquires ownership of a fee or leasehold interest.

“Property Manager” shall mean General Growth Management, Inc., a Delaware corporation, or its successors or assigns.

“Property Partnership” shall mean and include any partnership, limited liability company or other Entity in which the Company directly or indirectly is or becomes a partner, member or other equity participant and which has been or is formed for the purpose of directly or indirectly acquiring, developing or owning a Property or a proposed Property.

“Property Partnership Interests” shall mean and include the interest of the Company or any other Entity as a partner, member or other equity participant in any Property Partnership.

“Qualified Entity” shall mean a partnership, limited liability company or other Entity that is organized under the laws of any state and that is not taxable as a corporation for U.S. federal income tax purposes.

“Qualified Individual” shall have the meaning set forth in Section 9.2.

“Recourse Liabilities” shall mean Company liabilities with respect to which a Member or related person bears the economic risk of loss (as determined pursuant to Section 1.752-2 of the Regulations, except that for this purpose the DAI Contribution Obligation shall be disregarded).

“Regulations” shall mean the final, temporary or proposed Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Regulatory Allocations” shall have the meaning set forth in Exhibit A.

“REIT” shall mean a real estate investment trust as defined in Section 856 of the Code.

“REIT Expenses” shall mean (i) costs and expenses relating to the formation and continuity of existence of GGPI and its subsidiaries (which subsidiaries shall, for purposes of this definition, be included within the definition of GGPI), including taxes, fees and assessments associated therewith, any and all costs, expenses or fees payable to any director or trustee of GGPI or such subsidiaries, (ii) costs and expenses relating to any offer or registration of securities by GGPI and all statements, reports, fees and expenses incidental thereto, including underwriting discounts and selling commissions applicable to any such offer of securities, (iii) costs and expenses associated with the preparation and filing of any periodic reports by GGPI under federal, state or local laws or regulations, including filings with the SEC, (iv) costs and expenses associated with compliance by GGPI with laws, rules and regulations promulgated by any regulatory body, including the SEC, and (v) all other operating or administrative costs of GGPI incurred in the ordinary course of its business.

“REIT Requirements” shall have the meaning set forth in Section 5.2.

“REIT Subsidiaries” shall mean [SubREIT 1], a Delaware corporation, [SubREIT 2], a Delaware corporation, and [Existing GGP], a Delaware corporation.

“Requesting Party” shall have the meaning set forth in Section 9.2.

“Responding Party” shall have the meaning set forth in Section 9.2.

“SEC” shall mean the United States Securities and Exchange Commission.

“Section 704(c) Tax Items” shall have the meaning set forth in Exhibit A.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Series C Preferred Units” shall have the meaning set forth in Section 4.3.

“Shopping Center Project” shall mean any shopping center, including construction and improvement activities undertaken with respect thereto and off-site improvements, on-site improvements, structures, buildings and/or related parking and other facilities.

“Subsidiaries” shall mean all Entities in which the Company has a direct or indirect interest and that would be consolidated with the Company for financial accounting purposes under GAAP.

“Substituted Member” shall have the meaning set forth in Section 8.2.

“Tax Items” shall have the meaning set forth in Exhibit A.

“Trading Day” shall mean a day on which the principal national securities exchange on which the Common Shares are listed or admitted to trading is open for the transaction of business or, if the Common Shares are not listed or admitted to trading on any national securities exchange, shall mean any Business Day.

“Unit(s)” shall mean a unit of a Member’s limited liability company interest as a Member of the Company entitling the holder to an equal share, with every other holder of a Unit, in the allocations and distributions of the Company pursuant to Article VIII, and the rights of management, consent, approval or participation, if any, granted to holders of Units as provided in this Agreement. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code, the Company will not issue nonvoting equity interests; provided, however the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect. Such interests shall be deemed “securities” under Article 8 of the Uniform Commercial Code and shall be governed by Article 8 of the Uniform Commercial Code as in effect from time to time within the State. The number and designation of all Units held by each Member as of [_____], 2010 is set forth opposite such Member’s name on Schedule A

1.2 Exhibits, Etc. References to an “Exhibit” or to a “Schedule” are, unless otherwise specified, to one of the Exhibits or Schedules attached to this Agreement, and references to an “Article” or a “Section” are, unless otherwise specified, to one of the Articles or Sections of this Agreement. Each Exhibit and Schedule attached hereto and referred to herein is hereby incorporated herein by reference.

1.3 Pronouns and Headings. As used herein, all pronouns shall include the masculine, feminine and neuter, and all defined terms shall include the singular and plural thereof wherever the context and facts require such construction. The headings, titles and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Any references in this Agreement to “including” shall be deemed to mean “including without limitation”.

ARTICLE II

Continuation

2.1 Continuation. The Company was formed as a limited liability company under the Act on May 17, 2000 by the filing of the Certificate with the Delaware Secretary of State on such date. The Members agree that the rights and liabilities of the Members shall be as provided in this Agreement (which amends and restates and supersedes the Original Agreement in its entirety) and, to the extent not provided herein, in the Act. The Managing Member shall cause such notices, instruments, documents, or certificates as may be required by applicable law or which may be necessary to enable the Company to conduct its business and to own its properties in the Company name to be filed or recorded in all appropriate public offices.

2.2 Name. The business of the Company shall be conducted under the name of “GGPLP L.L.C.” or such other name as the Managing Member may select, and all transactions of the Company, to the extent permitted by applicable law, shall be carried on and completed in such name.

2.3 Character of the Business. The purpose of the Company shall be to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange, and otherwise dispose of or deal with Properties; to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange, and otherwise dispose of or deal with real and personal property of all kinds; to exercise all of the powers of a partner, member or other equity participant in Property Partnerships; to acquire, own, deal with and dispose of Property Partnership Interests; to undertake such other activities as may be necessary, advisable, desirable or convenient to the business of the Company, and to engage in such other ancillary activities as shall be necessary or desirable to effectuate the foregoing purposes. The Company shall have all powers necessary or desirable to accomplish the purposes enumerated. In connection with and without limiting the foregoing, but subject to all of the terms, covenants, conditions and limitations contained in this Agreement and any other agreement entered into by the Company, the Company shall have full power and authority, directly or through its interests in Property Partnerships, to enter into, perform, and carry out contracts of any kind, to borrow money and to issue evidences of indebtedness, whether or not secured by mortgage, trust deed, pledge or other Lien, and, directly or indirectly, to acquire and construct additional Properties.

2.4 Location of the Principal Place of Business. The location of the principal place of business of the Company shall be at 110 North Wacker Drive, Chicago, Illinois 60606, or at such other location as shall be selected by the Managing Member from time to time in its sole discretion.

2.5 Registered Agent and Registered Office. The Company shall maintain a registered agent and registered office as is required by the Act.

ARTICLE III

Term

3.1 Commencement. The Company heretofore commenced business as a limited liability company.

3.2 Dissolution. The Company shall continue until dissolved upon the occurrence of the earliest of the following events:

- (a) The dissolution, termination or retirement of the Managing Member unless the Company is continued as provided in Section 8.1;
- (b) The sale or other disposition of all or substantially all the assets of the Company unless the Managing Member elects to continue the Company business for the purpose of the receipt and the collection of indebtedness or the collection of any other consideration to be received in exchange for the assets of the Company (which activities shall be deemed to be part of the winding up of the affairs of the Company); or
- (c) Dissolution required by operation of law.

The bankruptcy (as defined in Section 18-101(1) and 18-304 of the Act) of the Managing Member shall not cause the Managing Member to cease to be a member and Managing Member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

ARTICLE IV

Classes of Units

4.1 Common Units. The Company has issued to the Members the number of common units of membership interest in the Company (the "Common Units") set forth opposite their names on Schedule A, and, in exchange therefor, such Members have contributed to the Company as their Capital Contributions the cash and other property set forth in the books and records of the Company. The Common Units have such rights as are described herein. The Managing Member may, without the consent of the other Members, issue additional Common Units to itself and others from time to time for such consideration as it deems is appropriate. The Managing Member shall be authorized to amend this Agreement to reflect the issuance of Common Units in accordance with this Section 4.1 without the joinder of any other Member.

4.2 Preferred Units. The Managing Member shall have the right, without the consent of the other Members (except as otherwise provided herein), to establish and issue from time to time series of preferred units of membership interest in the Company ("Preferred Units") and to establish from time to time the number of Preferred Units to be included in each such series, to fix the designation, powers, preferences and rights of the Preferred Units of each such series and the qualifications, limitations and restrictions thereof and to determine the consideration to be paid from time to time for the Preferred Units in each such series. Except as otherwise provided herein, Preferred Units that are cancelled or redeemed or purchased by the

Company may, at the election of the Managing Member, either (a) be reissued by the Company or (b) be cancelled. The Managing Member shall be authorized to amend this Agreement to effect the provisions of this Section 4.2 without the joinder of any other Member (except as otherwise provided herein).

4.3 Establishment of Series C Preferred Units. A series of Preferred Units designated as the “8.25% Series C Cumulative Preferred Units” (the “Series C Preferred Units”) was previously established and shall have such rights, preferences, limitations and qualifications as are described on Schedule B, attached hereto and by this reference made a part hereof (in addition to the rights, preferences, limitations and qualifications contained elsewhere in this Agreement, to the extent applicable). The maximum number of Series C Preferred Units which may be issued by the Company from time to time shall be 20,000.

4.4 No Third Party Beneficiary. No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by the parties hereto and their respective successors and assigns. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party, nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members.

4.5 No Interest; No Return; No Withdrawal. No Member shall be entitled to interest on its Capital Contribution or on its Capital Account. Except as provided herein or by law, no Member shall have any right to demand or receive the return of its Capital Contribution from the Company. No Member may withdraw from the Company without the prior written consent of the Managing Member, other than as expressly provided in this Agreement.

4.6 No Other Capital Contributions. No Member shall have any obligation to make any additional Capital Contribution to the Company.

ARTICLE V

Allocations and Other Tax and Accounting Matters

5.1 Allocations. The Net Income, Net Loss and/or other Company items shall be allocated pursuant to the provisions of Exhibit A hereto.

5.2 Distributions.

(a) Subject to the rights of holders of Preferred Units, the Managing Member shall, from time to time as determined by the Managing Member (but in any event not less frequently than quarterly), cause the Company to distribute all or a portion of Net Operating Cash Flow to the holders of the Common Units who are such on the relevant Common Unit Record Date in such amounts as the Managing Member shall determine; provided, however, that all such distributions shall be made pro rata in accordance with

the number of Common Units then owned by the Members; and provided further, that notwithstanding the foregoing, the Managing Member shall use its best efforts to cause the Company to distribute sufficient amounts to enable GGPI and the REIT Subsidiaries to pay shareholder dividends that will (a) satisfy the requirements for qualifying as a REIT under the Code and Regulations (“REIT Requirements”), and (b) avoid any federal income or excise tax liability of GGPI and the REIT Subsidiaries.

(b) The Company shall pay distributions in respect of each series of Preferred Units as provided in Section 4.3 hereof, Schedule B and/or any amendment hereto relating to such series of Preferred Units.

5.3 Books of Account. At all times during the continuance of the Company, the Managing Member shall maintain or cause to be maintained full, true, complete and correct books of account in accordance with generally accepted accounting principles wherein shall be entered particulars of all monies, goods or effects belonging to or owing to or by the Company, or paid, received, sold or purchased in the course of the Company’s business, and all of such other transactions, matters and things relating to the business of the Company as are usually entered in books of account kept by persons engaged in a business of a like kind and character. In addition, the Company shall keep all records as required to be kept pursuant to the Act. The books and records of account shall be kept at the principal office of the Company, and each Member shall at all reasonable times have access to such books and records and the right to inspect the same.

5.4 Reports. The Managing Member shall cause to be submitted to the other Members, promptly following the end of the last calendar year, copies of Financial Statements prepared on a consolidated basis for the Company and the Property Partnerships. The Company shall also cause to be prepared such reports and/or information as are necessary for GGPI and the REIT Subsidiaries to determine their qualification as a REIT and their compliance with the REIT Requirements.

5.5 Tax Elections and Returns.

(a) All elections required or permitted to be made by the Company under any applicable tax law shall be made by the Managing Member in its sole discretion, including without limitation an election on behalf of the Company pursuant to Section 754 of the Code to adjust the basis of the Company property in the case of transfers of Units, and the Managing Member shall not be required to make any such election.

(b) The Managing Member shall cause the Accountants to prepare and file all state and federal tax returns on a timely basis.

5.6 Tax Matters Member. The Managing Member is hereby designated as the Tax Matters Member of the Company, which has the meaning of “Tax Matters Partner” as specified in Section 6231(a)(7) of the Code; provided, however, in exercising its authority as Tax Matters Member it shall be limited by the provisions of this Agreement affecting tax aspects of the Company;

5.7 Withholding. Each Member hereby authorizes the Company to withhold or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Managing Member determines the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including without limitation any taxes required to be withheld or paid by the Company pursuant to Sections 1441, 1442, 1445 or 1446 of the Code. Any amount paid on behalf of or with respect to a Member shall constitute a loan by the Company to such Member, which loan shall be due within fifteen (15) days after repayment is demanded of such Member and shall be repaid through withholding of subsequent distributions to such Member. Any amounts payable by a Member hereunder shall bear interest at the lesser of (a) the Prime Rate and (b) the maximum lawful rate of interest on such obligation, such interest to accrue from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. To the extent the payment or accrual of withholding tax results in a federal, state or local tax credit to the Company, such credit shall be allocated to the Member to whose distribution the tax is attributable.

ARTICLE VI

Rights, Duties and Restrictions of the Managing Member

6.1 Expenditures by Company. The Managing Member is hereby authorized to pay compensation for accounting, administrative, legal, technical, management and other services rendered to the Company. All of the aforesaid expenditures shall be made on behalf of the Company, and the Managing Member shall be entitled to reimbursement by the Company for any expenditures incurred by it on behalf of the Company which shall be made other than out of the funds of the Company. The Company also shall assume, and pay when due, all Administrative Expenses.

6.2 Powers and Duties of Managing Member. The Managing Member shall be responsible for the management of the Company's business and affairs. Except as otherwise herein expressly provided, the Managing Member shall have, and is hereby granted, full, complete and exclusive power, authority and discretion under all circumstances to manage the business of the Company and to take all actions for and on behalf of the Company and in its name as the Managing Member shall, in its sole and absolute discretion, deem necessary or appropriate to carry out the purposes for which the Company was organized. Except as otherwise expressly provided herein and without limiting the foregoing, the Managing Member shall have the right, power and authority:

(a) To manage, control, invest, reinvest, acquire by purchase, lease or otherwise, sell, contract to purchase or sell, grant, obtain, or exercise options to purchase, options to sell or conversion rights, assign, transfer, convey, deliver, endorse, exchange, pledge, mortgage, abandon, improve, repair, maintain, insure, lease for any term and otherwise deal with any and all property of whatsoever kind and nature, and wheresoever situated, in furtherance of the purposes of the Company;

(b) To acquire, directly or indirectly, interests in real estate of any kind and of any type, and any and all kinds of interests therein, and to determine the manner in which

title thereto is to be held; to manage, insure against loss, protect and subdivide any of the real estate, interests therein or parts thereof; to improve, develop or redevelop any such real estate; to participate in the ownership and development of any property; to dedicate for public use, to vacate any subdivisions or parts thereof, to resubdivide, to contract to sell, to grant options to purchase or lease, to sell on any terms; to convey, to mortgage, pledge or otherwise encumber said property, or any part thereof; to lease said property or any part thereof from time to time, upon any terms and for any period of time, and to renew or extend leases, to amend, change or modify the terms and provisions of any leases and to grant options to lease and options to renew leases and options to purchase; to partition or to exchange said real property, or any part thereof, for other real or personal property; to grant easements or charges of any kind; to release, convey or assign any right, title or interest in or about or easement appurtenant to said property or any part thereof; to construct and reconstruct, remodel, alter, repair, add, to or take from buildings on said premises; to insure any Person having an interest in or responsibility for the care, management or repair of such property; to direct the trustee of any land trust to mortgage, lease, convey or contract to convey the real estate held in such land trust or to execute and deliver deeds, mortgages, notes, and any and all documents pertaining to the property subject to such land trust or in any matter regarding such trust; to execute assignments of all or any part of the beneficial interest in such land trust;

(c) To employ, engage or contract with or dismiss from employment or engagement Persons to the extent deemed necessary by the Managing Member for the operation and management of the Company business, including but not limited to, the engagement of the Property Manager pursuant to the Management Agreements and the employment or engagement of other contractors, subcontractors, engineers, architects, surveyors, mechanics, consultants, accountants, attorneys, insurance brokers, real estate brokers and others;

(d) To enter into contracts on behalf of the Company;

(e) To borrow money, procure loans and advances from any Person for Company purposes, and to apply for and secure, from any Person, credit or accommodations; to contract liabilities and obligations, direct or contingent and of every kind and nature with or without security; and to repay, discharge, settle, adjust, compromise, or liquidate any such loan, advance, credit, obligation or liability;

(f) To pledge, hypothecate, mortgage, assign, deposit, deliver, enter into sale and leaseback arrangements or otherwise give as security or as additional or substitute security, or for sale or other disposition any and all Company property, tangible or intangible, including, but not limited to, real estate and beneficial interests in land trusts, and to make substitutions thereof, and to receive any proceeds thereof upon the release or surrender thereof; to sign, execute and deliver any and all assignments, deeds and other contracts and instruments in writing; to authorize, give, make, procure, accept and receive moneys, payments, property, notices, demands, vouchers, receipts, releases, compromises and adjustments; to waive notices, demands, protests and authorize and execute waivers of every kind and nature; to enter into, make, execute, deliver and receive written agreements, undertakings and instruments of every kind and nature; to give oral

instructions and make oral agreements; and generally to do any and all other acts and things incidental to any of the foregoing or with reference to any dealings or transactions which any attorney may deem necessary, proper or advisable;

(g) To acquire and enter into any contract of insurance which the Managing Member deems necessary or appropriate for the protection of the Company, for the conservation of the Company's assets or for any purpose convenient or beneficial to the Company;

(h) To conduct any and all banking transactions on behalf of the Company; to adjust and settle checking, savings, and other accounts with such institutions as the Managing Member shall deem appropriate; to draw, sign, execute, accept, endorse, guarantee, deliver, receive and pay any checks, drafts, bills of exchange, acceptances, notes, obligations, undertakings and other instruments for or relating to the payment of money in, into, or from any account in the Company's name; to execute, procure, consent to and authorize extensions and renewals of the same; to make deposits and withdraw the same and to negotiate or discount commercial paper, acceptances, negotiable instruments, bills of exchange and dollar drafts;

(i) To demand, sue for, receive, and otherwise take steps to collect or recover all debts, rents, proceeds, interests, dividends, goods, chattels, income from property, damages and all other property, to which the Company may be entitled or which are or may become due the Company from any Person; to commence, prosecute or enforce, or to defend, answer or oppose, contest and abandon all legal proceedings in which the Company is or may hereafter be interested; and to settle, compromise or submit to arbitration any accounts, debts, claims, disputes and matters which may arise between the Company and any other Person and to grant an extension of time for the payment or satisfaction thereof on any terms, with or without security;

(j) To make arrangements for financing, including the taking of all action deemed necessary or appropriate by the Managing Member to cause any approved loans to be closed;

(k) To take all reasonable measures necessary to insure compliance by the Company with applicable arrangements, and other contractual obligations and arrangements entered into by the Company from time to time in accordance with the provisions of this Agreement, including periodic reports as required to lenders and using all due diligence to insure that the Company is in compliance with its contractual obligations;

(l) To maintain the Company's books and records;

(m) To prepare and deliver, or cause to be prepared and delivered by the Company's Accountants, all financial and other reports with respect to the operations of the Company, and preparation and filing of all Federal and state tax returns and reports; and

(n) Any and all other actions that the Managing Member, in its sole and absolute discretion, may deem necessary or appropriate in furtherance of the business of the Company.

The Managing Member shall not have any obligations hereunder except to the extent that Company funds are reasonably available to it for the performance of such duties, and nothing herein contained shall be deemed to authorize or require the Managing Member, in its capacity as such, to expend its individual funds for payment to third parties or to undertake any individual liability or obligation on behalf of the Company. Subject to the terms of Section 4.3 and the terms of any other Preferred Units, the merger or consolidation of the Company with or into another Entity shall be authorized by the Consent of the Holders of Common Units.

6.3 Proscriptions. The Managing Member shall not have the authority to:

(a) Do any act in contravention of this Agreement or which would make it impossible to carry on the ordinary business of the Company (other than a sale of all or substantially all of the Company assets or the dissolution of the Company, each of which is within the power and authority of the Managing Member and do not require the consent of the Members;

(b) Possess any Company property or assign rights in specific Company property for other than Company purposes; or

(c) Do any act in contravention of applicable law.

Nothing herein contained shall impose any obligation on any Person or firm doing business with the Company to inquire as to whether or not the Managing Member has properly exercised its authority in executing any contract, lease, mortgage, deed or other instrument or document on behalf of the Company, and any such third Person shall be fully protected in relying upon such authority.

6.4 Title Holder. To the extent allowable under applicable law, title to all or any part of the properties of the Company may be held in the name of the Company or any other individual, corporation, partnership, trust or otherwise, the beneficial interest in which shall at all times be vested in the Company, Any such title holder shall perform any and all of its respective functions to the extent and upon such terms and conditions as may be determined from time to time by the Managing Member.

6.5 Compensation of the Managing Member. The Managing Member shall not be entitled to any compensation for services rendered to the Company solely in its capacity as Managing Member except with respect to reimbursement for those costs and expenses constituting Administrative Expenses.

6.6 Waiver and Indemnification.

(a) Neither the Managing Member nor any Person acting on its behalf, pursuant hereto, shall be liable, responsible or accountable in damages or otherwise to the Company or to any Member for any acts or omissions performed or omitted to be

performed by them (whether on, prior to or after the date hereof) within the scope of the authority conferred upon the Managing Member by this Agreement and the Act; provided that (i) the Managing Member's or such other Person's conduct or omission to act was taken in good faith and in the belief that such conduct or omission was in the best interests of the Company and (ii) the Managing Member or such other Person shall not be guilty of fraud, willful misconduct or gross negligence. The Company shall, and hereby does, indemnify and hold harmless the Managing Member and its Affiliates and any individual acting on their behalf from any loss, damage, claim or liability, including, but not limited to, reasonable attorneys' fees and expenses, incurred by them by reason of any act performed or omitted to be performed by them (whether on, prior to or after the date hereof) in accordance with the standards set forth above or in enforcing the provisions of this indemnity; provided, however, no Member shall have any personal liability with respect to the foregoing indemnification, any such indemnification to be satisfied solely out of the assets of the Company.

(b) Any Person entitled to indemnification under this Agreement shall be entitled to receive, upon application therefor, advances to cover the costs of defending any proceeding against such Person; provided, however, that such advances shall be repaid to the Company, without interest, if such Person is found by a court of competent jurisdiction upon entry of a final judgment not to be entitled to such indemnification. All rights of the indemnitee hereunder shall survive the dissolution of the Company. The indemnification rights contained in this Agreement shall be cumulative of, and in addition to, any and all rights, remedies and recourse to which the person seeking indemnification shall be entitled, whether at law or at equity. Indemnification pursuant to this Agreement shall be made solely and entirely from the assets of the Company and no Member shall be liable therefor.

(c) The provisions of this Section 6.6 also shall apply to the Liquidating Trustee and the Tax Matters Member.

6.7 Operation in Accordance with REIT Requirements. The Members acknowledge and agree that the Company shall be operated in a manner that will enable GGPI and the REIT Subsidiaries to (a) satisfy the REIT Requirements and (b) avoid the imposition of any federal income or excise tax liability. The Company shall avoid taking any action, or permitting any Property Partnership to take any action, which would result in GGPI and the REIT Subsidiaries ceasing to satisfy the REIT Requirements or would result in the imposition of any federal income or excise tax liability on GGPI and the REIT Subsidiaries.

6.8 Duties and Conflicts. The Managing Member only shall be required to devote such time to the management of the business of the Company as it deems necessary to promote the interests of the Company. Each Member recognizes that the other Members (including the Managing Member) and their Affiliates have or may hereafter have other business interests, activities and investments, some of which may be in conflict or competition with the business or properties of the Company, and that such Persons are entitled to carry on such other business interests, activities and investments. The Members (including the Managing Member) and their Affiliates may engage in or possess an interest in any other business or venture of any kind, independently or with others, on their own behalf or on behalf of other entities with which they

are affiliated or associated, and such persons may engage in any activities, whether or not competitive with the Company, without any obligation to offer any interest in such activities to the Company or to any Member. Neither the Company nor any Member shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Company, shall not be deemed wrongful or improper. Without limiting the foregoing, each Member recognizes that (a) the Managing Member and/or its Affiliates (other than the Company and its Subsidiaries) own, independently and/or with others, direct and/or indirect interests in Shopping Center Projects in which the Company and its Subsidiaries have no interest and which may be in conflict or competition with the business or properties of the Company and its Subsidiaries, (b) the Managing Member intends to continue to conduct and expand such business and activities and (c) the Managing Member and its Affiliates (other than the Company and its Subsidiaries) are entitled to carry on such other business and activities and own such properties without any obligation to offer any interest in such business, activities or properties to the Company or to any Member.

ARTICLE VII

Dissolution, Liquidation and Winding-Up

7.1 Accounting. In the event of the dissolution, liquidation and winding-up of the Company, a proper accounting (which shall be certified) shall be made of the Capital Account of each Member and of the Net Profits or Net Losses of the Company from the date of the last previous accounting to the date of dissolution. Financial statements presenting such accounting shall include a report of a certified public accountant selected by the Liquidating Trustee.

7.2 Distribution on Dissolution. In the event of the dissolution and liquidation of the Company for any reason, the assets of the Company shall be liquidated for distribution in the following rank and order:

- (a) Payment of creditors of the Company (other than Members) in the order of priority as provided by law;
- (b) Establishment of reserves as provided by the Managing Member to provide for contingent liabilities, if any;
- (c) Payment of debts of the Company to Members, if any, in the order of priority provided by law; and
- (d) Payment to holders of Units in accordance with their Capital Accounts.

Whenever the Liquidating Trustee reasonably determines that any reserves established pursuant to paragraph (b) above are in excess of the reasonable requirements of the Company, the amount determined to be excess shall be distributed to the Members in accordance with the above provisions.

7.3 Timing Requirements. In the event that the Company is “liquidated” within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, any and all distributions to the

Members pursuant to Section 7.2(d) hereof shall be made no later than the later to occur of (i) the last day of the taxable year of the Company in which such liquidation occurs or (ii) ninety (90) days after the date of such liquidation.

7.4 Sale of Company Assets. In the event of the liquidation of the Company in accordance with the terms of this Agreement, the Liquidating Trustee may sell Company or Property Partnership property if the Liquidating Trustee has in good faith solicited bids from unrelated third parties and obtained independent appraisals before making any such sale; provided, however, all sales, leases, encumbrances or transfers of Company assets shall be made by the Liquidating Trustee solely on an “arm’s-length” basis, at the best price and on the best terms and conditions as the Liquidating Trustee in good faith believes are reasonably available at the time and under the circumstances and on a non-recourse basis to the Members. The liquidation of the Company shall not be deemed finally terminated until the Company shall have received cash payments in full with respect to obligations such as notes, installment sale contracts or other similar receivables received by the Company in connection with the sale of Company assets and all obligations of the Company have been satisfied. The Liquidating Trustee shall continue to act to enforce all of the rights of the Company pursuant to any such obligations until paid in full.

7.5 Distributions in Kind. In the event that it becomes necessary to make a distribution of Company property in kind, the Managing Member may transfer and convey such property to the distributees as tenants in common, subject to any liabilities attached thereto, so as to vest in them undivided interests in the whole of such property in proportion to their respective rights to share in the proceeds of the sale of such property (other than as a creditor) in accordance with the provisions of Section 7.2 hereof.

7.6 Documentation of Liquidation. Upon the completion of the dissolution and liquidation of the Company, the Company shall terminate and the Liquidating Trustee shall have the authority to execute and record any and all documents or instruments required to effect the dissolution, liquidation and termination of the Company.

7.7 Negative Capital Accounts. No Member shall be liable to the Company or to any other Member for any deficit or negative balance which may exist in its Capital Account.

7.8 DAI Contribution Obligation. Notwithstanding any other provision of this Agreement (including Schedule B to this Agreement):

- (a) Upon liquidation of the Company, in the event that the Gross Asset Value Available to Pay Recourse Liabilities and Exculpatory Liabilities is less than One Hundred Million Dollars (\$100,000,000), DAI shall make a Capital Contribution to the Company of cash in immediately available funds equal to the least of (i) One Hundred Million Dollars (\$100,000,000), (ii) the amount by which One Hundred Million Dollars (\$100,000,000) exceeds the Gross Asset Value Available to Pay Recourse Liabilities and Exculpatory Liabilities and (iii) the aggregate amount of Recourse Liabilities and Exculpatory Liabilities outstanding immediately prior to the liquidation of the Company. Such amount shall be used to pay Recourse Liabilities and/or Exculpatory Liabilities or

shall be distributed to Members other than DAI in accordance with their positive Capital Account balances.

(b) DAI shall make any Capital Contribution required to be made by it pursuant to this Section 7.8 no later than the later to occur of (i) the last day of the taxable year of the Company in which such liquidation occurs or (ii) 90 days after the date of such liquidation.

(c) Any Capital Contribution made by DAI pursuant to this Section 7.8 and the associated Capital Account credit shall be taken into account in allocating Net Income and Net Loss and other items of income, gain, loss and deduction for the taxable year of liquidation.

(d) DAI shall not be subrogated to the rights of any creditor or other person receiving the proceeds of the Capital Contribution made by DAI pursuant to this Section 7.8 against the Managing Member, the Company, another Member or any person. DAI hereby waives any right to reimbursement, contribution or similar right to which DAI might otherwise be entitled as a result of the performance of its obligations under this Section 7.8.

(e) Section 4.4 and Section 4.6 hereof shall not apply with respect to DAI's obligations pursuant to this Section 7.8.

(f) The parties intend that DAI shall bear the economic risk of loss within the meaning of Section 1.752-2(a) of the Regulations with respect to an amount of Exculpatory Liabilities and/or Recourse Liabilities equal to the lesser of One Hundred Million Dollars (\$100,000,000) and the aggregate amount of Recourse Liabilities and Exculpatory Liabilities, and this Section 7.8 and other relevant provisions of this Agreement shall be interpreted and applied in a manner consistent therewith.

(g) Notwithstanding any other provision of this Agreement, at any time on or after June 1, 2005, DAI may terminate the DAI Contribution Obligation by providing twelve (12) months' prior written notice to the Company, provided however that the DAI Contribution Obligation shall not terminate if during the twelve (12) month period following such notice there has been:

(i) An entry of a decree or order for relief in respect of the Company by a court having jurisdiction over a substantial part of the Company's assets, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of the Company's affairs, in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; or

(ii) The commencement against the Company of an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; or

(iii) The commencement by the Company of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the entry of an order for relief in an involuntary case under any such law or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of a general assignment for the benefit of creditors, or the failure of Company generally to pay its debts as such debts become due or the taking of any action in furtherance of any of the foregoing;

provided that, after the passage of such 12 months, DAI shall cease to be liable for the DAI Contribution Obligation, at the first time, if any, that the appointment, case or proceeding referred to in Section 7.8(g)(i) through (iii) above has terminated.

(h) As a result of the transfer of all or a portion of the Series C Preferred Units to a Permitted DAI Transferee (as defined in Schedule B) pursuant to Section 7 of Schedule B, the transferor shall continue to be obligated for the entire amount of the DAI Contribution Obligation except to the extent that such Permitted DAI Transferee agrees to assume all or a portion of such transferor's obligation under the DAI Contribution Obligation. In the event of such a transfer to and assumption by the Permitted DAI Transferee, (1) the transferor and the Permitted DAI Transferee assuming the obligation under the DAI Contribution Obligation shall notify the Company that the Permitted DAI Transferee has assumed all or a portion of the DAI Contribution Obligation in connection with such transfer, and (2) this Agreement shall be amended to reflect such Permitted DAI Transferee's assumption of all or a portion of the DAI Contribution Obligation. Except to the extent that the Permitted DAI Transferee assumes all or a portion of the obligation under the DAI Contribution Obligation in accordance with this Section 7.8(h), the transferor shall not be relieved of such obligation and shall continue to be obligated under the DAI Contribution Obligation notwithstanding the transfer and to the same extent as if the transfer had not occurred. Following the transfer of Series C Preferred Units to GGPI or the Managing Member pursuant to Section 6 of Schedule B, the transferor shall continue to be obligated for the entire amount of the DAI Contribution Obligation in accordance with its terms and neither GGPI nor the Managing Member shall have any liability therefor.

ARTICLE VIII

Transfer of Units

8.1 Managing Member Transfer. The Managing Member shall not withdraw from the Company and shall not sell, assign, pledge, encumber or otherwise dispose of all or any portion of its Units without the Consent of the Holders of Common Units (except that the Managing Member may sell, assign or transfer its interest to an Affiliate without the consent of the Members). Upon any transfer of Units in accordance with the provisions of this Section 8.1, the transferee Managing Member shall become vested with the powers and rights of the transferor Managing Member, and shall be liable for all obligations and responsible for all duties of the Managing Member, once such transferee has executed such instruments as may be

necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Units so acquired. It is a condition to any transfer otherwise permitted hereunder that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Managing Member under this Agreement with respect to such transferred Units and no such transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Managing Member are assumed by a successor corporation by operation of law) shall relieve the transferor Managing Member of its obligations under this Agreement without the Consent of the Holders of the Common Units, in their reasonable discretion. In the event the Managing Member withdraws from the Company, in violation of this Agreement or otherwise, or dissolves or terminates, a Majority in Interest of the Common Units may elect to continue the Company business by selecting a substitute Managing Member.

8.2 Transfers in Other Members. Except as otherwise provided herein, no Member (other than the Managing Member) shall have the right to transfer all or a portion of its Units to any Person without the written consent of the Managing Member, which consent may be given or withheld in the sole discretion of the Managing Member. It is a condition to any transfer otherwise permitted hereunder that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Member under this Agreement with respect to such transferred Units and no such transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Member are assumed by a successor corporation by operation of law) shall relieve the transferor Member of its obligations under this Agreement without the approval of the Managing Member, which may be given or withheld in its sole discretion. Upon such transfer, the transferee shall be admitted as a substituted member of the Company (the “Substituted Member”) and shall succeed to all of the rights of the transferor Member under this Agreement in the place and stead of such transferor Member. Any transferee, whether or not admitted as a Substituted Member, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Member, no transferee, whether by a voluntary transfer, by operation of law or otherwise, shall have rights hereunder, other than to receive such portion of the distributions made by the Company as are allocable to the Units transferred.

8.3 Restrictions on Transfer. In addition to any other restrictions on transfer herein contained, in no event may any transfer or assignment of Units by any Member be made (a) to any Person who lacks the legal right, power or capacity to own Units; (b) in violation of any provision of any mortgage or trust deed (or the note or bond secured thereby) constituting a Lien against a Property or any part thereof, or other instrument, document or agreement to which the Company or any Property Partnership is a party or otherwise bound; (c) in violation of applicable law; (d) unless such assignment or transfer is made pursuant to an effective registration statement under the Securities Act of 1933, as amended, or is exempt from registration thereunder; (e) of any component portion of a Unit, such as the Capital Account, or rights to Net Operating Cash Flow, separate and apart from all other components of such Unit, (f) in the event such transfer would cause GGPI and the REIT Subsidiaries to cease to comply with the REIT Requirements, (g) if such transfer would cause a termination of the Company for federal income tax purposes, (h) if such transfer would, in the opinion of counsel to the Company, cause the Company to cease to be classified as a partnership for Federal income tax purposes, cause the Company to fail to satisfy the safe harbor requirements of Section 1.7704-1(j) of the Regulations during 2002

or cause the Company to have more than 100 partners within the meaning of Reg. §1.7704-1(h), or (i) if such transfer would, in the opinion of counsel to the Company, cause any assets of the Company to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.3-101, as modified by Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended.

8.4 Bankruptcy of a Member. The Bankruptcy of any Member (other than the Managing Member) shall not cause a dissolution of the Company, but the rights of such Member to share in the Net Profits or Net Losses of the Company and to receive distributions of Company funds shall, on the happening of such event, devolve on its successors or assigns, subject to the terms and conditions of this Agreement, and the Company shall continue as a limited liability company. However, in no event shall such assignee(s) become a Substituted Member without the written consent of the Managing Member.

ARTICLE IX

Arbitration of Disputes

9.1 Arbitration. Notwithstanding anything to the contrary contained in this Agreement, all claims, disputes and controversies between the parties hereto (including, without limitation, any claims, disputes and controversies between the Company and any one or more of the Members and any claims, disputes and controversies between any one or more Members) arising out of or in connection with this Agreement or the Company shall be resolved by binding arbitration in Chicago, Illinois, in accordance with this Article IX and, to the extent not inconsistent herewith, the Expedited Procedures and Commercial Arbitration Rules of the American Arbitration Association,

9.2 Procedures. Any arbitration called for by this Article IX shall be conducted in accordance with the following procedures:

(a) The Company or any Member (the “Requesting Party”) may demand arbitration pursuant to Section 9.1 at any time by giving written notice of such demand (the “Demand Notice”) to all other Members and (if the Requesting Party is not the Company) to the Company which Demand Notice shall describe in reasonable detail the nature of the claim, dispute or controversy.

(b) Within fifteen (15) days after the giving of a Demand Notice, the Requesting Party, on the one hand, and each of the other Members and/or the Company against whom the claim has been made or with respect to which a dispute has arisen (collectively, the “Responding Party”), on the other hand, shall select and designate in writing to the other party one reputable, disinterested individual (a “Qualified Individual”) willing to act as an arbitrator of the claim, dispute or controversy in question. Each of the Requesting Party and the Responding Party shall use their best efforts to select a lawyer or retired judge having no affiliation with any of the parties as their respective Qualified Individual. Within fifteen (15) days after the foregoing selections have been made, the arbitrators so selected shall jointly select a lawyer or retired judge having no affiliation with any of the parties as the third Qualified Individual

willing to act as an arbitrator of the claim, dispute or controversy in question. In the event that the two arbitrators initially selected are unable to agree on a third arbitrator within the second fifteen (15) day period referred to above, then, on the application of either party, the American Arbitration Association shall promptly select and appoint a lawyer or retired judge having no affiliation with any of the parties as the Qualified Individual to act as the third arbitrator. The three arbitrators selected pursuant to this subsection (b) shall constitute the arbitration panel for the arbitration in question.

(c) The presentations of the parties hereto in the arbitration proceeding shall be commenced and completed within sixty (60) days after the selection of the arbitration panel pursuant to subsection (b) above, and the arbitration panel shall render its decision in writing within thirty (30) days after the completion of such presentations. Any decision concurred in by any two (2) of the arbitrators shall constitute the decision of the arbitration panel, and unanimity shall not be required.

(d) The arbitration panel shall have the discretion to include in its decision a direction that all or part of the attorneys' fees and costs of any party or parties and/or the costs of such arbitration be paid by any other party or parties. On the application of a party before or after the initial decision of the arbitration panel, and proof of its attorneys' fees and costs, the arbitration panel shall order the other party to make any payments directed pursuant to the preceding sentence.

9.3 Binding Character. Any decision rendered by the arbitration panel pursuant to this Article IX shall be final and binding on the parties hereto, and judgment thereon may be entered by any state or federal court of competent jurisdiction.

9.4 Exclusivity. Arbitration shall be the exclusive method available for resolution of claims, disputes and controversies described in Section 9.1, and the Company and its Members stipulate that the provisions hereof shall be a complete defense to any suit, action, or proceeding in any court or before any administrative or arbitration tribunal with respect to any such claim, controversy or dispute. The provisions of this Article IX shall survive the dissolution of the Company. Notwithstanding the foregoing, the parties may seek injunctive relief or similar relief from a court of competent jurisdiction in New York, New York before an arbitration panel has been appointed.

9.5 No Alteration of Agreement. Nothing contained herein shall be deemed to give the arbitrators any authority, power or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

ARTICLE X

General Provisions

10.1 Notices. Except as otherwise provided herein, all notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and may be personally served, delivered by nationally recognized overnight courier, telecopied or sent by registered or certified United States mail, postage prepaid and properly addressed, and

shall be deemed to have been given when delivered in person or by nationally recognized courier or registered or certified U.S. mail or upon receipt of telecopy by the appropriate party. For purposes of this Section 10.1, the addresses of the parties hereto shall be as set forth opposite their names on the signature pages thereto. The address of any party hereto may be changed by a notice in writing given in accordance with the provisions hereof.

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

10.3 Effect and Interpretation. This Agreement shall be governed by and construed in conformity with the laws of the State of Delaware (without regard to its conflicts of law principles, which might result in the application of the laws of any other jurisdiction).

10.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document and all signatures need not appear on the same page.

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

10.6 Entire Understanding; Etc. This Agreement constitutes the entire agreement and understanding among the Members and supersedes any prior understandings and/or written or oral agreements among them respecting the subject matter within (including without limitation the Original Agreement).

10.7 Amendments. Except as otherwise provided herein (including the provisions of Section 4.3), this Agreement may not be amended, and no provision may be waived, except by a written instrument signed by the holders of a Majority in Interest of the Common Units.

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

10.9 Trust Provision. This Agreement, to the extent executed by the trustee of a trust, is executed by such trustee solely as trustee and not in a separate capacity. Nothing herein contained shall create any liability on, or require the performance of any covenant by, any such trustee individually, nor shall anything contained herein subject the individual personal property of any trustee to any liability.

10.10 Issuance of Certificates Representing Units. The Managing Member may, in its sole discretion, issue certificates representing all or a portion of the Units of one or more Members and, in such event, the Managing Member shall establish such rules and regulations relating to issuances and reissuances of certificates upon transfer of Units, the division of Units

among multiple certificates and the loss, theft, destruction or mutilation of certificates as the Managing Member reasonably deems appropriate.

10.11 Specific Performance. The parties agree that irreparable damage will result in the event that this Agreement is not specifically enforced, and the parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the parties hereunder shall be enforceable in a court of equity or other tribunal with jurisdiction by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which a party may have under this Agreement or otherwise.

10.12 Power of Attorney. Each Member hereby irrevocably constitutes and appoints the Managing Member his or its true and lawful attorney-in-fact, in his or its name, place and stead with full power of substitution, to consent to, make, execute, sign, acknowledge, swear to, record and file, on behalf of such Member and/or on behalf of the Company, the following:

(a) this Agreement, any certificate of foreign limited liability company, any certificate of doing business under an assumed name, and any other certificates or instruments which may be required to be filed by the Company or such Member under the laws of the State of Delaware or any other jurisdiction the laws of which may be applicable;

(b) a certificate of cancellation of the Certificate of Formation of the Company and such other instruments or documents as may be deemed necessary or desirable by said attorneys upon the termination of the Company;

(c) any and all amendments or restatements of the documents described in subsections (a) and (b) above, provided such amendments are either required by law, are necessary to correct statements herein or therein, or are consistent with this Agreement (including without limitation any amendments referred to in Sections 4.1 and 4.2); and

(d) any and all such other documents as may be deemed necessary or desirable by said attorney to carry out fully the provisions of this Agreement and as are consistent with the terms hereof.

The foregoing grant of authority: (i) is a special power of attorney coupled with an interest, is irrevocable and shall survive the death or incapacity of each member and (ii) shall survive the delivery of an assignment by a Member of the whole or any portion of his or its Units.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, and GGPI has executed this Agreement solely for the purpose of binding itself under Section 6 of Schedule B, as of the date and year first above written.

MANAGING MEMBER:

GGP LIMITED PARTNERSHIP, a Delaware limited partnership

By: [General Growth Properties, Inc.,] a Delaware corporation, its general partner

By: _____
Name: _____
Title: _____

110 North Wacker Drive
Chicago, Illinois 60606
Attention:

GGPI:

GENERAL GROWTH PROPERTIES, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

110 North Wacker Drive
Chicago, Illinois 60606
Attention:

**SCHEDULE A
TO THE
THIRD AMENDED AND RESTATED OPERATING AGREEMENT
OF
GGPLP L.L.C.**

Member	Common Units	Preferred Units
GGP Limited Partnership	[] ¹	0
DA Retail Investments, LLC	0	20,000 Series C Preferred Units ²
Total	[]	

¹ Represents 100% of all Common Units

² Represents 100% of all Series C Preferred Units

**SCHEDULE B
TO THE
THIRD AMENDED AND RESTATED OPERATING AGREEMENT
OF
GGPLP L.L.C.**

Designation, Preferences and Rights of Series C Preferred Units

1. Designation and Number; Etc. The Series C Preferred Units have been established and shall have such rights, preferences, limitations and qualifications as are described herein (in addition to the rights, preferences, limitations and qualifications contained in the Agreement to the extent applicable). The authorized number of Series C Preferred Units shall be 20,000. Notwithstanding anything to the contrary contained herein, in the event of a conflict between the provisions of this Schedule B and any other provision of the Agreement, the provisions of this Schedule B shall control. Series C Preferred Units shall not have any relative, participating, optional or other special rights and powers other than as set forth herein.

2. Rank of the Series C Preferred Units. The Series C Preferred Units shall, with respect to distribution rights and rights upon liquidation, dissolution or winding up of the Company, rank as follows:

(a) senior to all classes or series of Common Units and all series of Preferred Units that are not referred to in Section 2(b) or (c) of this Schedule B (the Common Units and the Preferred Units ranking junior to the Series C Preferred Units with respect to distribution rights and rights upon liquidation, dissolution and winding up, collectively, “Series C Junior Units”);

(b) on parity with each other series of Preferred Units that is hereafter created and that provides by its express terms that it ranks on parity with the Series C Preferred Units as to distribution rights and rights upon liquidation, dissolution and winding-up of the Company (the “Series C Parity Units”); and

(c) junior to any class or series of Preferred Units that is hereafter established, that provides by its express terms that it ranks senior to the Series C Preferred Units and that is approved in accordance with the provisions of Section 3 of this Schedule B.

3. Voting. The Company shall not, without the affirmative vote or consent of the holders of at least fifty-one percent (51%) of the Series C Preferred Units outstanding at such time, (a) reclassify any Common Units into Preferred Units ranking senior to or on parity with the Series C Preferred Units with respect to the payment of distributions or distribution of assets upon liquidation, dissolution or winding-up of the Company, (b) issue additional Series C Preferred Units or (c) amend, alter or repeal this Section 3 or any other provisions of this Schedule B or the Agreement, whether by merger, consolidation or otherwise (a “Series C Event”), so as to negate the provisions of clause (a) or (b) of this paragraph or materially and adversely affect any special right, preference, privilege or voting power of the holders of the Series C Preferred Units. Notwithstanding anything to the contrary contained herein, each of the following shall be deemed not to materially and adversely affect such rights, preferences, privileges or voting power and shall not require the vote or consent of the holders of the Series C

Preferred Units: (A) the occurrence of any of the Series C Events set forth in clause (c) of this paragraph so long as Series C Preferred Units remain outstanding with the terms thereof materially unchanged (taking into account that, upon the occurrence of such Series C Event, the Company may not be the surviving entity) and the surviving entity is a Qualified Entity, (B) the authorization or creation of, or the increase in the authorized or issued amount of, the Common Units or any other series of Preferred Units, whether ranking senior or junior to or on parity with the Series C Preferred Units (and any amendments to the Agreement to effect such increase, creation or issuance), provided that no such action alters the parity of the Series C Preferred Units with each other series of Preferred Units that is hereafter created and that provides by its express terms that it ranks on parity with the Series C Preferred Units, and (C) the liquidation, dissolution and winding-up of the Company.

For purposes of the provisions of this Section 3, each Series C Preferred Unit shall have one (1) vote.

Notwithstanding anything to the contrary contained herein, the foregoing voting provisions shall not apply if, prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding Series C Preferred Units shall have been exchanged or redeemed.

Except as provided herein, the holders of Series C Preferred Units shall have no voting or consent rights or other rights to participate in the management of the Company or to receive notices of meetings.

4. Distributions.

(a) Payment of Distributions. Each holder of Series C Preferred Units will be entitled to receive, when, as and if declared by the Managing Member, out of Net Operating Cash Flow and subject to the right to payment of the holders of Preferred Units ranking senior to or on parity with the Series C Preferred Units, cumulative preferential cash distributions per Series C Preferred Unit at the rate per annum of 8.25% of the \$250 base liquidation preference thereof (or \$5.15625 per quarter) (the “Series C Preferred Unit Distribution”). Series C Preferred Unit Distributions with respect to any Series C Preferred Units shall be cumulative, shall accrue from the date of the issuance of such Series C Preferred Units and will be payable (i) quarterly when, as and if authorized and declared by the Managing Member, in arrears, on the 15th day of January, April, July and October of each year and (ii) in the event of an exchange or redemption of Series C Preferred Units, on the exchange or redemption date, as applicable (each a “Series C Preferred Unit Distribution Payment Date”), commencing on the first of such payment dates to occur following their original date of issuance. The amount of distribution per Series C Preferred Unit accruing in each full quarterly distribution period shall be computed by dividing the annual distribution rate by four. The amount of distributions payable for the initial distribution period or any other period shorter or longer than a full quarterly distribution period on the Series C Preferred Units will be computed on the basis of twelve 30-day months and a 360-day year and the actual number of days elapsed in such a thirty (30) day month. If any Series C Preferred Unit Distribution Payment Date is not a Business Day, then payment of the Series C Preferred Unit Distribution to be made on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of

such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (without any deduction), in each case with the same force and effect as if made on such date. Series C Preferred Unit Distributions will be made to the holders of Series C Preferred Units of record on the relevant record dates, which will be fifteen (15) days prior to the relevant Series C Preferred Unit Distribution Payment Date.

(b) Distributions Cumulative. Notwithstanding the foregoing, Series C Preferred Unit Distributions will accrue whether or not the terms and provisions of the Agreement or any other agreement of the Company at any time prohibit the current payment of distributions, whether or not the Company has revenues, whether or not there are funds legally available for the payment of such distributions and whether or not such distributions are authorized. Accrued but unpaid Series C Preferred Unit Distributions will accumulate as of the Series C Preferred Unit Distribution Payment Date on which they first become payable. Any accrued but unpaid Series C Preferred Unit Distributions that are not paid on or prior to the date that they first become payable are hereinafter referred to as “Series C Accumulated Preferred Unit Distributions.” No interest or sum of money in lieu of interest will be payable in respect of any Series C Accumulated Preferred Unit Distributions. Series C Accumulated Preferred Unit Distributions may be declared and paid at any time, without reference to any regular Series C Preferred Unit Distribution Payment Date.

(c) Priority as to Distributions.

(i) So long as any Series C Preferred Units are outstanding, no distribution of cash or other property shall be authorized, declared, paid or set apart for payment on or with respect to any Series C Parity Units, nor shall any cash or other property be set aside for or applied to the purchase, redemption or other acquisition for consideration of any Series C Parity Units, unless, in each case, all Series C Accumulated Preferred Unit Distributions have been paid in full (or have been declared and a sum sufficient for such payment has been set aside therefor) or when Series C Accumulated Preferred Unit Distributions are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, all distributions declared upon Series C Preferred Units and all distributions declared upon any other series or class or classes of Series C Parity Units shall be declared ratably in proportion to the respective amounts of distributions accumulated and unpaid on the Series C Preferred Units and such Series C Parity Units.

(ii) So long as any Series C Preferred Units are outstanding, no distribution of cash or other property (other than distributions paid solely in Series C Junior Units or options, warrants or other rights to subscribe for or purchase Series C Junior Units) shall be authorized, declared, paid or set apart for payment on or with respect to any class or series of Series C Junior Units nor shall any cash or other property be set aside for or applied to the purchase, redemption or other acquisition for consideration of any Series C Junior Units (other than consideration paid solely in Series C Junior Units or options, warrants or other rights to subscribe for or purchase Series C Junior Units) unless, in each case, all Series C Accumulated Preferred Unit Distributions have been paid in full or have been declared and a sum sufficient for payment thereof has been set aside therefor.

(iii) So long as there are Series C Accumulated Preferred Unit Distributions (and a sum sufficient for full payment of Series C Accumulated Preferred Unit Distributions is not so set apart), all future Series C Preferred Unit Distributions shall be authorized and declared so that the amount of Series C Preferred Unit Distributions per Series C Preferred Unit shall in all cases bear to each other the same ratio that Series C Accumulated Preferred Unit Distributions per Series C Preferred Unit bear to each other.

(iv) Notwithstanding anything to the contrary set forth herein, distributions on Units held by the Managing Member ranking junior to or on parity with the Series C Preferred Units may be made, without preserving the priority of distributions described in Sections 4(c)(i) and (ii) of this Schedule B, but only to the extent such distributions are required to preserve the REIT status of GGPI and the REIT Subsidiaries.

(d) No Further Rights. Except as provided in Section 5 hereof, holders of Series C Preferred Units shall not be entitled to any distributions, whether payable in cash, other property or otherwise, in excess of the Series C Preferred Unit Distributions (and any Series C Accumulated Preferred Unit Distributions) described herein.

5. Liquidation Preference.

(a) Payment to Holders of Series C Preferred Units. In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, and subject to the right to payment of holders of Preferred Units ranking senior to or on parity with the Series C Preferred Units, before any payment or distribution of the assets of the Company shall be made to or set apart for the holders of Series C Junior Units, each holder of the Series C Preferred Units shall be entitled to receive an amount equal to such holder's Capital Account in respect of its Series C Preferred Units, but the holders of Series C Preferred Units shall not be entitled to any further payment in respect of their Series C Preferred Units. If, upon any such liquidation, dissolution or winding up of the Company, the assets of the Company, or proceeds thereof, distributable to the holders of Series C Preferred Units shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other Series C Parity Units, then such assets, or the proceeds thereof, shall be distributed among the holders of the Series C Preferred Units and the holders of any such other Series C Parity Units ratably in accordance with the respective amounts that would be payable on such Series C Preferred Units and any such other Series C Parity Units if all amounts payable thereon were paid in full. For the purposes of this Section 5, none of a consolidation or merger of the Company with or into one or more entities, a merger of an entity with or into the Company, a statutory share exchange by the Company or a sale, lease or conveyance of all or substantially all of the Company's assets shall be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Company.

(b) Payments to Holders of Series C Junior Units. Subject to the rights of the holders of Series C Parity Units, after payment shall have been made in full to the holders of the Series C Preferred Units as provided in this Section 5, any series or class or classes of Series C Junior Units shall, subject to any respective terms and provisions applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of the Series C Preferred Units shall not be entitled to share therein.

6. Exchange Rights.

(a) Right to Exchange.

(i) Subject to the other terms and conditions of this Section 6, Series C Preferred Units will be exchangeable in whole but not in part with GGPI at any time on or after June 1, 2012, at the option of the holders of at least fifty-one percent (51%) of all outstanding Series C Preferred Units, for authorized but previously unissued Common Shares (and in the event such option is exercised, such exercise and the Series C Exchange Notice (as defined below) given in connection therewith shall be deemed to apply to all issued and outstanding Series C Preferred Units and the holders thereof). Each holder of Series C Preferred Units will be entitled to receive for each Series C Preferred Unit held by it a number of Common Shares equal to the quotient of the Capital Account relating to such Series C Preferred Unit (adjusted and booked up or down to reflect fair market value of Company assets through the exchange closing date) (the amount of such Capital Account, the “Series C Exchange Price”) divided by the Current Per Share Market Price as of the Trading Day immediately preceding the exchange closing date. This exchange right is only exercisable if, at the time of exercise, the fair market value of the Company’s assets exceeds the Company’s liabilities (and any preferred security claims senior to the Series C Preferred Units) by an amount at least equal to twice the sum of (1) the aggregate Capital Accounts of all holders of Series C Preferred Units plus (2) the aggregate Capital Accounts of all holders of Series C Parity Units.

(ii) Notwithstanding anything to the contrary set forth in Section 6(a)(i) of this Schedule B, if a Series C Exchange Notice has been delivered to the Managing Member and GGPI, then the Managing Member or GGPI may at its option, within ten (10) Business Days after receipt of the Series C Exchange Notice, elect to purchase or cause the Company to redeem all or a portion of the outstanding Series C Preferred Units for cash at the Series C Exchange Price per Series C Preferred Unit. If such election by GGPI is made with respect to fewer than all of the outstanding Series C Preferred Units, the number of Series C Preferred Units held by each holder of Series C Preferred Units to be redeemed or purchased shall equal such holder’s pro rata share (based on the percentage of the aggregate number of outstanding Series C Preferred Units that the total number of Series C Preferred Units held by such holder of Series C Preferred Units represents) of the aggregate number of Series C Preferred Units being redeemed or purchased. An election by the Managing Member or GGPI under this Section shall be effected by delivering notice thereof to the holders identified in the Series C Exchange Notice.

(iii) If an exchange of all Series C Preferred Units pursuant to Section 6(a)(i) of this Schedule B would violate the provisions on ownership limitation of GGPI set forth in its Charter and such ownership limitation is not waived by GGPI, each holder of Series C Preferred Units shall be entitled to exchange the maximum number of Series C Preferred Units which would comply with the provisions on the ownership limitation of GGPI, and any Series C Preferred Units not so exchanged shall be purchased by GGPI

or redeemed by the Company for cash in an amount determined in the manner set forth in subsection (ii) of this Section 6(a).

(iv) If an exchange of all Series C Preferred Units pursuant to Section 6(a)(i) of this Schedule B is prohibited by virtue of the holder of the Series C Preferred Units being unable to make such customary representations and warranties as may be reasonably necessary for the Managing Member or GGPI to establish that the issuance of Common Shares pursuant to the exchange shall not be required to be registered under the Securities Act or any applicable state securities laws pursuant to Section 6(b)(i) below, any Series C Preferred Units not so exchanged shall be purchased by GGPI or redeemed by the Company for cash in an amount determined in the manner set forth in subsection (ii) of this Section 6(a).

(b) Procedure for Exchange and/or Redemption of Series C Preferred Units.

(i) The exchange right only may be exercised pursuant to a written notice of exchange (the “Series C Exchange Notice”) delivered to the Managing Member and GGPI by holders of Series C Preferred Units owning at least fifty-one percent (51%) of the outstanding Series C Preferred Units by fax and certified mail postage prepaid. The closing of the exchange, purchase and/or redemption pursuant to this Section 6 shall occur within fifteen (15) Business Days following the giving of the Series C Exchange Notice. At the closing, the exchanging holder(s) shall deliver such instruments of transfer and other documents as GGPI or the Managing Member may reasonably request, and GGPI and/or the Company shall deliver to the exchanging holder(s) certificates representing the Common Shares and/or the cash redemption and/or purchase price. Notwithstanding anything to the contrary contained herein, any and all Series C Preferred Units to be exchanged for Common Shares pursuant to this Section shall be so exchanged in a single transaction at one time. As a condition to the exercise of the rights contained in this Section 6, each holder of Series C Preferred Units shall make such customary representations and warranties as may be reasonably necessary for the Managing Member or GGPI to establish that the issuance of Common Shares pursuant to the exchange shall not be required to be registered under the Securities Act or any applicable state securities laws, including without limitation representations and warranties that such holder is an accredited investor as such term is defined in Rule 501 of Regulation D promulgated pursuant to the Securities Act and that such holder is acquiring such Common Shares for investment, solely for its own account and not with a view to or for the resale or distribution thereof (other than pursuant to the Registration Statement, as defined below); provided, however, that in the event a holder is unable to make such representations, the condition shall be deemed satisfied with respect to such holder by virtue of Section 6(a)(iv). Any Common Shares issued pursuant to this Section to a holder of Series C Preferred Units shall be delivered as shares which are duly authorized, validly issued, fully paid and nonassessable, free of any pledge, lien, encumbrance or restriction other than those provided in the Charter or the by-laws of GGPI, the Securities Act or relevant state securities or blue sky laws or created by, through or under such holder, and any Series C Preferred Units as to which the exchange right has been exercised shall be free of any pledge, lien, encumbrance or restriction other than those provided in the Agreement, the Securities Act and relevant state securities or blue sky laws (and the

parties shall make representations and warranties to the other to such effect). Subject to the provisions of Section 6(c) of this Schedule B, the certificates representing the Common Shares issued upon exchange of the Series C Preferred Units shall, in addition to any legend required by the Charter, contain the following legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”) OR (B) IF THE CORPORATION HAS BEEN FURNISHED WITH A SATISFACTORY OPINION OF COUNSEL FOR THE HOLDER OF THE SHARES REPRESENTED HEREBY, OR OTHER EVIDENCE SATISFACTORY TO THE CORPORATION, THAT SUCH TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION IS EXEMPT FROM THE PROVISIONS OF SECTION 5 OF THE ACT AND THE RULES AND REGULATIONS THEREUNDER.

(ii) In the event of an exchange of Series C Preferred Units, an amount equal to the Series C Accumulated Preferred Unit Distributions to the date of exchange on any Series C Preferred Units tendered for exchange shall continue to accrue on such Series C Preferred Units, which remain outstanding following such exchange, with the Managing Member as the holder of such Series C Preferred Units (GGPI having contributed the Series C Preferred Units to the Managing Member). Fractional Common Shares are not to be issued upon exchange but, in lieu thereof, the Managing Member will pay a cash adjustment based upon the Current Per Share Market Price as of the exchange closing date.

(iii) During the thirty day period ending on the closing of any exchange, purchase and/or redemption pursuant to this Section 6, the holders of Series C Preferred Units shall not, directly or indirectly, buy or sell (including without limitation short-sell) any Common Shares, whether in the open market or in a negotiated transaction.

(c) Registration of Common Shares.

(i) As soon as practicable following the issuance of Common Shares pursuant to this Section 6 (but, subject to the provisions of the last sentence of Section 6(c)(ii) of this Schedule B, in no event more than 90 days following such issuance), GGPI shall file a Registration Statement on Form S-3 or other appropriate registration form (the “Registration Statement”) with the SEC covering the resale by the initial holders of such Common Shares (the “Initial Holders”) and shall use its reasonable best efforts to cause the Registration Statement to become effective as soon as practicable thereafter. Following the effective date of the Registration Statement and until the Common Shares covered by the Registration Statement have been sold or are eligible for resale under Rule 144(k) promulgated under the Securities Act, GGPI shall keep the Registration Statement current, effective and available for the resale by the Initial Holders of the Common

Shares delivered to them pursuant to this Section 6. GGPI shall bear all expenses relating to filing such Registration Statement and keeping such Registration Statement current, effective and available; provided, however, that GGPI shall not be responsible for any brokerage fees or underwriting commissions due and payable by any holder of such Common Shares.

(ii) During the time period when the Registration Statement is required to be current, effective and available under Section 6(c)(i) of this Schedule B, GGPI also shall:

(1) prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus constituting a part thereof, as amended or supplemented (the "Prospectus"), as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act with respect to the sale of the Common Shares covered by such Registration Statement whenever any Initial Holder shall desire to sell or otherwise dispose of the same but in no event beyond the period in which the Registration Statement is required to be kept in effect under Section 6(c)(i) of this Schedule B;

(2) furnish to each Initial Holder, without charge, such number of authorized copies of the Prospectus, and any amendments or supplements to the Prospectus, in conformity with the requirements of the Securities Act, and such other documents as any Initial Holder may reasonably request in order to facilitate the public sale or other disposition of the Common Shares owned by the Initial Holders.

(3) register or qualify the securities covered by the Registration Statement under state securities or blue sky laws of such jurisdictions as are reasonably required to effect a sale thereof and do any and all other acts and things which may be necessary or appropriate under such state securities or blue sky laws to enable the Initial Holders to consummate the public sale or other disposition in such jurisdictions of such securities;

(4) before filing any amendments or supplements to the Registration Statement or the Prospectus, furnish copies of all such documents proposed to be filed to the Initial Holders who shall be afforded a reasonable opportunity to review and comment thereon; provided, however, that all such documents shall be subject to the approval of the Initial Holders insofar as they relate to information concerning the Initial Holders (including, without limitation, the proposed method of distribution of any Initial Holder's securities);

(5) notify the Initial Holders promptly (A) when any such Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective, (B) of any request by the SEC or any state securities authority for amendments and supplements to such Registration Statement and the Prospectus or for additional information, (C) of the issuance by the SEC or any state securities authority of any stop order suspending the

effectiveness of any such Registration Statement or the initiation of any proceedings for the purpose, (D) it between the effective date of any such Registration Statement and the sale of the Common Shares to which it relates, GGPI receives any notification with respect to the suspension of the qualification of the Common Shares or initiation of any proceeding for such purpose, and (E) of the happening of any event during the period such Registration Statement is effective which in the judgment of GGPI makes any statement made in the Registration Statement or the Prospectus untrue in any material respect or which requires the making of any changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading;

(6) use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement at the earliest practicable time;

(7) cooperate with each Initial Holder to facilitate the timely preparation and delivery of certificates representing Common Shares being sold, which certificates shall not bear any restrictive legends, provided the Common Shares evidenced thereby have been sold in a manner permitted by the Prospectus; and

(8) upon the occurrence of any event contemplated by Section 6(c)(ii)(5)(E) hereof, promptly prepare and file a supplement or post-effective amendment to the Registration Statement or the Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Common Shares, the Prospectus will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein in light of the circumstances under which they were made, not misleading.

Notwithstanding anything to the contrary contained herein, the obligation to prepare and file the Registration Statement or any supplement or post-effective amendment thereto and any other obligations of GGPI hereunder shall be suspended if GGPI, relying upon advice of counsel, determines that disclosure of any information required to be included therein would be adverse to its interests, but such suspension shall not extend beyond 120 days with respect to any such specified event.

(iii) GGPI hereby agrees to indemnify and hold harmless each Initial Holder and each person, if any, who controls such Initial Holder (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) from and against any and all losses, claims, damages, costs and expenses (including reasonable attorneys' fees) ("Claims") to which such Initial Holder or such controlling person may become subject, under the Securities Act or otherwise, caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus or any amendment or supplement thereto, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to Make the statements therein not misleading, and shall reimburse such Initial Holder and each such

controlling person for any legal or other expenses reasonably incurred by such Initial Holder in connection with investigating or defending any such loss as such expenses are incurred; provided, however, that GGPI shall not be liable insofar as any such losses, claims, damages, costs and expenses (including reasonable attorneys' fees) are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information furnished in writing to GGPI by any Initial Holder expressly for use therein. Each Initial Holder agrees to indemnify and hold harmless GGPI and each person, if any, who controls GGPI (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) from and against any and all Claims to which GGPI or such controlling person may become subject, under the Securities Act or otherwise, caused by any untrue statement or omission or alleged untrue statement or omission based upon such information furnished in writing to GGPI by such Initial Holder.

(iv) Each Initial Holder agrees that, upon receipt of any notice from GGPI of the happening of any event of the kind described in Section 6(c)(ii)(5)(E), such Initial Holder will forthwith discontinue disposition of securities pursuant to the Registration Statement until such Initial Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 6(c)(ii)(8).

(d) No Other Exchange Rights. The Series C Preferred Units are not convertible into or redeemable or exchangeable for any other property or securities. of GGPI, the Managing Member, the Company or any other Person at the option of any holder of Series C Preferred Units except as expressly provided in this Section 6 or in that certain Debt Maintenance Agreement by and between the Company and DAI of even date herewith.

7. Transfers. Notwithstanding anything to the contrary contained in the Agreement, DAI, and any Permitted DAI Transferee (hereinafter defined) pursuant to this Section 7, may sell, assign or otherwise transfer all but not part of its Series C Preferred Units to a single Permitted DAI Transferee, without the consent of the Managing Member; provided, however, that (i) no such sale, conveyance or other transfer may be made unless the requirements of Section 8.3 of the Agreement (other than Section 8.3(b) thereof) and the second and fourth sentences of Section 8.2 of the Agreement are satisfied with respect to such sale, conveyance or other transfer, (ii) such Series C Preferred Units are held by one person for purposes of Treasury Regulation § 1.7704-1(h)(1)(ii), taking into account the "look-through" rules of Treas. Reg. § 1.7704-1(h)(3), (iii) the transferor and transferee provide the Company with representations and covenants reasonably satisfactory to the Company to assure the Company that the requirements described in (ii) above will be satisfied immediately after the transfer and at all times thereafter and (iv) the organizational documents of the proposed transferee prohibit the issuance or the transfer of any membership or other equity interests in such transferee if such transferee would thereafter be treated as owned by more than 14 persons under Treas. Reg. § 1.7704-1(h)(1), taking into account the look through rules of Treas. Reg. § 1.7704-1(h)(3). For this purpose, a "Permitted DAI Transferee" shall mean a transferee pursuant to this Section 7 that is any Person or Entity that is an Affiliate of DAI or a transferee pursuant to this Section 7 that is any Person or Entity that is an Affiliate of a Permitted DAI Transferee who was the transferee of Series C Preferred Units pursuant to this Section 7 by virtue of having itself constituted an Affiliate of DAI. In addition, DAI and each Permitted DAI Transferee respectively covenants on

behalf of themselves and their respective direct or indirect equity owners that no issuances of membership or equity interests or transfers of membership or equity interests in DAI or any DAI Permitted Transferee or any Person owning a direct or indirect equity interest in either shall be made or effective if the Series C Preferred Units held by DAI or the DAI Permitted Transferee would thereafter be treated as owned by more than 14 persons under Treas. Reg. § 1.7704-1(h)(1), taking into account the look through rules of Treas. Reg. § 1.7704-1(h)(3).

**EXHIBIT A
TO THE
THIRD AMENDED AND RESTATED OPERATING AGREEMENT
OF
GGPLP L.L.C.**

Allocations

1. Allocation of Net Income and Net Loss.

(a) Net Income. Except as otherwise provided herein, Net Income for any fiscal year or other applicable period shall be allocated in the following order and priority:

(1) First, to each Member holding Common Units in proportion to, and to the extent of, the excess of (i) the cumulative amount of Net Loss allocated with respect to such Common Units pursuant to paragraph (b)(5) below for all prior periods over (ii) the cumulative amount of Net Income allocated with respect to such Common Units pursuant to this paragraph (a)(1) for all prior periods;

(2) Second, to each Member holding Preferred Units until the cumulative Net Income allocated with respect to each Preferred Unit pursuant to this paragraph (a)(2) for such period and all prior periods equals the cumulative Net Loss allocated with respect to each such Preferred Unit pursuant to paragraph (b)(4) below for all prior periods (such allocation to be among the Members holding Preferred Units in the reverse order that such Net Loss was allocated to them);

(3) Third, to each Member holding Preferred Units in proportion to, and to the extent of, the excess of (i) the cumulative amount of accrued distributions with respect to such Preferred Units for such period and all prior periods (whether or not declared or paid) over (ii) the cumulative amount of Net Income allocated with respect to such Preferred Units pursuant to this paragraph (a)(3) for all prior periods (net of the cumulative Net Loss, if any, allocated with respect to such Preferred Units pursuant to paragraph (b)(3) hereof for all prior periods);

(4) Fourth, to each Member holding Common Units until the cumulative Net Income allocated with respect to each Common Unit pursuant to this paragraph (a)(4) for such period and all prior periods equals the cumulative Net Loss allocated with respect to each such Common Unit pursuant to paragraph (b)(2) below for all prior periods (such allocation to be among the Members holding Common Units in the reverse order that such Net Loss was allocated to them); and

(5) Thereafter, the balance of the Net Income, if any, shall be allocated among the Members holding Common Units in proportion to the number of Common Units held by them.

(b) Net Loss. Except as otherwise provided herein, Net Loss of the Company for each fiscal year or other applicable period shall be allocated as follows:

(1) First, to the Members holding Common Units, until the cumulative amount of Net Loss allocated with respect to each Common Unit under this paragraph (b)(1) for such period and all prior periods equals the cumulative amount of Net Income allocated to such Common Unit pursuant to paragraph (a)(5) for all prior periods;

(2) Second, to the holders of Common Units in proportion to the number of Common Units held by them (provided, however, that to the extent any Net Loss allocated to a Member holding Common Units under this paragraph (b)(2) would cause such Member (hereinafter, a “Restricted Member”) to have an Adjusted Capital Account Deficit as of the end of the fiscal year to which such Net Loss relates, such Net Loss shall not be allocated to such Restricted Member but shall instead, to the extent possible, be allocated to the other Member(s) holding Common Units (hereinafter, the “Permitted Members”) pro rata in accordance with the Common Units held by all Permitted Members (for this purpose, a Member’s Adjusted Capital Account Deficit shall be determined by considering only those adjustments to such Member’s capital account (including any adjustments for capital contributed) that were made in respect of the Member’s Common Units));

(3) Third, to the Members holding Preferred Units in proportion to, and to the extent of, the excess of (i) the cumulative Net Income allocated with respect to each Preferred Unit pursuant to paragraph (a)(3) hereof for all prior periods over (ii) the cumulative distributions made with respect to each such Preferred Unit pursuant to Section 5.2(b) of the Agreement for the current and all prior periods;

(4) Fourth, to the Members holding Preferred Units in proportion to the number of Preferred Units held by them (provided, however, that to the extent any Net Loss allocated to a Member holding Preferred Units under this paragraph (b)(2) would cause such Member (hereinafter, a “Restricted Preferred Member”) to have an Adjusted Capital Account Deficit as of the end of the fiscal year to which such Net Loss relates, such Net Loss shall not be allocated to such Restricted Preferred Member but shall instead, to the extent possible, be allocated to the other Member(s) holding Preferred Units (hereinafter, the “Permitted Preferred Members”) pro rata in accordance with the Preferred Units held by all Permitted Preferred Members (for this purpose, a Member’s Adjusted Capital Account Deficit shall be determined by considering only those adjustments to such Member’s capital account (including any adjustments for capital contributed) that were made in respect of the Member’s Preferred Units)); and

(5) Fifth, to the holders of Common Units in proportion to the number of Common Units held by them.

2. Special Allocations.

Notwithstanding any provisions of paragraph 1 of this Exhibit A, the following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback (Nonrecourse Liabilities). If there is a net decrease in Partnership Minimum Gain for any Company fiscal year (except as a result of conversion or

refinancing of Company indebtedness, certain capital contributions or revaluation of the Company property as further outlined in Regulation Sections 1.704-2(d)(4), (f)(2) or (f)(3)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in Partnership Minimum Gain. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(f). This paragraph (a) is intended to comply with the minimum gain chargeback requirement in said section of the Regulations and shall be interpreted consistently therewith. Allocations pursuant to this paragraph (a) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(b) Minimum Gain Attributable to Partner Nonrecourse Debt. If there is a net decrease in Minimum Gain Attributable to Partner Nonrecourse Debt during any fiscal year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly nonrecourse, certain capital contributions, or certain revaluations of Company property as further outlined in Regulation Section 1.704-2(i)(4)), each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Member's share of the net decrease in the Minimum Gain Attributable to Partner Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(i)(4) and (j)(2). This paragraph (b) is intended to comply with the minimum gain chargeback requirement with respect to Partner Nonrecourse Debt contained in said section of the Regulations and shall be interpreted consistently therewith. Allocations pursuant to this paragraph (b) shall be made in proportion to the respective amounts required to be allocated to each Member pursuant hereto.

(c) Qualified Income Offset. In the event a Member unexpectedly receives any adjustments, allocations or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This paragraph (c) is intended to constitute a "qualified income offset" under Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other applicable period shall be allocated among the Members holding Common Units in proportion to the number of Common Units held.

(e) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any fiscal year or other applicable period shall be specially allocated to the Member that bears the economic risk of loss for the debt (i.e., the Partner Nonrecourse Debt) to which such Partner Nonrecourse Deductions are attributable (as determined under Regulation Section 1.704-2(b)(4) and (i)(1)).

(f) Curative Allocations. The Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the cumulative net amount of allocations of Company items under paragraphs 1 and 2 of this Exhibit A shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not occurred. This paragraph (f) is intended to

minimize to the extent possible and to the extent necessary any economic distortions which may result from application of the Regulatory Allocations and shall be interpreted in a manner consistent therewith. For purposes hereof, “Regulatory Allocations” shall mean the allocations provided for by subsections (a) through (e) of this Section 2.

3. Tax Allocations.

(a) Generally. Subject to paragraphs (b) and (c) hereof, items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, “Tax Items”) shall be allocated among the Members on the same basis as their respective book items.

(b) Sections 1245/1250 Recapture. If any portion of gain from the sale of property is treated as ordinary income by virtue of the application of Code Sections 1245 or 1250 (“Affected Gain”), then (A) such Affected Gain shall be allocated among the Members in the same proportion that the depreciation and amortization deductions giving rise to the Affected Gain were allocated and (B) other Tax Items of gain of the same character that would have been recognized, but for the application of Code Sections 1245 and/or 1250, shall be allocated away from those Members who are allocated Affected Gain pursuant to Clause (A) so that, to the extent possible, the other Members are allocated the same amount, and type, of capital gain that would have been allocated to them had Code Sections 1245 and/or 1250 not applied. For purposes hereof, in order to determine the proportionate allocations of depreciation and amortization deductions for each fiscal year or other applicable period, such deductions shall be deemed allocated on the same basis as Net Income and Net Loss for such respective period.

(c) Allocations Respecting Section 704(c) and Revaluations; Curative Allocations Resulting from the Ceiling Rule. Notwithstanding paragraph (b) hereof, Tax Items with respect to Company property that is subject to Code Section 704(c) and/or Regulation Section 1.704-3 (collectively “Section 704(c) Tax Items”) shall be allocated in accordance with said Code Section and/or Regulation Section 1.704-3, as the case may be. The allocation of Tax Items shall be in accordance with the “traditional method” set forth in Regulation Section 1.704-3(b)(1), unless otherwise determined by the Managing Member, and shall be subject to the ceiling rule stated in Regulation Section 1.704-3(b)(1). The Managing Member is authorized to specially allocate Tax Items (other than the Section 704(c) Tax Items) to cure for the effect of the ceiling rule.

EXHIBIT 11

CERTIFICATE OF INCORPORATION
OF

This Certificate of Incorporation of _____ (the “Corporation”) is being executed by the undersigned for the purpose of forming a corporation pursuant to the Delaware General Corporation Law.

ARTICLE I

The name of the corporation is _____, Inc.

ARTICLE II

The Registered Office of the Corporation is located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its Registered Agent at that address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as amended from time to time (as amended, the “Delaware Law”).

ARTICLE IV

The total number of shares of stock which the Corporation shall have authority to issue is One Thousand (1,000) shares of common stock, no par value per share.

ARTICLE V

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors and/or the stockholders of the Corporation are expressly empowered to make, alter, amend or repeal the Bylaws of the Corporation in the manner determined by the terms of the Bylaws of the Corporation then in existence.

In the event of any conflict between this Certificate of Incorporation and the Bylaws of the Corporation, this Certificate of Incorporation shall control.

ARTICLE VI

The name and the mailing address of the sole incorporator are as follows:

NAME

MAILING ADDRESS

110 N. Wacker Drive
Chicago, Illinois 60606

ARTICLE VII

The Corporation shall have perpetual existence.

ARTICLE VIII

The Corporation shall indemnify all officers and directors of the Corporation, and advance expenses reasonably incurred by such officers and directors in defending any civil, criminal, administrative or investigative action, suit or proceeding, in accordance with and to the fullest extent permitted by Section 145 of the Delaware Law.

ARTICLE IV

To the fullest extent permitted by the Delaware Law, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Incorporation to be duly executed as of the ____ day of _____, ____.

_____, Sole Incorporator

**[AMENDED AND RESTATED]
BYLAWS
OF**

As Adopted on _____

ARTICLE I

OFFICES

Section 1. Registered Office. The Corporation shall have and maintain a registered office in the State of Delaware and a registered agent having a business office identical with such registered office.

Section 2. Other Offices. The Corporation may also have such other office or offices in the State of Delaware or elsewhere as the Board of Directors may determine from time to time or as the business of the Corporation may require.

ARTICLE II

MEETING OF STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of stockholders shall be held on the second Monday in July or, if it is a legal holiday, then on the next business day following, at 10:00 a.m. Such meeting may be held within or without the State of Delaware as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that stockholders and proxy holders may be deemed present and may participate and vote at a meeting of stockholders by means of remote communication or determine that the meeting may be held solely by means of remote communication, provided in each case that the requirements of Section 211(a)(2) of the Delaware General Corporation Law (the “Delaware Law”) are met. At such meeting the stockholders shall elect, by a plurality vote, a Board of Directors, and transact such other business as may properly be brought before the meeting. If the election of directors shall not be held on the day designated herein for an annual meeting, or any adjournment thereof, the Board of Directors shall cause the election to be held at a meeting of the stockholders as soon thereafter as may be convenient.

Section 2. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by the Delaware Law or by the Certificate of Incorporation of the Corporation (the “Certificate of

Incorporation”), may be called by the President and shall be called by the President or Secretary at the request in writing of a majority of the Board of Directors or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Such special meeting may be held within or without the State of Delaware as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the stockholders and proxy holders may be deemed present and may participate and vote at a special meeting of the stockholders by means of remote communication or determine that the meeting be held solely by means of remote communication, provided in each case that the requirements of Section 211(a)(2) of the Delaware Law are met.

Section 3. Notice. Subject to Article IX of these Bylaws, written notice of the annual or any special meeting of the stockholders shall be given to each stockholder entitled to vote thereat, not less than 10 nor more than 60 days before the date of meeting, except as otherwise provided herein or as required from time to time by the Delaware Law or the Certificate of Incorporation, unless such notice is waived in writing by each stockholder entitled thereto. In the case of a special meeting, the purpose or purposes for which the meeting is called must be stated in the notice.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and participate and vote at such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Stockholder List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, in the manner provided by

the Delaware Law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof as provided by the Delaware Law, and may be inspected by any stockholder who is present.

Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 5. Quorum. The holders of 50% of the capital stock issued and outstanding and entitled to vote at the annual or any special meeting of the stockholders, present in person or represented by proxy, shall constitute a quorum at such meeting of the stockholders for the transaction of business except as otherwise provided by the Delaware Law or the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be presented or represented, at which time any business may be transacted which might have been transacted at the meeting as originally notified. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which a different vote is required by express provision of the Delaware Law or the Certificate of Incorporation, in which case such express provision shall govern and control the decision of such question.

Section 6. Voting. Unless otherwise provided for by the Certificate of Incorporation, each Stockholder shall at every meeting of the Stockholders be entitled to one vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by the Delaware Law or the Certificate of Incorporation filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

The Corporation may and, to the extent required by the Delaware Law or the Certificate of Incorporation, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report

thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by the Delaware Law or the Certificate of Incorporation, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballot shall be counted by an inspector or inspectors appointed by the chairman of the meeting.

Section 7. Written Consent. Any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred therein unless, within sixty (60) days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in the first paragraph of this Section. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxy holder, or by a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written, signed, dated and delivered for the purposes of this Section provided that it meets the requirements of the Delaware Law.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original consent could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

ARTICLE III

DIRECTORS

Section 1. Number. The minimum number of directors which shall constitute the entire Board of Directors shall be one. The number of directors to constitute the Board of Directors shall be fixed from time to time by resolution of the Board of Directors. The directors shall be elected at the annual or special meeting of the stockholders (except as otherwise provided in Section 2 of this Article III), and each director elected shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. Directors need not be stockholders.

Section 2. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and each director so chosen shall hold office until the next annual election and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. Any such vacancy or newly created directorship may also be filled at any time by a vote of the stockholders.

Section 3. Duties of Directors. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Delaware Law, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. Annual Meetings. An annual meeting of the Board of Directors shall be held (either within or without the State of Delaware) immediately following the annual meeting of the stockholders. In the event such meeting is not held immediately following the annual meeting of the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors.

Section 5. Regular Meetings. Other regular meetings of the Board of Directors may be held (either within or without the State of Delaware) without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

Section 6. Special Meetings. Special meetings of the Board of Directors shall be held (either within or without the State of Delaware) whenever called by the President and shall be called by the President or Secretary on the written request of one-third of the directors. Notice of a special meeting shall be given to each director, in person or by mail, courier, telegram, facsimile (if receipt is confirmed electronically), or other electronic transmission of the same at his or

her last known address not less than three days prior to the date designated therein for such meeting. Said notice shall specify the time and place of such meeting.

Section 7. Quorum. At all meetings of the board, a majority of the total number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Delaware Law or the Certificate of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum shall be present.

Section 8. Voting. At all meetings of the Board of Directors, each director is to have one vote.

Section 9. Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in and act at any meeting of such Board of Directors or committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 10. Unanimous Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 11. Committees of Directors. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation, which committee, to the extent provided in the resolution and not otherwise restricted by statute, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, including the power and authority to declare dividends, and may authorize the seal of the Corporation, if any, to be affixed to all papers which may require it. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors as required by the Board of Directors. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee.

Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 12. Compensation of Directors. Unless otherwise restricted by the Delaware Law, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, for attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

OFFICERS

Section 1. Number. The officers of the Corporation shall be elected by the Board of Directors and shall include a Chief Executive Officer, a President, a Vice Chairman, a Secretary and a Treasurer. The Board of Directors also may elect one or more Vice Presidents and one or more Assistant Secretaries and Assistant Treasurers in such numbers as the Board of Directors may determine. The Board of Directors may elect such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. Any number of offices may be held by the same person. No officer need be a director of the Corporation.

Section 2. Election. The Board of Directors shall elect officers annually at its first meeting following the annual meeting of stockholders. New offices may be created and filled and any vacancy occurring in any office may be filled at any meeting of the Board of Directors.

Section 3. Compensation. The compensation of all officers of the Corporation shall be fixed by the Board of Directors.

Section 4. Term. Each of the officers of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed for or without cause at any time by the Board of Directors.

Section 5. Duties of Officers. The duties and powers of the officers shall be as follows:

Chief Executive Officer

The Chief Executive Officer, when elected, shall be responsible for formulating general policies and programs for the Corporation for submission to the Board of Directors and for carrying out the programs and policies approved by the Board of Directors.

President

The President shall be the Chief Operating Officer of the Corporation and shall be responsible for the administration and operation of the business and affairs of the Corporation. The President shall cause to be called regular and special meetings of the stockholders and Board of Directors in accordance with these Bylaws and he or she shall preside at all such meetings. He or she shall have the power to sign and deliver on behalf of the Corporation all documents and agreements. The President shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

In the absence or disability of the Chief Executive Officer, the President shall perform the duties and exercise all the powers of the Chief Executive Officer, and shall be subject to all the restrictions upon the Chief Executive Officer.

Vice Chairman

The Vice Chairman shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President may from time to time prescribe.

Vice President

The Vice President (including without limitation Executive Vice Presidents and Senior Vice Presidents) shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, the President, or such other designated officer may from time to time prescribe.

Secretary

The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He or she shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Assistant Secretary

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe.

Treasurer

The Treasurer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements and reports of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Treasurer shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Chief Executive may direct any Assistant Treasurer or any other officer to assume and perform the duties of the Treasurer in the absence of the Treasurer or because of the inability to act of the Treasurer.

Assistant Treasurer

The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there shall be no such determination, then in the order of their election), shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe.

Section 6. Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board of Directors, the President or any other officer of the Corporation authorized by the President shall have the power to vote and otherwise to act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V

STOCK CERTIFICATES

Section 1. Description. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the President or a Vice President, and countersigned by the Treasurer or Assistant Treasurer, Secretary or Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation, and sealed with the seal of the Corporation, if any. If the Corporation shall be authorized to issue more than one class of stock, or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class of stock; provided, however, that except as otherwise provided in Section 202 of the Delaware Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 2. Facsimile of Signature. The signature of any officer on a stock certificate may be by facsimile. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on any such certificate or certificates, shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates are issued, such certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation.

Section 3. Transfer of Stock. The stock of the Corporation, irrespective of class, shall be assignable and transferable on the books of the Corporation only by the person in whose name it appears on said books, or his or her legal representatives. In case of transfer by attorney, the power of attorney, duly executed and acknowledged, shall be deposited with the Secretary. In all cases of transfer, the former certificate must be surrendered up and cancelled before a new certificate is issued; however, in the event of loss, theft, mutilation or destruction of a certificate, a duplicate certificate may be issued upon such terms as the Board of Directors shall prescribe. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to

transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books, subject, however, to any restrictions or limitations on the transfer thereof which may be set forth in the Certificate of Incorporation or referred to on the certificate so surrendered or which may be imposed by law or by any agreement to which the holder of such shares is subject.

Section 4. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote or take other action as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, (except as otherwise provided herein) the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for the purpose of determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to consent to corporate action without a meeting, including by telegram, cablegram or other electronic transmission as permitted by the Delaware Law, the Board of Directors may fix a record date, which shall not precede the date upon which the

resolution fixing the record date is adopted by the Board of Directors, and which record date shall be not more than ten (10) days after the date upon which the resolution fixing the record date is adopted. If no record date has been fixed by the Board of Directors and no prior action by the Board of Directors is required by the Delaware Law, the record date shall be the first date upon which a written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner prescribed by Article II, Section 7 hereof. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the Delaware Law with respect to the proposed action by written consent of the stockholders, the record date for determining stockholders entitled to consent to corporate action in writing shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting thereof, pursuant to the Delaware Law or the Certificate of Incorporation. Dividends may be paid in cash, property or shares of capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interests of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, of committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 2. Statements and Reports. The Board of Directors shall present at each annual meeting of stockholders, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

Section 3. Checks and Notes. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other persons as the Board of Directors may from time to time determine.

ARTICLE VII

FISCAL YEAR

The fiscal year of the Corporation shall end on December 31 of each year, unless otherwise determined by the Board of Directors.

ARTICLE VIII

AMENDMENTS

These Bylaws may be altered, amended or repealed, or new by-laws may be adopted by the stockholders or the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors, or at any special meeting of the stockholders or the Board of Directors if notice of such alteration, amendment, repeal, or adoption of new by-laws is contained in the notice of such special meeting. If the power to adopt, amend or repeal by-laws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal by-laws.

ARTICLE IX

NOTICES

Section 1. Manner of Notice. Whenever notice is required to be given to any director or stockholder under the provisions of any statute, the Certificate of Incorporation or these Bylaws, it shall not be construed to require personal notice, but may be given, by first class United States mail, postage prepaid, or by prepaid telegram, telex or cable, addressed to such director or stockholder at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail or, in the case of telegrams, telex or cable, when transmitted. In addition, without limiting the manner by which the notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware Law.

Section 2. Waiver of Notice. Whenever notice is required to be given under the provisions of any statute, the Certificate of Incorporation or these Bylaws, a waiver of said notice in writing, or a waiver of said notice by electronic transmission, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE X

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Corporation shall indemnify all officers and directors of the Corporation, and shall advance expenses reasonably incurred by such officers and directors in defending any civil, criminal, administrative or investigative action, suit or proceeding, in accordance with and to the fullest extent permitted by Section 145 of the Delaware Law.

CERTIFICATE OF FORMATION

OF

_____, LLC

This Certificate of Formation of _____, LLC (the “Company”) is being executed by the undersigned for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act.

1. The name of the Company is:

_____, LLC

2. The address of the registered office of the Company in Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its Registered Agent at that address is Corporation Service Company.

3. This Certificate of Formation shall become effective upon filing.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Formation to be duly executed as of the ____ day of _____, ____.

_____ authorized to sign
this Certificate of Formation on behalf of the
Company.

OPERATING AGREEMENT OF

OPERATING AGREEMENT of _____, LLC, a Delaware limited liability company (the “Company”) dated as of _____, among _____, a _____ (“_____”) and any other Persons who may be admitted to the Company as Members (each capitalized term as defined herein).

RECITALS

WHEREAS, _____ has formed the Company under the Limited Liability Company Act of the State, as amended from time to time (the “Act”), and desires to set forth herein certain understandings regarding the Company.

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

ARTICLE I

Definitions

The following are definitions of certain terms capitalized and used throughout this Operating Agreement:

“Act” shall have the meaning set forth in the recitals.

“Affiliate” shall mean, as to any Member (or as to any other Person the affiliates of whom are relevant for purposes of any of the provisions of this Agreement), any Person controlled by, under common control with or controlling, directly or indirectly through one or more intermediaries, such Member (or such other Person).

“Agreement” shall mean this Operating Agreement as originally executed and as amended in writing from time to time. This Agreement shall constitute the limited liability company agreement of the Company, within the meaning of the Act.

“Capital Contribution” shall mean, as to any Member, the amount of cash or property contributed to the capital of the Company by such Member.

“Certificate” shall mean the certificate of formation of the Company, as the same is amended from time to time.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time (or the corresponding provisions of succeeding law).

“Committee” shall mean the Company’s management committee described in Section 5.1.

“Company” shall have the meaning set forth in the recitals.

“Entity” shall mean any partnership, corporation, trust, limited liability company, business association, court, governmental agency or other entity.

“Fiscal Year” shall mean the Company’s fiscal year, which shall be the calendar year, unless the Committee designates an alternative period as the Company’s fiscal year pursuant to Section 9.1.

“Managers” shall mean the Persons selected to serve on the Committee pursuant to Article V. Each Manager shall be deemed to be a manager within the meaning of the Act.

“Member” shall mean each of the Persons listed on Schedule A and each Person who may hereafter be admitted as an additional or substituted member of the Company in accordance with this Agreement, each in its capacity as a member of the Company.

“Officers” shall have the meaning set forth in Section 5.2.

“Person” shall mean any individual or Entity.

“State” shall mean the State of Delaware.

“Transfer” shall mean any assignment, sale, transfer, conveyance, pledge, grant of an option or other disposition or act of alienation, whether voluntary or involuntary or by operation of law.

“Unit(s)” shall mean a unit of a Member’s limited liability company interest as a Member of the Company entitling the holder to an equal share, with every other holder of a Unit, in the allocations and distributions of the Company pursuant to Article VIII, and the rights of management, consent, approval or participation, if any, granted to holders of Units as provided in this Agreement. Such interests shall be deemed “securities” under Article 8 of the Uniform Commercial Code and shall be governed by Article 8 of the Uniform Commercial Code as in effect from time to time within the State.

All other capitalized terms not specifically defined in this Agreement shall have the meanings ascribed to them in the Act.

ARTICLE II

Organization

2.1 Organization of the Company. The Company was formed as a limited liability company under the Act by filing the Certificate with the Delaware Secretary of State on _____. The rights and liabilities of the Members, except as expressly stated herein, shall be as provided in the Act.

_____ is hereby designated as an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate with the Delaware Secretary of State. Upon the filing of the Certificate on _____ with the Delaware Secretary of State, [her/his] powers as an “authorized person” ceased, and the Member thereupon became a designated “authorized person” and shall continue as the designated “authorized person” within the meaning of the Act. The Member, a Manager or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate as provided in the Act.

2.2 Name. “_____” is the name of the Company.

2.3 Principal Office. The principal office of the Company shall be located at 110 North Wacker Drive, Chicago, Illinois 60606. The location of the Company’s office may be changed from time to time by the Committee.

2.4 Registered Agent and Registered Office. The Company shall at all times maintain a registered agent and a registered office in the State as provided in the Act. The name and address of the registered office and registered agent of the Company are listed on the Certificate.

2.5 Tax Status of Company. The parties intend that the Company shall be disregarded for Federal and state income tax purposes.

ARTICLE III

Purposes and Powers

3.1 Purposes. The purposes of the Company are to, directly or indirectly, acquire, develop, redevelop, hold, operate, manage, finance, sell, dispose of or otherwise deal with real property and engage in any other lawful transaction or conduct any other lawful business for which limited liability companies may be formed under the Act.

3.2 General Powers. The Company shall have all powers granted to limited liability companies under the Act.

ARTICLE IV

Members

4.1 Limited Liability Company Interests. The names and addresses of the Members and the number of Unit(s) owned by each are set forth on attached Schedule A, which Schedule shall be revised by the Committee from time to time as necessary to reflect the admission of additional or substitute members and the withdrawal of Members in accordance with Article X.

4.2 Meetings. Meetings of the Members may be called at any time by any Member, the Committee or the President. The Member calling a meeting shall cause notice of such meeting to be given to the Members.

4.3 Place of Meeting. Unless otherwise agreed by all Members, the place of meeting shall be the principal office of the Company in the State of Illinois.

4.4 Notice of Meetings. Notice stating the place, day and hour of any meeting of Members and the purpose(s) of the meeting shall be given to each Member not less than five (5) days before the meeting. A waiver of notice in writing, signed at any time by a Member entitled to such notice, shall be deemed equivalent to the giving of such notice.

4.5 Closing of Transfer Books or Fixing of Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members or payment of distributions or for any other purpose, the Members may provide that the records relating to Transfers of Units shall be closed for a stated period not to exceed sixty (60) days. In lieu of closing such Transfer records, the Members or the Committee may fix, in advance, a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days prior to the date of such meeting or the payment of such distributions. If such Transfer records are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members or to receive payment of a distribution, the date on which notice of the meeting is mailed or on which the Members adopt a resolution to pay such distribution, as the case may be, shall be the record date for such determination of Members.

4.6 Quorum. The holders of a majority of the Units, present in person or represented by proxy, shall constitute a quorum of the Members for all purposes except in those instances where a larger number shall be required by law. If a quorum of Members is not present at any meeting, such meeting may be adjourned by those present to any day, not exceeding thirty (30) days thereafter, and no further call or notice of such adjourned meeting shall be necessary.

4.7 Voting. Each outstanding Unit shall be entitled to one vote upon each matter submitted to a vote of the Members. A Member may vote in person or by proxy appointed in writing by such Member or its duly authorized attorney-in-fact. Such proxy

shall be filed with the Company prior to the vote in question. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. The affirmative vote of the holders of a majority of the Units present in person or represented by proxy at any meeting at which there is a quorum shall be the act of the Members, unless the vote of a greater number or class thereof is required by law or this Agreement.

4.8 Action by Written Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding Units having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voting.

4.9 Telephone Meetings. Any meeting of the Members may be held, or any Member may participate in any meeting of the Members, by conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other.

4.10 Other Activities. Notwithstanding any provision at law or in equity, a Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in other investments or activities of any Member or to the income or proceeds derived therefrom.

ARTICLE V

Management

5.1 The Committee.

(a) Managers. Except as specifically provided herein, the management and control of the Company shall be vested exclusively in the Managers, who shall exercise their authority as a committee (the "Committee"). The Committee may exercise all such powers of the Company and do all such lawful acts and things as are not by the Act or by this Agreement directed or required to be exercised or done by the Members. Without limiting the foregoing, the Committee shall be responsible for the establishment of policy and operating procedures respecting the business affairs of the Company and the appointment of Officers and delegation of duties thereto as herein contemplated. The Committee shall consist of one or more Managers elected from time to time by the Members in accordance with Article IV. The Managers shall be elected at a meeting or by written consent of the Members, and each Manager elected shall hold office until his or her successor is elected and qualified, or until his or her resignation or removal. Managers need not be Members but must be at least 18 years of age. In furtherance of the foregoing, the sole Member on the date of the Agreement hereby elects each of Robert A. Michaels, Thomas H. Nolan, Jr. and

Edmund J. Hoyt as a Manager to serve until his successor is duly elected and qualified or until his earlier resignation or removal.

(b) Meetings. The Committee may hold meetings, both regular and special, either within or without the State. The first meeting of each newly elected Committee shall be held at such time and place as may be fixed by the vote of the Members at the meeting electing the Managers and no notice of such meeting shall be necessary to the newly elected Managers in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the Members to fix the time or place of such first meeting of the newly elected Committee, or in the event such meeting is not held at the time and place so fixed by the Members, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Committee, or as shall be specified in a written waiver signed by all of the Managers. Regular meetings of the Committee may be held without notice at such time and at such places as shall from time to time be determined by the Committee. Special meetings of the Committee may be called by the President upon at least two (2) days notice to each Manager; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two Managers unless the Committee consists of only one Manager, in which case special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of the sole Manager. The Committee shall cause written minutes to be prepared of all action taken by the Committee at a meeting and shall deliver a copy thereof to each Manager within thirty (30) days thereafter.

(c) Quorum and Voting. At all meetings of the Committee, a majority of the Managers shall constitute a quorum for the transaction of business and the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Committee, except as may be otherwise specifically provided in this Agreement or by the Act. If a quorum shall not be present at any meeting of the Committee, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(d) Telephonic Meetings. Managers may participate in a meeting of the Committee by means of conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other and such participation in a meeting shall constitute presence in person at the meeting.

(e) Decision of Managers by Written Consent. Any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting, if all members of the Committee consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Committee.

(f) Notice. Notice of Committee meetings shall be in writing and may be given personally (including delivery by messenger or courier service), by mail, by telegram or by facsimile, and shall be deemed given when received, except that notice sent by mail shall be deemed to be given two (2) days after deposited in the United States mail. Whenever any notice is required to be given under the provisions of this Agreement, a waiver thereof in writing, signed by the Person or Persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

(g) Delegation of Powers. The Committee may delegate its powers, but not its responsibilities, to the Officers, or to any other Person.

(h) Compensation. No Manager shall receive compensation for its services to the Company in such capacity, a fee for attendance at meetings or reimbursement of expenses of attendance at meetings.

(i) Resignation. Any Manager may resign at any time by giving written notice to the Committee.

(j) Removal. Any Manager or the entire Committee may be removed, with or without cause, by the affirmative vote of the Members in accordance with Article IV.

(k) Vacancies and New Positions. Vacancies and newly created Manager positions resulting from any increase in the authorized number of Managers may be filled by a majority of the Managers then in office or by a sole remaining Manager, and the Managers so chosen shall hold office until the next annual election and until their successors are duly elected and shall have qualified, or until his or her earlier death, resignation or removal. Any such vacancy or newly created Manager position may also be filled at any time by a vote of the Members as provided in Article IV.

5.2 Officers.

(a) Election and Term of Office. The officers of the Company (the "Officers") shall be elected by the Committee and shall be a President, a Vice President (which includes any Executive Vice President, Senior Vice President or any variation thereof for all purposes of this Agreement), a Secretary and a Treasurer. The Committee may also elect a Chairman, a Chief Executive Officer, additional Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other Officers as it shall deem necessary or desirable; provided, however, that the initial Officers are listed on Schedule B and such Persons are deemed to have been elected to the offices set forth opposite their respective names thereon without any Committee or other action. The Officers of the Company shall hold office until their successors are elected and qualified, or until they resign or are removed. Each Officer shall perform such duties as may be prescribed by the Committee or specified in this Agreement.

(b) Duties of the Chief Executive Officer. The Chief Executive Officer shall be responsible for formulating general policies and programs for the Company for submission to the Committee and for carrying out the programs and policies approved by the Committee. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(c) Duties of the President. The President shall be the chief operating officer of the Company and shall be responsible for the administration and operation of the business and affairs of the Company. The President shall cause to be called special meetings of the Committee in accordance herewith. The President shall perform such other duties and have such other powers as the Chief Executive Officer or the Committee may from time to time prescribe. In the absence or disability of the Chief Executive Officer, or in the event the Committee has not elected a Chief Executive Officer, the President shall perform the duties and exercise all the powers of the Chief Executive Officer, and shall be subject to all the restrictions upon the Chief Executive Officer. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(d) Duties of the Vice President. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Committee, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as may be prescribed by the Committee, the Chief Executive Officer or the President, under whose supervision he or she shall serve. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(e) Duties of the Secretary. The Secretary shall attend all meetings of the Committee and all meetings of the Members and record all the proceedings of the meetings of the Members and of the Committee in a book to be kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of the Members and special meetings of the Committee and shall perform such other duties as may be prescribed by the Committee from time to time. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(f) Duties of the Treasurer. The Treasurer shall have the custody of the funds and securities of the Company and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Committee. The Treasurer shall disburse the funds of the Company as may be ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and the Committee, at its regular meetings, or when the Committee so requires, an account of all of his or her transactions as Treasurer and of the financial condition of the Company. The Treasurer shall perform, in general, all the duties incident to the office of Treasurer and such other duties as may be prescribed by the Committee from time to time. If required by the Committee, the Treasurer shall give the Company a bond in such sum and with such surety or sureties as shall be satisfactory to the Committee for the faithful performance of the duties of the Office of Treasurer and for the restoration to the Committee, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Company. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(g) Duties of the Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Committee (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Committee may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(h) Duties of the Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Committee (or if there shall be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Committee may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(i) Compensation. No Officer shall receive compensation for his or her services to the Company in such capacity.

(j) Resignations. Any Officer may resign at any time by giving written notice to the Committee.

(k) Removal. Any Officer may be removed, with or without cause, at any time by the affirmative vote of the Managers in accordance with Section 5.1.

(l) Vacancies. Any vacancy occurring in any office of the Company may be filled by the Committee.

5.3 No Exclusive Duty to the Company. Notwithstanding any provision at law or in equity, no Manager or Officer shall be required to manage the Company as its sole and exclusive function. Notwithstanding any provision at law or in equity, a Manager or Officer may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in other investments or activities of any Manager or Officer or to the income or proceeds derived therefrom.

ARTICLE VI

Limitation on Liability and Indemnification

6.1 Limitation on Liability. To the fullest extent permitted by law, no Member, Manager or Officer shall be liable to the Company or any other Member for any act or omission in connection with the management of the business or affairs of the Company unless such act or omission was taken or made in bad faith or constitutes gross negligence or willful misconduct.

6.2 Indemnification of Members. The Company shall, to the fullest extent permitted by law, indemnify and hold harmless each Member, Manager and Officer against any losses, judgments, liabilities or expenses incurred in settling any claim or incurred in any finally adjudicated legal proceeding, including reasonable attorneys' fees and costs of removing any liens affecting property of the indemnitee, and/or amounts paid in settlement of any claims sustained by it arising from or relating to the Company, provided that the same were not the result of (a) actions or omissions of such Member, Manager or Officer taken or made in bad faith or which constitute gross negligence or willful misconduct or (b) actions or claims instituted by such Member, Manager or Officer (other than claims or actions seeking to enforce the indemnification obligations hereunder).

6.3 Payment of Expenses in Advance. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding, as authorized by the Members in the specific case, upon receipt of an undertaking by a Member, Manager or Officer, as the

case may be, to repay such amount unless it shall ultimately be determined that such Member, Manager or Officer is entitled to be indemnified by the Company.

6.4 Provisions Not Exclusive. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

6.5 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of the Members, Managers and/or Officers against any liability asserted against them or incurred by them in such capacity or capacities or arising out of their status as such, whether or not the Company would have the power to indemnify them against such liability under the provisions of this Article.

6.6 Continuation. The provisions of this Article shall continue as to a Person who has ceased to be a Member, Manager or Officer as to claims arising out of activities related to its prior capacity and shall inure to the benefit of its successors and obligors. The provisions of this Article also shall survive the liquidation, dissolution and termination of the Company and the termination of this Agreement and shall, to the fullest extent permitted by law, be binding on the Company's successors and assigns.

6.7 Notice of Indemnification and/or Advancement of Expenses. If the Company has indemnified and/or advanced any expenses to any Person pursuant to this Article VI, the Company shall, within 30 days of such indemnification or advancement or sooner as required by the Act, provide the Members with written notice thereof.

ARTICLE VII

Contributions and Capital Accounts

7.1 Capital Contributions.

(a) Each Member has made, or is deemed to have made, a Capital Contribution to the Company in the amount set forth in the records of the Company.

(b) No further contributions of capital to, or financial accommodations for the benefit of, the Company shall be required.

7.2 Member Loans.

(a) The Company may borrow funds from any Member for proper business purposes at any time and from time to time on such terms and conditions, including, without limitation, the rate of interest, any participation rights and any security, as the Committee deems appropriate. Any such loan shall not increase such Member's capital account, if any, but shall be a debt due

from the Company to such Member payable in accordance with its terms. In the event of default, such Member, as lender, shall be entitled to exercise and pursue all rights and remedies available to it in accordance with such terms or applicable law.

(b) Notwithstanding the foregoing, no Member shall be required to loan funds to the Company.

7.3 Interest; Priority; Return of Capital; Etc. No interest shall be paid by the Company on Capital Contributions. No Member shall be entitled to priority over any other Member, either as to a return of its Capital Contribution or as to allocations of profits, losses or distributions. No Member shall be entitled to the return of its Capital Contributions except (a) as provided for herein, (b) as required by law, (c) to the extent, if any, that distributions made pursuant to the express terms of this Agreement may be considered as such by law, or (d) upon dissolution of the Company, and then only to the extent expressly provided for in this Agreement. No Member shall have any right to demand or receive property other than cash in return for its Capital Contribution, and no Member shall have the right to withdraw or resign from the Company except as expressly provided herein.

7.4 Negative Capital Accounts. No Member shall have an obligation to the Company to restore to zero any negative balance in its capital account.

ARTICLE VIII

Allocations; Distributions

8.1 Allocation of Net Profits and Net Losses. In the event that the Company is treated as a partnership for federal and/or state income tax purposes, the profits and losses of the Company shall be allocated among the Members pro rata in accordance with the number of Units then owned by each Member in relation to the total number of Units then outstanding.

8.2 Computation and Determination. To the fullest extent permitted by law, the Members, Managers and Officers may rely upon, and shall have no liability to the Members or the Company if they rely upon, the advice of the independent public accountants retained by the Company from time to time with respect to all matters (including disputes with respect thereto) relating to computations and determinations required to be made under this Article.

8.3 Distributions. The timing and amount of distributions to the Members shall be determined by the Committee. All distributions shall be made pro rata to the Members in accordance with the number of Units then owned by each Member in relation to the total number of Units then outstanding.

ARTICLE IX

Accounting and Tax Matters

9.1 Fiscal Year. The Company's Fiscal Year shall be the calendar year or such other period as the Committee shall determine.

9.2 Tax Assessed or Amounts Withheld. Any tax assessed on the Company with respect to any Member's allocable share of the income of the Company and/or all amounts required to be withheld with respect to the income of the Company allocable to any payment or distribution to the Company or the Members pursuant to the Code or any provision of any state or local tax law, shall be treated as amounts distributed to the Members for all purposes under this Agreement. The Company may allocate any such amounts among the Members in any manner so that the capital accounts, if any, of the Member whose status gives rise to such assessment or withholding is properly debited or credited.

9.3 Books of Account and Records. The Committee shall cause proper and complete records and books of account of the Company to be kept in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is required by the Act and is customary and usual for businesses of the type engaged in by the Company. The books and records at all times shall be maintained at the principal office of the Company (and, to the extent required to be kept at the registered office, also maintained at the registered office) and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours.

9.4 Financial and Tax Information. Within ninety (90) days after the end of each Fiscal Year, the Company shall furnish to each Person who was a Member during such period financial statements of the Company and all other information necessary for the preparation of such Person's federal income tax return.

ARTICLE X

Restrictions on Transfer of Units

10.1 Transfer of Units. No Member may sell, assign, pledge or otherwise transfer or encumber any of its Units or any beneficial interest therein to any other person without the prior written consent of the other Members, if any; provided, however, that any Member shall have the right at any time or from time to time to assign some or all of its Units to an Affiliate or to a successor by sale, merger or consolidation. To the fullest extent permitted by law, any purported Transfer in violation of this Agreement shall be null and void and shall not be recognized by the Company.

10.2 Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the Committee and upon such terms and conditions as may be specifically agreed upon between the Committee and the

withdrawing Member. The provisions of Article VIII with respect to distributions upon withdrawal are exclusive and no Member shall be entitled to claim any further or different distribution upon withdrawal.

10.3 Additional Members. The Committee shall have the sole right to admit additional Members upon such terms and conditions, at such time or times, and for such capital contributions as the Committee shall in its sole discretion determine. In connection with any such admission, the Committee shall amend Schedule A hereof to reflect the name, address, capital contribution and number of Units of the additional Member.

10.4 Record Owner of Unit. The Company shall be entitled to treat the Person whose name appears on the records of the Company as the absolute owner of a Unit in the Company in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such record owner, until such time as a written assignment of such Unit has been received and accepted by the Committee and recorded on the books of the Company.

ARTICLE XI

Dissolution and Termination, Final Accounting and Distributions

11.1 Dissolution and Termination of the Company.

(a) The term of the Company shall end, and the Company shall be immediately dissolved, upon the occurrence of any of the following:

(i) The termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act;

(ii) the sale of all or substantially all assets of the Company;

(iii) the decision of the holders of a majority of the outstanding Units to dissolve; or

(iv) a decree of judicial dissolution under Section 18-802 of the Act.

(b) Upon the occurrence of any event that causes the last remaining member of the Company or the Member to cease to be a member of the Company (other than upon an assignment by such member of its entire limited liability company interest and the admission of the transferee as a member pursuant to Sections 10.1 and 10.3), to the fullest extent permitted by law, the

personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company with the rights (and only the rights) of such member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member or the Member in the Company.

(c) Upon the dissolution of the Company, no further business shall be conducted by the Company except the taking of action necessary for the winding up of the affairs of the Company and the liquidation and distribution of its assets. Actions taken by the Company to effectuate or facilitate the orderly winding up of the Company's affairs shall not be construed to involve a continuation of the Company.

11.2 Distributions After Dissolution and Termination.

(a) Upon the dissolution of the Company, the Committee shall proceed to wind-up the business of the Company. The Committee shall use its best efforts to sell such Company assets (except cash and current receivables) as are necessary to satisfy the claims of creditors or as cannot be readily divided among the Members at such prices, and on such terms, as the Committee, in the exercise of its best judgment under the circumstances then presented, deems in the best interest of the Members. To the fullest extent permitted by law, the Committee is specifically authorized to accept an installment obligation in connection with the sale of any assets of the Company if the Committee, in its sole discretion, deems it to be in the best interest of the Members. Any Member shall have the right to purchase any Company property to be sold on liquidation, provided that the terms on which such sale is made are no less favorable than would otherwise be available from third parties.

(b) In settling accounts after dissolution of the Company, the assets of the Company shall be paid to creditors of the Company and to the Members in the following order:

(i) to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof) in the order of priority as provided by law, including to the establishment of reserves for payment of creditors; and

(ii) to the Members, pro rata in accordance with the number of Units owned by them.

(c) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Agreement and (ii) the Certificate shall have been canceled in the manner required by the Act.

11.3 Additional Understandings. Notwithstanding any other provision of this Agreement, the Company shall continue as a separate legal entity until the cancellation of the Certificate in accordance with the Act.

ARTICLE XII

Amendment of Agreement

Notwithstanding anything to the contrary contained herein, this Agreement may be amended only upon the approval of the holders of all outstanding Units (and the consent of no Manager, Officer or other Person shall be required); provided, however, that any amendment that materially and adversely affects any right, power or liability of any Manager or Officer shall be prospective only unless the Person affected consents in writing thereto.

ARTICLE XIII

Miscellaneous

13.1 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given when deposited in the United States mail, first class postage prepaid, addressed to a Member at its address as it appears in the records of the Company or when delivered personally (including delivery by messenger or courier service) to the Member at such address.

13.2 Law Governing. The construction and enforcement of this Agreement shall be governed by the laws of the State (without regard to the conflicts of law principles thereof).

13.3 Representatives and Assigns. Subject to the other provisions hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, personal or legal representatives, successors and assigns.

13.4 Entire Agreement. This Agreement contains the entire understanding among the parties with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements among them, or any of them, respecting the subject matter contained herein.

13.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one document.

13.6 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance is, for any reason and to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

13.7 Construction. The Article and Section titles used in this Agreement are solely for convenience and neither modify nor limit the provisions of this Agreement. Any references herein to Articles and Sections shall be deemed to refer to the Articles and Sections hereof, as the case may be, unless otherwise specified. If the context so requires, the masculine shall include the feminine and the neuter, and the singular shall include the plural, and vice versa.

13.8 Third Party Beneficiary. No Person other than a Member shall have any legal or equitable right, remedy or claim under or in respect of this Agreement or be entitled to status as a third party beneficiary of any obligation arising under this Agreement or to enforce the obligation of any Member or the Company under this Agreement (but the Managers and Officers may enforce the provisions of Article VI as to indemnification). Notwithstanding the foregoing, or any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member.

13.9 Waiver of Action for Partition. To the fullest extent permitted by law, each Member irrevocably waives any right that it may have to maintain any action for partition with respect to the property of the Company.

13.10 Attorneys' Fees. To the fullest extent permitted by law, if any legal action, including an action for declaratory relief, is brought to enforce any provision of this Agreement, the prevailing party or parties, as the case may be, shall be entitled to recover his, its or their respective reasonable attorneys' fees from the non-prevailing party or parties, as the case may be. These fees, which may be set by the court in the same action or in a separate action brought for that purpose, are in addition to any other relief to which any prevailing party may be entitled.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has executed this Operating Agreement on the date first above written.

MEMBER: _____

By: _____
Linda J. Wight, Assistant Secretary

_____, LLC

Member

Number of Units Owned

110 North Wacker Drive
Chicago, Illinois 60606

100

**SCHEDULE B
TO
OPERATING AGREEMENT
OF
_____, LLC**

<u>Name</u>	<u>Office</u>
Adam S. Metz	Chief Executive Officer
Thomas H. Nolan, Jr.	President and Chief Operating Officer
Robert A. Michaels	Vice Chairman
Steven J. Douglas	Executive Vice President and Chief Financial Officer
Michael H. McNaughton	Executive Vice President
Ronald L. Gern	Senior Vice President and Secretary
Kathleen M. Courtis	Vice President
Linda J. Wight	Vice President and Assistant Secretary
Edmund J. Hoyt	Treasurer
Michael Chimitris	Assistant Secretary
Howard A. Sigal	Assistant Secretary
Carol A. Williams	Assistant Secretary

**STATE OF DELAWARE
CERTIFICATE OF LIMITED PARTNERSHIP**

The Undersigned, desiring to form a limited partnership pursuant to the Delaware Revised Uniform Limited Partnership Act, 6 Delaware Code, Chapter 17, do hereby certify as follows:

FIRST: The name of the limited partnership is _____
_____.

SECOND: The address of its registered office in the State of Delaware is 2711 Centerville Road, in the City of Wilmington, zip code 19808. The name of the Registered Agent at such address is Corporation Service Company.

THIRD: The name and mailing address of each general partner is as follows:

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Limited Partnership as of _____ day of _____, _____.

[Insert General Partner Name and Signature Block]

By: _____
Authorized Person

**AGREEMENT OF LIMITED PARTNERSHIP
OF**

AGREEMENT OF LIMITED PARTNERSHIP
OF

THIS AGREEMENT OF LIMITED PARTNERSHIP is made and entered into as of the _____ day of _____, _____, by and between the undersigned parties.

RECITALS:

WHEREAS, the parties hereto are forming a new Delaware limited partnership known as _____, L.P. (as the same is constituted from time to time, the “Partnership”) pursuant to the Delaware Revised Uniform Partnership Act, as amended (the “Act”) and desire to set forth herein certain understandings regarding the Partnership.

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

ARTICLE I

Definitions; Etc.

1.1 Definitions. Except as otherwise herein expressly provided, the following terms and phrases shall have the meanings set forth below:

“Act” shall mean the Delaware Revised Uniform Limited Partnership Act, as the same may be amended from time to time.

“Adjusted Capital Account Deficit” shall mean, with respect to any Partner, the deficit balance, if any, in such Partner’s Capital Account as of the end of any relevant fiscal year and after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Partner is obligated or treated as obligated to restore with respect to any deficit balance in such Capital Account pursuant to Section 1.704-1(b)(2)(ii)(c) of the Regulations, or is deemed to be obligated to restore with respect to any deficit balance pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the requirements of the alternate test for economic effect contained in Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

“Affiliate” shall mean, as to any Partner (or as to any other Person the affiliates of whom are relevant for purposes of any of the provisions of this Agreement), any Person controlled by, under common control with or controlling, directly or indirectly through one or more intermediaries, such Partner or such other Person. The term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” shall mean this Agreement of Limited Partnership, as the same may hereafter be amended, modified, supplemented or restated from time to time, as the context requires.

“Capital Account” shall mean, with respect to any Partner, the separate “book” account which the Partnership shall establish and maintain for such Partner in accordance with Section 704(b) of the Code and Section 1.704-1(b)(2)(iv) of the Regulations and such other provisions of Section 1.704-1(b) of the Regulations that must be complied with in order for the Capital Accounts to be determined in accordance with the provisions of said Regulations. In furtherance of the foregoing, the Capital Accounts shall be maintained in compliance with Section 1.704-1(b)(2)(iv) of the Regulations; and the provisions hereof shall be interpreted and applied in a manner consistent therewith. In the event that a Partnership Interest is transferred in accordance with the terms of this Agreement, the Capital Account, at the time of the transfer, of the transferor attributable to the transferred interest shall carry over to the transferee.

“Capital Contribution” means, with respect to any Partner, the amount of money and the initial fair market value of any property (less the amount of indebtedness, if any, of such Partner which is assumed by the Partnership and/or the amount of indebtedness, if any, to which such property is subject, as of the date of contribution) actually contributed to the Partnership by such Partner as well as any additional contributions actually made or deemed made by a Partner.

“Cash Flow” shall mean, with respect to any fiscal period, (a) all cash receipts of the Partnership received from any source (excluding Capital Contributions) during such period less (b) cash expended for Partnership debts and expenses (including, without limitation, capital expenditures and interest and principal payments on any indebtedness but excluding interest and principal payments on Partner loans) and reasonable operating and replacement reserves for such fiscal period, all as determined in the sole and absolute discretion of the General Partner to be

reasonably necessary in the conduct of the Partnership's business; provided, however, reserves previously set aside, shall, where and to the extent the General Partner no longer regards such reserves as necessary, be considered cash revenues of the Partnership as of the time of such determination.

"Certificate" shall mean the certificate of limited partnership of the Partnership, as the same is amended from time to time.

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

"General Partner" shall mean _____, a _____ company, its duly admitted successors and assigns, or any Person who is a general partner of the Partnership at the time of reference thereto.

"Limited Partner" shall mean _____, a _____ company, its duly admitted successors and assigns, or any Person who is a limited partner of the Partnership at the time of reference thereto.

"Liquidating Trustee" shall mean such individual as is selected by the General Partner with the written approval of the Limited Partner, which individual may include an affiliate of the General Partner. The Liquidating Trustee shall be empowered to give and receive notices, reports and payments in connection with the dissolution, liquidation and/or winding-up of the Partnership, and shall hold and exercise such other rights and powers as are necessary or required to permit all parties to deal with the Liquidating Trustee in connection with the dissolution, liquidation and/or winding-up of the Partnership.

"Net Income" or "Net Loss" shall mean, for each fiscal year or other applicable period, an amount equal to the Partnership's net taxable income or loss for such year or period determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a) of the Code shall be included in taxable income or loss), with the following adjustments: (a) by including as an item of gross income any tax-exempt income received by the Partnership and (b) by treating as a deductible expense any expenditure of the Partnership described in Section 705(a)(2)(B) of the Code (including amounts paid or incurred to organize the Partnership (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of interests in the Partnership and by treating deductions for any losses incurred in connection with the sale or exchange of Partnership property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code).

"Nonrecourse Deductions" shall, for a Partnership fiscal year, mean and refer to the net decrease in the amount of Partnership Minimum Gain during such Partnership fiscal year, and less the aggregate amount of any distributions (whether actual or deemed) during such fiscal year

of proceeds of Nonrecourse Liabilities (other than Partner Nonrecourse Deductions) that are allowable as an increase in Partnership Minimum Gain, determined in accordance with Section 1.704-2(b)(1) and (c)(2) of the Regulations.

“Nonrecourse Liabilities” shall have the meaning ascribed to it in Section 1.704-2(b)(3) of the Regulations.

“Partner Nonrecourse Deductions” shall have the meaning set forth in Section 1.704-2(i)(2) of the Regulations.

“Partners” shall mean the General Partner and the Limited Partner, their duly admitted successors or assigns, or any Person who is a partner of the Partnership at the time of reference thereto.

“Partnership” shall have the meaning set forth in the recitals.

“Partnership Interest” shall have the meaning ascribed to it in Section 10.1.

“Partnership Minimum Gain” shall have the meaning set forth in Section 1.704-2(b)(2) of the Regulations.

“Percentage Interest” shall mean, with respect to each Partner, the percentage interest of such Partner in the Partnership as set forth opposite its respective name under the heading “Percentage Interest” on Schedule A, as such schedule may be from time to time pursuant to Section 8.4.

“Person” shall mean any individual, partnership, corporation, trust, business association or other entity.

“Property” shall mean the retail shopping center and related property located in _____ and commonly known as _____.

“Regulations” means the final, temporary or proposed Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Substituted Limited Partner” shall have the meaning set forth in Section 10.1 hereof.

“Transferred Interest” shall have the meaning set forth in the recitals.

1.2 Exhibit, Etc. References to an “Exhibit” or a “Schedule” are, unless otherwise specified, to one of the Exhibits or Schedules attached to this Agreement, and references to an “Article” or a “Section” are, unless otherwise specified, to one of the Articles or Sections of this Agreement.

ARTICLE II

Continuation of Partnership

2.1 Formation of Partnership. The Partners do hereby agree to form the Partnership as a limited partnership under and pursuant to the provisions of the Act and all other pertinent laws of the State of Delaware for the purposes and upon the terms and conditions hereinafter set forth. The Partners agree that the rights and liabilities of the Partners shall be as provided in the Act except as otherwise herein expressly provided.

2.2 Documents. The Partnership shall cause such notices, instruments, documents or certificates as may be required by applicable law and which may be necessary to enable the Partnership to conduct its business and to own its properties in the Partnership name to be filed or recorded in all appropriate public offices.

2.3 Name. The business of the Partnership shall continue to be conducted under the name of “La Cantera Holding, LP” or such other name as the General Partner may select.

2.4 Character of the Business. The purpose of the Partnership shall be to own, redevelop, operate, finance, sell and otherwise deal with the Property and to engage in one or more other businesses as are permissible under the Act. The Partnership shall have all powers necessary or desirable to accomplish these purposes.

2.5 Location of the Principal Place of Business. The location of the principal place of business of the Partnership shall be at 110 North Wacker Drive, Chicago, Illinois 60606, or such other location as shall be selected from time to time by the General Partner in its sole discretion.

2.6 Registered Agent and Registered Office. The Registered Agent of the Partnership shall be Corporation Service Company or such other Person as the General Partner may select in its sole discretion. The Registered Office of the Partnership shall be 2711 Centerville Road, Suite 400, Wilmington, Newcastle County, Delaware 19808, or such other location as the General Partner may select in its sole and absolute discretion.

ARTICLE III

Term

3.1 Commencement. The Partnership previously commenced business.

3.2 Dissolution. The Partnership shall be dissolved upon the first to occur of one of the following events:

- (a) the entry of a judicial decree dissolving the Partnership;
- (b) at any time there are no limited partners of the Partnership, unless the business of the Partnership is continued in accordance with the Act;

(c) any events that result in the General Partner ceasing to be a general partner of the Partnership under the Act, *provided that* the Partnership shall not be dissolved and required to be wound up in connection with any such event if (A) at the time of the occurrence of such event there is at least one remaining general partner of the Partnership who is hereby authorized to and does carry on the business of the Partnership, or (B) within 90 days after the occurrence of such event, all partners other than the withdrawn general partner agree in writing or vote to continue the business of the Partnership and to the appointment, effective as of the date of such event, if required, of one or more additional general partners of the Partnership;

(d) the date on which all of the real property acquired by the Partnership is sold or otherwise disposed of; or

(e) the date on which the Partnership is voluntarily dissolved by the agreement of the Partners.

ARTICLE IV

Contributions to Capital

4.1 Capital Contributions. The Partners have contributed capital to the Partnership as set forth on the books and records of the Partnership.

4.2 Additional Contributions. No Partner shall be obligated to contribute any additional amounts to the Partnership.

4.3 No Third Party Beneficiary. No creditor or other third party having dealings with the Partnership shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns.

4.4 No Interest; No Return. No Partner shall be entitled to interest on any Capital Contribution to the Partnership or on such Partner's Capital Account. Except as provided herein or by law, no Partner shall have any right to demand or receive the return of its Capital Contribution to the Partnership.

ARTICLE V

Allocations of Net Income and Net Loss, Etc.

5.1 Allocation of Net Income and Net Loss.

(a) Net Income. After giving effect to the allocations set forth in Sections 5.2 and 5.3 and except as otherwise provided herein, Net Income for any fiscal year or other applicable period shall be allocated in the following order and priority:

(i) first, to the Partners, pro rata, until the aggregate of Net Income allocated to them pursuant to this Section 5.1(a)(i) for such fiscal year and all prior fiscal years is equal to the aggregate amount of Net Loss allocated to them pursuant to Section 5.1(b)(ii); and

(ii) the balance, if any to the Partners in accordance with their Percentage Interests.

(b) Net Loss. After giving effect to the allocations set forth in Sections 5.2 and 5.3 and except as otherwise provided herein, Net Loss of the Partnership for each fiscal year or other applicable period shall be allocated as follows:

(i) Net Loss of the Partnership for each fiscal year shall be allocated to the Partners in accordance with their respective Percentage Interests;

(ii) Notwithstanding Section 5.1(b)(i) above, to the extent any Net Loss allocated to a Partner under Section 5.1(b)(i) would cause such Partner to have an Adjusted Capital Account Deficit as of the end of the fiscal year to which such Net Loss relates, such Net Loss shall be allocated to the other Partner.

5.2 Special Allocations.

Notwithstanding any provisions of Section 5.1, the following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback (Nonrecourse Liabilities). If there is a net decrease in Partnership Minimum Gain for any Partnership fiscal year (except as a result of the conversion or refinancing of any Nonrecourse Liabilities, certain capital contributions, or a revaluation of the Partnership property as further outlined in Regulation Section 1.704-2(d)(4), (f)(2), or (f)(3)), each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(f). This Section 5.2(a) is intended to comply with the minimum gain chargeback requirement in said section of the Regulations and shall be interpreted consistently therewith. Allocations pursuant to this paragraph shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant hereto.

(b) Minimum Gain Attributable to Partner Nonrecourse Debt. If there is a net decrease in Minimum Gain Attributable to Partner Nonrecourse Debt during any fiscal year (other than due to the conversion, refinancing or other change in the debt instrument causing it to become partially or wholly non-recourse, certain capital contributions, or certain revaluations of Partnership property as further outlined in Regulation Section 1.704-2(i)(4)), each Partner shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to that Partner's share of the net decrease in the Minimum Gain Attributable to Partner

Nonrecourse Debt. The items to be so allocated shall be determined in accordance with Regulation Section 1.704-2(i)(4) and (j)(2). This Section 5.2(b) is intended to comply with the minimum gain chargeback requirement with respect to Partner Nonrecourse Debt contained in said section of the Regulations and shall be interpreted consistently therewith. Allocations pursuant to this paragraph shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant hereto.

(c) Qualified Income Offset. In the event that any Partner unexpectedly receives any adjustments, allocations or distributions described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such Partner has an Adjusted Capital Account Deficit, items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit as quickly as possible. This Section 5.2(c) is intended to constitute a “qualified income offset” under Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other applicable period shall be specially allocated to the Partners in accordance with their respective Percentage Interests.

(e) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any fiscal year or other applicable period shall be specially allocated to the Partner that bears the economic risk of loss for the debt (i.e., the partner nonrecourse debt) in respect of which such Partner Nonrecourse Deductions are attributable (as determined under Regulation Section 1.704-2(b)(4) and (i)(1).

(f) Section 754 Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Sections 732, 734 or 743 of the Code is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to said section of the Regulations.

5.3 Curative Allocations. Notwithstanding any other provisions of this Article V to the contrary (other than the Regulatory Allocations, as defined below, and Section 5.5 hereof), the allocations (the “Regulatory Allocations”) set forth in Section 5.2 (save subparagraphs (d) and (f)) shall be taken into account in allocating other items of income, gain, loss, and deduction among the Partners so that, to the extent possible, the cumulative net amount of allocations of Partnership items under this Article V shall be equal to the net amount that would have been allocated to each Partner if the Regulatory Allocations had not occurred. This Section 5.3 is intended to minimize to the extent possible and to the extent necessary any economic distortions which may result from application of Section 1.704-1(b) of the Regulations and shall be interpreted in a manner consistent therewith.

5.4 Other Allocation Rules. Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction, and any other allocations for any fiscal year or other applicable period shall be divided among the Partners in the same proportions as they share Net Income or Net Loss, as the case may be, for the year.

5.5 Tax Allocations.

(a) Generally. Subject to paragraphs (b) and (c) hereof, items of income, gain, loss, deduction and credit to be allocated for income tax purposes (collectively, "Tax Items") shall be allocated among the Partners on the same basis as the respective book items.

(b) Sections 1245/1250 Recapture. If any portion of gain from the sale of property is treated as gain which is ordinary income by virtue of the application of Code Sections 1245 or 1250 ("Affected Gain"), then (A) such Affected Gain shall be allocated among the Partners in the same proportion that the depreciation and amortization deductions giving rise to the Affected Gain were allocated and (B) other Tax Items of gain of the same character that would have been recognized, but for the application of Code Sections 1245 and/or 1250, shall be allocated away from those Partners who are allocated Affected Gain pursuant to Clause (A) so that, to the extent possible, the other Partners are allocated the same amount, and type, of capital gain that would have been allocated to them had Code Sections 1245 and/or 1250 not applied. For purposes hereof, in order to determine the proportionate allocations of depreciation and amortization deductions for each fiscal year or other applicable period, such deductions shall be deemed allocated on the same basis as Net Income and Net Loss for such respective period.

(c) Allocations Respecting Section 704(c) and Revaluations; Curative Allocations Resulting from the Ceiling Rule. Notwithstanding paragraph (b) hereof, Tax Items with respect to Partnership property that is subject to Code Section 704(c) and/or Regulation Section 1.704-1(b)(2)(iv)(f) (collectively "Section 704(c) Tax Items") shall, to the extent so required, be allocated in accordance with said Code section and/or Regulation Section 1.704-1(b)(4)(i), as the case may be. The allocation of Tax Items shall be subject to the ceiling rule stated in Regulation Section 1.704-1(c)(2)(i). The General Partner is authorized to specially allocate Tax Items (other than the Section 704(c) Tax Items) to cure for the effect of the ceiling rule.

ARTICLE VI

Distributions

Subject to the provisions of Section 9.2 hereof respecting distributions on the dissolution of the Partnership, the Cash Flow of the Partnership shall be distributed to the Partners, at such

times as shall be determined in the sole and absolute discretion of the General Partner, pro rata in accordance with their Percentage Interests.

ARTICLE VII

Records, Reports and Accounting

7.1 Books of Account. At all times during the continuance of the Partnership, the General Partner shall cause proper and true books of account to be kept, such books of account to be of the types usually kept by Persons engaged in a business of a like kind and character. In addition, the Partnership shall keep all records as required to be kept pursuant to the Act. The books and records of account shall be kept at the principal office of the Partnership, and each Partner shall at all reasonable times have access to such books and records and the right to inspect the same.

7.2 Annual Statements. The Partnership's books of account shall be closed promptly after the end of each fiscal year. Promptly thereafter, a written report shall be made to each Partner by the General Partner, which may include a balance sheet of the Partnership as of the end of such year, a statement of income and expenses for such year, a statement of Partners' Capital Accounts and such statements with respect to the status of the Partnership and allocation of Net Income or Net Loss and distributions thereof as shall be necessary to advise all Partners properly about their investment in the Partnership for federal income tax reporting purposes.

ARTICLE VIII

Rights, Duties and Restrictions of the General Partner

8.1 Powers and Duties of General Partner. The General Partner shall be responsible for the management of the Partnership's business and affairs and shall devote such time and effort to the Partnership as it shall deem reasonably necessary. Except as otherwise herein expressly provided, the General Partner shall have, and is hereby granted, full and complete power, authority and discretion to take such action for and on behalf of the Partnership and in its name as the General Partner shall, in its sole and absolute discretion, deem necessary or appropriate to carry out the purposes for which the Partnership was organized, including, but not limited to, the following:

(a) To manage, control, invest, reinvest, acquire by purchase, lease or otherwise, sell, contract to purchase or sell, grant, obtain, or exercise options to purchase, options to sell or conversion rights, assign, transfer, convey, deliver, endorse, exchange, pledge, mortgage, abandon, improve, repair, maintain, insure, lease for any term and otherwise deal with any and all real property of whatsoever kind and nature, and wherever situated, in furtherance of the purposes of the Partnership;

(b) To acquire real estate of any kind and of any type, and any and all kinds of interests therein, and to determine the manner in which title thereto is to be held; to manage, insure against loss, protect and subdivide any of the real estate, interests therein

or parts thereof; to improve develop or redevelop any such real estate; to participate in the ownership and development of any property; to dedicate for public use, to vacate any subdivisions or parts thereof, to resubdivide, to contract to sell, to grant options to purchase, to sell on any terms; to convey, mortgage, pledge or otherwise encumber said property, or any part thereof; to lease said property or any part thereof from time to time, upon any terms and for any period of time, and to renew or extend leases, to amend, change or modify the terms and provisions of any leases and to grant options to lease and options to renew leases and options to purchase; to partition or to exchange said real property, or any part thereof, for other real or personal property; to grant easements or charges of any kind; to release, convey or assign any right, title or interest in or about or easement appurtenant to said property or any part thereof; to construct and reconstruct, remodel, alter, repair, add to or take from buildings on said premises; to insure any person having an interest in or responsibility for the care, management or repair of such property; to direct the trustee of any land trust to mortgage, lease, convey or contract to convey the real estate held in such land trust or to execute and deliver deeds, mortgages, notes, and any and all documents pertaining to the property subject to such land trust or in any matter regarding such trust; and to execute assignments of all or any part of the beneficial interest in such land trust;

(c) To employ, engage or contract with or dismiss from employment or engagement persons deemed necessary by the General Partner for the operation and management of the Partnership business, including but not limited to, contractors, subcontractors, engineers, architects, surveyors, mechanics, consultants, accountants, attorneys, insurance brokers, real estate brokers and others;

(d) To enter into and/or assume contracts on behalf of the Partnership;

(e) To borrow money, procure loans and advances from any person for Partnership purposes, and to apply for and secure, from any person, credit or accommodations; to contract liabilities and obligations, direct or contingent and of every kind and nature with or without security; and to repay, discharge, settle, adjust, compromise, or liquidate any such loan, advance, credit, obligation or liability;

(f) To pledge, hypothecate, mortgage, assign, deposit, deliver, enter into sale and leaseback arrangements or otherwise give as security or as additional or substitute security, or for sale or other disposition any and all Partnership property, tangible or intangible, including, but not limited to, real estate and beneficial interests in land trusts, and to make substitutions thereof, and to receive any proceeds thereof upon the release or surrender thereof; to sign, execute and deliver any and all assignments, deeds and other contracts and instruments in writing; to authorize, give, make, procure, accept and receive moneys, payments, property, notices, demands, vouchers, receipts, releases, compromises and adjustments; to waive notices, demands, protests and authorize and execute waivers of every kind and nature; to enter into, make, execute, deliver and receive written agreements, undertakings and instruments of every kind and nature; to give oral instructions and make oral agreements; and generally to do any and all other acts and things incidental to any of the foregoing or with reference to any dealings or transactions which any attorney may deem necessary, proper or advisable;

(g) To acquire and enter into any contract of insurance which the General Partner deems necessary or appropriate for the protection of the Partnership, for the conservation of the Partnership's assets or for any purpose convenient or beneficial to the Partnership;

(h) To conduct any and all banking transactions on behalf of the Partnership to adjust and settle checking, savings, and other accounts with such institutions as the General Partner shall deem appropriate; to draw, sign, execute, accept, endorse, guarantee, deliver, receive and pay any checks, drafts, bills of exchange, acceptances, notes, obligations, undertakings and other instruments for or relating to the payment, of money in, into, or from any account in the Partnership's name; to execute, procure, consent to and authorize extensions and renewals of the same; and to make deposits and withdraw the same and to negotiate or discount commercial paper, acceptances, negotiable instruments, bills of exchange and dollar drafts;

(i) To demand, sue for, receive, and otherwise take steps to collect or recover all debts, rents, proceeds, interests, dividends, goods, chattels, income from property, damages and all other property, to which the Partnership may be entitled or which are or may become due the Partnership from any person or organization; to commence, prosecute or enforce, or to defend, answer or oppose, contest and abandon all legal proceedings in which the Partnership is or may hereafter be interested; and to settle, compromise or submit to arbitration any accounts, debts, claims, disputes and matters which may arise between the Partnership and any other person or organization and to grant an extension of time for the payment or satisfaction thereof on any terms, with or without security;

(j) To make arrangements for financing, including the taking of all action deemed necessary or appropriate by the General Partner to cause any approved loans to be closed;

(k) To take all reasonable measures necessary to insure compliance by the Partnership with applicable arrangements, and other contractual obligations and arrangements entered into by the Partnership from time to time in accordance with the provisions of this Agreement, including periodic reports as required to lenders and using all due diligence to insure that the Partnership is in compliance with its contractual obligations;

(l) To maintain the Partnership's books and records;

(m) To prepare budgets and forecasts with respect to the cash needs of the Partnership;

(n) To prepare and deliver, or cause to be prepared and delivered by the Partnership's accountants, (i) all financial and other reports with respect to the operations of the Partnership and (ii) all Federal and state tax returns and reports; and

(o) To pay all expenditures of the Partnership and to invest the funds of the Partnership in such interest bearing or non-interest bearing accounts, including, without

limitation, checking and savings accounts, certificates of deposit and time or demand deposits in such institutions, or in other safe and liquid investments as the General Partner shall deem appropriate.

8.2 Duties and Conflicts. The General Partner shall devote such time and efforts to the business and activities of the Partnership as the General Partner shall deem reasonably necessary to promote adequately the interests of the Partnership and the Partners. Subject to any limitations contained in the Certificate of Formation or Operating Agreement of the General Partner, each Partner recognizes that each other Partner has or may have other business interests, activities and investments, some of which may be in conflict or competition with the business of the Partnership, and that each Partner is entitled to carry on such other business interests, activities and investments. Subject to any limitations contained in the Certificate of Formation or Operating Agreement of the General Partner, each Partner may engage in any activities, whether or not competitive with the Partnership, without any obligation to offer any interest in such activities to the Partnership or to any Partner.

8.3 Authority of the General Partner. Nothing herein contained shall impose any obligation on any Person or firm doing business with the Partnership to inquire as to whether or not the General Partner has properly exercised its authority in executing any instrument on behalf of the Partnership, and any such third Person shall be fully protected in relying upon such authority.

8.4 Additional Partners; Changes in Percentage Interests. Additional partners may be admitted to the Partnership only with the prior written consent of all Partners. Schedule A shall be revised by the General Partner from time to time as necessary to reflect the admission of additional or substitute partners, the withdrawal of Partners or any other change to a Partner's Percentage Interest.

8.5 Waiver and Indemnification. Neither the General Partner nor any Person acting on its behalf, pursuant hereto, shall be liable, responsible or accountable in damages or otherwise to the Partnership or to any Partner for any acts or omissions performed or omitted to be performed by them within the scope of the authority conferred upon the General Partner by this Agreement and the Act provided that the General Partner's conduct or omission to act was taken in good faith and in the belief that such conduct or omission was in the best interests of the Partnership and, provided further, that the General Partner shall not be guilty of fraud, willful misconduct or gross negligence. Subject to the provisions of Section 8.7 hereof, the Partnership shall, and hereby does, indemnify and hold harmless the General Partner and its affiliates and any individual acting on their behalf from any loss, damage, claim or liability including, but not limited to, reasonable attorneys' fees and expenses incurred by them by reason of any act performed by them in accordance with the standards set forth above or in enforcing the provisions of this indemnity; provided, however, no Partner shall have any personal liability with respect to the foregoing indemnification liabilities, any such indemnification to be satisfied solely out of the assets of the Partnership, it being understood and agreed that a deficit balance in the Capital Account of a Partner shall not be deemed an asset of the Partnership for purposes hereof.

8.6 Tax Matters Partner. The General Partner is hereby designated as the Tax Matters Partner of the Partnership under Subchapter C of Chapter 63 as contained in subtitle F of the Code, and as such is herein referred to as the “Tax Matters Partner.” All elections permitted to be made by the Partnership under the Code shall be made in the discretion of the Tax Matters Partner.

ARTICLE IX

Dissolution, Liquidation and Winding-Up

9.1 Accounting. In the event of the dissolution, liquidation and winding-up of the Partnership, a proper accounting (which need not be certified) shall be made of the Capital Account of each Partner and of the Net Income or Net Loss of the Partnership from the date of the last previous accounting to the date of dissolution.

9.2 Distribution on Dissolution. In the event of the dissolution and liquidation of the Partnership for any reason, the assets of the Partnership shall be liquidated for distribution in the following rank and order:

- (a) Payment of creditors of the Partnership (other than Partners) in the order of priority as provided by law;
- (b) Establishment of reserves to provide for contingent liabilities, if any;
- (c) Payment of debts of the Partnership to Partners, if any, in the order of priority provided by law; and
- (d) To the Partners in accordance with their respective positive Capital Account balances, as determined after taking into account all Capital Account adjustments for the Partnership taxable year during which such liquidation occurs (other than those made pursuant to Sections 1.704-1(b)(2)(ii)(b)(2) and (3) of the Regulations), such distributions to be made by the end of such taxable year (or, if later, within ninety (90) days after the date of such liquidation).

Whenever the Liquidating Trustee reasonably determines that any reserves established pursuant to subsection (b) above are in excess of the reasonable requirements of the Partnership, the amount determined to be excess shall be distributed to the Partners in accordance with the provisions of this Section 9.2.

9.3 No Obligation to Restore Deficit Capital Account Balance. No Partner, including without limitation the General Partner, shall be obligated to restore a deficit balance in such Partner’s Capital Account.

9.4 Sale of Partnership Assets. To the extent that it is required to pay or provide for payment of Partnership debts, the Liquidating Trustee may, without the consent of the Partners,

sell Partnership property. The Liquidating Trustee shall in good faith solicit bids from unrelated third parties and obtain independent appraisals before making any sale that has not been consented to by all of the Partners. Subject to the foregoing, all sales, leases, encumbrances or transfers of Partnership assets shall be made by the Liquidating Trustee solely on an “arms-length” basis and on the best price, terms and conditions reasonably available at the time and under the circumstances.

ARTICLE X

Transfer of Partnership Interests

10.1 Restriction on Transfer. Except to the extent permitted by this Article X or as otherwise provided herein, no Partner may sell, assign, pledge, encumber or otherwise dispose of all or any portion of his or its interest in the Partnership (the “Partnership Interest”) without, in the case of a transfer by the Limited Partner, the prior written consent of the General Partner, and, in the case of a transfer by the General Partner, the prior written consent of the Limited Partner. Upon the transfer of a Partnership Interest in accordance with the provisions of this Section 10.1, the transferee Partner, in the case of a transferee General Partner, shall become vested with the powers and rights of the transferor General Partner once such transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest so acquired, and, in the case of a transferee Limited Partner, shall become a substituted limited partner entitled to all the rights and benefits of the transferee under this Agreement (the “Substituted Limited Partner”) only in accordance with the provisions of Section 10.2 hereof.

10.2 Substituted Limited Partners.

(a) The General Partner may, but need not, in its sole and absolute discretion, permit an assignee or transferee (whether such assignee or transferee has acquired its Partnership Interest by virtue of a voluntary transfer or assignment pursuant to Sections 10.1, an involuntary transfer or assignment or a transfer or assignment by operation of law) of a Partnership Interest (or a part thereof) of the Limited Partner to be and become a Substituted Limited Partner in the Partnership.

(b) Each Substituted Limited Partner, as a condition to its admission as a Substituted Limited Partner, shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner shall deem necessary or desirable to effectuate such admission and to confirm the agreement of the Substituted Limited Partner to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest acquired. All reasonable expenses, including attorneys’ fees, incurred by the Partnership in this connection shall be borne by such Substituted Limited Partner.

ARTICLE XI

Rights and Obligations of the Limited Partner

11.1 No Participation in Management. The Limited Partner shall not take part in the management of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership.

11.2 Bankruptcy, Death, Dissolution or Termination of the Limited Partner. The bankruptcy, death, dissolution or termination of the Limited Partner shall not cause a dissolution of the Partnership, but, the rights of the Limited Partner to share in the Net Income or Net Loss of the Partnership, to receive distributions of Partnership funds and to assign its Partnership Interest or cause the substitution of a Substituted Limited Partner shall, on the happening of such event, devolve on its successors or assigns, and the Partnership shall continue as a limited partnership. However, such designee(s) shall not become a Substituted Limited Partner without the prior written consent of the General Partner.

ARTICLE XII

General Provisions

12.1 Notices. All notices, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, mailed from within the United States by first class United States mail, postage prepaid, or sent by prepaid telegram or facsimile transmission (with written receipt of confirmation) to the addresses of the parties as set forth on Schedule A. The address of any party hereto may be changed by a notice in writing given in accordance with the provisions hereof.

12.2 Waiver of Right of Partition. Each of the Partners does hereby agree to and does hereby waive any right it may have to cause the Partnership's property to be partitioned or divided among the Partners, or to file a complaint or institute any proceeding at law or in equity to cause the Partnership's property to be partitioned or otherwise divided among the Partners.

12.3 Successors. This Agreement and all the terms and provisions hereof shall be binding upon and shall inure to the benefit of all Partners, and their legal representatives, heirs, successors and assigns, except as expressly herein otherwise provided.

12.4 Effect and Interpretation. This Agreement shall be governed by and construed in conformity with the laws of the State of Delaware (without regard to conflicts of laws principals thereof).

12.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

12.6 Partners Not Agents. Nothing contained herein shall be construed to constitute any Partner the agent of another Partner, except as specifically provided herein, or in any manner to limit the Partners in the carrying on of their own respective businesses or activities.

12.7 Entire Understanding; Amendments. This Agreement constitutes the entire understanding among the Partners and supersedes any prior understandings and/or written or oral agreements among them respecting the subject matter within (including, without limitation, the Original Agreement). This Agreement may only be amended in a writing signed by all Partners.

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

12.9 Assurances. Each of the Partners shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed as of the date and year first above written.

GENERAL PARTNER:

By: _____
Authorized Officer

LIMITED PARTNER:

By: _____
Authorized Officer

SCHEDULE A
TO
AGREEMENT OF LIMITED PARTNERSHIP
OF

General Partner

Percentage Interest

[Name]

____%

[Address]

Limited Partner

[Name]

____%

[Address]

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**CERTIFICATE OF TRUST
OF
[TRUST NAME]**

This Certificate of Trust of **[TRUST NAME]** (the “Trust”) dated _____, is being duly executed and filed by the undersigned trustees to form a business trust under the **[Maryland Business Trust Act/ Delaware Statutory Trust Act (Title 12 of the Delaware Code, Section 3801 et seq.)]** (the “Act”).

1. The name of the business trust formed hereby is

[TRUST NAME]

2. The resident agent of the Company in the State of **[Maryland is CSC-Lawyers Incorporating Service Company, whose present address for service of process is 7 St. Paul Street, Suite 1660, Baltimore, MD 21202/Delaware is CSC Trust Company of Delaware, Little Falls Centre One, 2711 Centerville Road, Ste. 210, Wilmington, DE 19808]**.

3. **[APPLICABLE FOR MD TRUSTS]** The principal office of the Trust in the State of Maryland is 10275 Little Patuxent Parkway, Columbia, Maryland 21044.

4. **[APPLICABLE FOR DE TRUSTS]** This Certificate has been duly executed and filed in accordance with the provisions of Title 12, Chapter 38 of the Delaware Code.

5. This Certificate of Trust shall be effective **[upon the date and time of filing/ at ____ am/pm on _____]**.

IN WITNESS WHEREOF, the undersigned, being all the Trustees of the Trust, have executed this Certificate of Trust as of the date first written above.

TRUSTEES:

**DECLARATION OF TRUST
OF
[ENTITY NAME]**

DECLARATION OF TRUST dated as of December __, 2009, among **[SHAREHOLDER NAME]**, and any other Persons who may be admitted to the Trust as Trustees.

WITNESSETH:

WHEREAS, a **[STATE]** statutory trust known as **[ENTITY NAME]** (as the same is constituted from time to time, the “Trust”) exists pursuant to the **[STATE]** Statutory Trust Code, as amended from time to time (the “Act”).

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

**ARTICLE I
THE TRUST: DEFINITIONS**

1.1 **NAME.** The name of the Trust shall be “**[ENTITY NAME]**” and so far as may be practicable the Trustees shall conduct the Trust’s activities, execute all documents and sue or be sued under that name. Under circumstances under which the Trustees determine that the use of such name is not practicable or under circumstances in which the Trustees are contractually bound to change that name, they may adopt another name under which the Trust may hold property or conduct its activities.

1.2 **PLACES OF BUSINESS;[RESIDENT TRUSTEES, APPLIES TO DELAWARE ONLY].**

(a) The Trust may have such offices or places of business within or without the State of Delaware as the Trustees may from time to time determine.

[ADD IF STATE = DELAWARE]

(b) The Trust shall have one or more Trustees who are residents of Delaware. The name and address of the Trustee on the date hereof who is a resident of Delaware is set forth in Section 2.1.

1.3 **NATURE OF TRUST.** The Trust shall be a **[STATE]** statutory trust as defined in the Act. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation or joint stock company, nor shall the Trustees or Shareholders or any of them for any purpose be, nor be deemed to be, nor be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Shareholders to the Trustees shall be solely that of Shareholders of the Trust in accordance with the rights conferred upon them by this Declaration.

1.4 **DEFINITIONS.** The terms defined in this Section 1.4 wherever used in this Declaration shall, unless the context otherwise requires, have the respective meanings hereinafter specified. Whenever the singular number is used in this

Declaration, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. Where applicable, calculations to be made pursuant to any such definition shall be made in accordance with generally accepted accounting principles as in effect from time to time except as otherwise provided in such definition.

(a) AFFILIATE. "Affiliate" shall mean, as to any Person, (i) any other Person directly or indirectly controlling, controlled by or under common control with such Person and the term "control" for the purposes of this definition means the possession directly or indirectly, of the power to direct or cause the direction of management, policies, or activities of a person or entity whether through ownership of voting securities, by contract or otherwise, (ii) any officer, director, employee, general partner or trustee of such Person or of any Person controlling, controlled by or under common control with such Person or (iii) the spouse, child or grandchild of such Person or any of the Persons referred to in clauses (i), (ii) or (iii).

(b) ANNUAL MEETING OF SHAREHOLDERS. "Annual Meeting of Shareholders" shall have the meaning set forth in Section 4.10.

(c) CERTIFICATE. "Certificate" shall mean the Certificate of Trust of the Trust, as the same may be amended and/or restated from time to time.

(d) CODE. "Code" shall mean the Internal Revenue Code of 1986, as now enacted or hereafter amended, or successor statutes.

(e) DECLARATION. "Declaration" or "this Declaration" shall mean this Declaration of Trust, as amended, restated or modified from time to time. References in this Declaration to "herein" and "hereunder" shall be deemed to refer to this Declaration and shall not be limited to the particular text, article or section in which such words appear.

(f) ACT. "Act" shall have the meaning set forth in the recitals.

(g) INDEPENDENT TRUSTEE. "Independent Trustee" shall have the meaning set forth in Article VII.

(h) LENDER. "Lender" shall have the meaning set forth in Article VII.

(i) LOAN. "Loan" shall have the meaning set forth in Article VII.

(j) LOAN AGREEMENT. "Loan Agreement" shall have the meaning set forth in Article VII.

(k) LOAN DOCUMENTS. "Loan Documents" shall have the meaning set forth in Article VII.

(l) MORTGAGE. "Mortgage" shall have the meaning set forth in Article VII.

(m) OFFICERS. "Officers" shall have the meaning set forth in Section 3.3.

(n) PERSON. "Person" shall mean an individual, corporation, partnership, estate, trust, limited liability company or other entity.

(o) **PROPERTY.** "Property" shall mean the retail shopping center and related property located in **[PROPERTY LOCATION]** and commonly known as **[PROPERTY NAME]**.

(p) **REAL ESTATE INVESTMENT.** "Real Estate Investment" shall mean any direct or indirect investment in any interest in Real Property or in any mortgage, mortgage loan, or any interest therein or in any Person whose principal purpose is to make any such investment.

(q) **REAL PROPERTY.** "Real Property" shall mean and include land, leasehold interests (including but not limited to interests of a lessor or lessee therein), rights and interests in land, and any buildings, structures, improvements, furnishings, fixtures and equipment located on or used in connection with land, leasehold interests or rights in land or interests therein, but does not include investments in mortgages, mortgage loans or interests therein.

(r) **SECURITIES.** "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire any of the foregoing. Notwithstanding anything to the contrary, to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code, the Trust will not issue nonvoting equity securities; provided, however the foregoing restriction will (a) have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Trust, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

(s) **SHAREHOLDERS.** "Shareholders" shall mean as of any particular time all holders of record of outstanding Shares at such time.

(t) **SHARES.** "Shares" shall have the meaning set forth in Section 4.1 hereof.

(u) **TRADE DEBT.** "Trade Debt" shall have the meaning set forth in Article VII.

(v) **TRANSFER.** "Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Shares or the right to vote or receive dividends on Shares (including without limitation (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Shares or (ii) the sale, transfer, gift, assignment or other disposition or grant of any securities or rights convertible into or exchangeable for Shares, or the right to vote or receive dividends on Shares), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise.

(w) **TRUST.** "Trust" shall have the meaning set forth in the recitals.

(x) **TRUST ESTATE.** "Trust Estate" shall mean as of any particular time any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to or purchased by the Trust or Trustees and all rents, income, profits

and gains therefrom and which at such time is owned or held by or for the Trust or the Trustees.

(y) TRUSTEES. "Trustees" shall mean, as of any particular time, the persons specified in Section 2.1 hereof as long as they hold office hereunder and additional and successor Trustees, and shall not include the officers, employees or agents of the Trust or the Shareholders. Nothing herein shall be deemed to preclude the Trustees from also serving as officers, employees or agents of the Trust or owning Shares.

ARTICLE II TRUSTEES

2.1 NUMBER, TERM OF OFFICE AND QUALIFICATIONS OF TRUSTEES. There shall be no fewer than two (2) nor more than twelve (12) Trustees. The Trustees and their addresses are as follows:

Thomas H. Nolan, Jr.
110 North Wacker Drive
Chicago, Illinois 60606

Robert A. Michaels
110 North Wacker Drive
Chicago, Illinois 60606

Edmund J. Hoyt
110 North Wacker Drive
Chicago, Illinois 60606

[ADD IF STATE = DELAWARE]

Michelle A. Dreyer¹
c/o Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

and those individuals listed on Schedule A as an Independent Trustee to serve until his or her successor is duly elected and qualified or until his or her earlier resignation or removal. Within the limits set forth in this Section 2.1, the number of Trustees may be increased or decreased from time to time by the Trustees or by the Shareholders. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term. Subject to the provisions of Section 2.3, each Trustee shall hold office until the next annual meeting of Shareholders and until the election and qualification of his successor. There shall be no cumulative voting in the election of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to devote their entire time to the business and affairs of the Trust.

2.2 COMPENSATION AND OTHER REMUNERATION. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as

¹ Delaware Resident Trustee

the Trustees may determine from time to time. The Trustees and Trust officers shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Subject to Sections 5.5 and 5.6, such services may include legal, accounting or other professional services, or services as a broker, transfer agent or underwriter.

2.3 RESIGNATION, REMOVAL AND INCOMPETENCY OF TRUSTEES. A Trustee may resign at any time by giving written notice to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date specified in such notice, without need for prior accounting. A Trustee may be removed at any time with or without cause by vote or consent of holders of Shares representing a majority of the total votes authorized to be cast by Shares then outstanding and entitled to vote thereon, or with cause by all remaining Trustees. A Trustee judged incompetent, or for whom a guardian has been appointed, shall be deemed to have resigned as of the date of such adjudication or appointment.

2.4 VACANCIES. If any or all the Trustees cease to be Trustees hereunder, whether by reason of resignation, removal, incapacity, death or otherwise, such event shall not dissolve or terminate the Trust or affect its continuity. Until vacancies are filled, the remaining Trustee or Trustees (even though fewer than three (3)) may exercise the powers of the Trustees hereunder. Subject to the provisions of Article VII hereof, vacancies (including vacancies created by increases in number) may be filled by the remaining Trustee or Trustees or by a majority of the remaining Trustees or by vote of the Shareholders. If at any time there shall be no Trustees in office, successor Trustees shall be elected by the Shareholders as provided in Section 4.10. Any Trustee elected to fill a vacancy created by the resignation, removal or death of a former Trustee shall hold office for the unexpired term of such former Trustee. The right, title and interest of any Trustee who ceases to be a Trustee hereunder, whether, by reason of resignation, removal, death or otherwise, shall vest in the remaining Trustees without the need for conveying documents to have been executed and delivered.

2.5 SUCCESSOR AND ADDITIONAL TRUSTEES. The right, title and interest of the Trustees in and to the Trust Estate shall also vest in successor and additional Trustees upon their qualification, and they shall thereupon have all the rights and obligations of Trustees hereunder. Such right, title and interest shall vest in the Trustees without the need for conveyancing documents to have been executed and delivered. Appropriate written evidence of the election and qualification of successor and additional Trustees shall be filed with the records of the Trust, with copies provided to the Trustees, and in such other offices or places as the Trustees may deem necessary, appropriate or desirable.

2.6 ACTIONS BY TRUSTEES. The Trustees may act with or without a meeting. Subject to the provisions of Article VII hereof, a quorum for all meetings of the Trustees shall be a majority of the Trustees; PROVIDED, HOWEVER, that, whenever pursuant to Section 5.6 or otherwise the vote of a majority of a particular group of Trustees is required at a meeting, a quorum for such meeting shall be a majority of the Trustees which shall include a majority of such group. Subject to the provisions of Article VII, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (a quorum being present)(or a majority of a particular group of Trustees as applicable) or without a meeting by written consents of a majority of the

Trustees, (or a majority of a particular group of Trustees, as applicable) *provided, however*, that no such written consent of the Independent Trustee shall be required for the validity of such action by the Trustees, which consents shall be filed with the records of meetings of the Trustees. Any action or actions permitted to be taken by the Trustees in connection with the business of the Trust may be taken pursuant to authority granted by a meeting of the Trustees conducted by a telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at the meeting and the transaction of Trust business represented thereby shall be of the same authority and validity as if transacted at a meeting of the Trustees held in person or by written consent. The minutes of any Trustees' meeting held by telephone shall be prepared in the same manner as the minutes of a meeting of the Trustees held in person. Any agreement, deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees or by any authorized person shall be valid and binding upon the Trustees and upon the Trust when authorized or ratified by action of the Trustees as provided herein (provided that the signature of an Independent Trustee must be accompanied by the signature of one of Thomas H. Nolan, Jr., Robert A. Michaels or Edmund J. Hoyt). With respect to the actions of the Trustees, Trustees who have, or are Affiliates of Persons who have, any direct or indirect interest in or connection with any matter being acted upon may be counted for all quorum purposes under this Section 2.6 and, subject to the provisions of Section 5.6, may vote on the matter as to which they or their Affiliates have such interest or connection.

2.7 COMMITTEES. The Trustees may appoint from among their number such standing committees as the Trustees determine. Each committee shall have such powers, duties and obligations as the Trustees may deem necessary or appropriate. The standing committees shall report their activities periodically to the Trustees.

ARTICLE III TRUSTEES' POWERS

3.1 POWER AND AUTHORITY OF TRUSTEES. The Trustees, subject only to the provisions of Article VII hereof and any other specific limitations contained in this Declaration, shall have, without further or other authorization, and free from any power or control on the part of the Shareholders, full, absolute and exclusive power, control and authority over the Trust Estate and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof in their own right and may do all such acts and things as in their sole judgment and discretion are necessary for or incidental to or desirable for the carrying out of or conducting the business of the Trust. Any construction of this Declaration or any determination made in good faith by the Trustees of the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive. In construing the provisions of this Declaration, presumption shall be in favor of the grant of powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid powers or the general powers or authority or any other specified power or authority conferred herein upon the Trustees.

3.2 SPECIFIC POWERS AND AUTHORITY. Subject only to the express limitations contained in this Declaration (including without limitation the provisions of Article VII hereof) and in addition to any powers and authority conferred by this Declaration or which the Trustees may have by virtue of any present or future statute or rule or law, the Trustees without any action or consent by the Shareholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

(a) to retain, invest and reinvest the capital or other funds of the Trust in, and to acquire, purchase, or own, real or personal property of any kind (including without limitation Securities of any Person) wherever located in the world, and make commitments for such investments, all without regard to whether any such property is authorized by law for the investment of trust funds or produces or may produce income and to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Estate; and to increase the capital of the Trust at any time by the issuance of any additional Shares or other Securities of the Trust for such consideration as they deem advisable;

(b) without limitation of the powers set forth in paragraph (a) above, to invest in, purchase or otherwise acquire for such consideration as they deem proper, in cash or other property or through the issuance of Shares or through the issuance of notes, debentures, bonds or other obligations of the Trust, and to hold for investment, the entire or any participating interests in any mortgage loans, or interests in Real Property, including ownership of, or participations in the ownership of, or rights to acquire, equity interests in Real Property or in Persons owning, developing, improving, operating or managing Real Property, which interests may be acquired independently of or in connection with other investment activities of the Trust and, in the latter case, may include rights to receive additional payments based on gross income or rental or other income from the Real Property or improvements thereon; to invest in loans secured by the pledge or transfer of mortgage loans; to develop, operate, pool, utilize, grant production payments out of or lease or otherwise dispose of mineral, oil and gas properties and rights;

(c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any and all the Trust Estate by deeds (including without limitation deeds in lieu of foreclosure), trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or nominee of the Trust, provided that no disposition of a Real Estate Investment shall be accomplished without the approval of a majority of the Trustees;

(d) to issue Shares, bonds, debentures, notes or other evidences of indebtedness which may be secured or unsecured and may be subordinated to any indebtedness of the Trust to such Persons for such cash, property or other consideration (including without limitation Securities issued or created by, or interests in

any Person) at such time or times and on such terms as the Trustees may deem advisable and to list any of the foregoing Securities issued by the Trust on any securities exchange and to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any of such Securities, and to cause the instruments evidencing such Securities to bear an actual or facsimile imprint of the seal of the Trust and to be signed by manual or facsimile signature or signatures (and to issue such Securities, whether or not any Person whose manual or facsimile signature shall be imprinted thereon shall have ceased to occupy the office with respect to which such signature was authorized), provided that, where only facsimile signatures for the Trust are used, the instrument shall be countersigned manually by a transfer agent, registrar or other authentication agent. Any of such Securities of different types may be issued in combinations or units with such restrictions on the separate transferability thereof as the Trustees shall determine;

(e) to enter into leases or subleases of real and personal property as lessor or lessee and to enter into contracts, obligations and other agreements for a term, extending beyond the term of office of the Trustees and beyond the possible dissolution of the Trust, or having a lesser term;

(f) to borrow money and give negotiable or non-negotiable instruments therefor; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interests in, encumber or hypothecate the Trust Estate to secure any indebtedness of the Trust or any other of the foregoing obligations of the Trust;

(g) to lend money, whether secured or unsecured;

(h) to create reserve funds for any purpose;

(i) to incur and pay out of the Trust Estate any charges or expenses, and disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including without limitation taxes and other governmental levies, charges and assessments, of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the Trust Estate or any part thereof, and for any of the purposes herein;

(j) to deposit funds of the Trust in banks, trust companies, savings and loan associations and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including any one or more Trustees, officers, employees or agents) as the Trustees may determine;

(k) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any mortgages or Securities issued or created by, or interests in, any Person, forming part of the Trust Estate, to the same extent that an individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of

attorney may be for meetings or actions generally or for any particular meeting or action, and may include the exercise of discretionary powers;

(l) to cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire the Trust Estate or any part or parts thereof or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer the Trust Estate or any part or parts thereof to or with any such Person or any existing Person in exchange for the Securities thereof or otherwise, and to merge or consolidate the Trust with or into any Person or merge or consolidate any Person into the Trust, and to lend money to, subscribe for the Securities of, and enter into any contracts with, any Person in which the Trust holds or is about to acquire Securities or any other interest;

(m) to enter into joint ventures, general or limited partnerships, participation or agency arrangements and any other lawful combination or associations;

(n) to elect, appoint, engage or employ such officers for the Trust as the Trustees may determine, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms, as may be prescribed by the Trustees; to engage or employ any Persons (including, without limitation, subject to the provisions of Sections 5.5 and 5.6, any Trustee, officer or agent and any Person in which any Trustee, officer or agent is directly or indirectly interested or with which he is directly or indirectly connected) as agents, representatives, employees or independent contractors (including, without limitation, real estate advisors, investment advisors, transfer agents, registrars, underwriters, accountants, attorneys at law, real estate agents, managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Person may be so engaged or employed; and to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons;

(o) to determine whether moneys, Securities or other assets received by the Trust shall be charged or credited to income or capital or allocated between income and capital, including the power to amortize or fail to amortize any part or all of any premium or discount, to treat any part or all the profit resulting from the maturity or sale of any asset whether purchased at a premium or at a discount, as income or capital, or apportion the same between income and capital, to apportion the sales price of any asset between income and capital, and to determine in what manner any expenses or disbursements are to be borne as between income and capital, whether or not in the absence of the power and authority conferred by this subsection such moneys, Securities or other assets would be regarded as income or as capital or such expense or disbursement would be charged to income or to capital, to treat any dividend or other distribution on any investment as income or capital or apportion the same between income and capital; to provide or fail to provide reserves for depreciation, amortization or obsolescence in respect of all or any part of the Trust Estate subject to depreciation, amortization or obsolescence in such amounts and by such methods as they shall determine; and to determine the method or form in which the accounts and records of the Trust shall be kept and to change from time to time such method or form;

(p) to determine or cause to be determined from time to time the value of all or any part of the Trust Estate and of any services, Securities, property or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue or cause to be revalued all or any part of the Trust Estate in accordance with such appraisals or other information as are in the Trustees' sole judgment, necessary and/or satisfactory;

(q) to collect, sue for, and receive all sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compound, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Trust, the Trust Estate or the Trust's affairs, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof;

(r) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust or participate in any reorganization of obligors to the Trust;

(s) to purchase and pay for out of the Trust Estate insurance contracts and policies insuring the Trust Estate against any and all risks and insuring the Trust and/or all or any of the Trustees, the Shareholders, officers, employees or agents against any and all claims and liabilities of every nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, Shareholders, officers, employees or agents;

(t) to cause legal title to any of the Trust Estate to be held by and/or in the name of the Trustees, or except as prohibited by law by and/or in the name of the Trust or one or more of the Trustees or any other Person, on such terms, in such manner, with such powers in such Person as the Trustees may determine, and with or without disclosure that the Trust or Trustees are interested therein;

(u) to adopt a fiscal year for the Trust, and from time to time to change such fiscal year;

(v) to adopt and use a seal (but the use of a seal shall not be required for the execution of instruments or obligations of the Trust);

(w) to the extent permitted by law, to indemnify or enter into agreements with respect to indemnification with any Person with which the Trust has dealings, including without limitation any investment advisor or independent contractor, to such extent as the Trustees shall determine;

(x) to confess judgment against the Trust;

(y) to discontinue the operations of the Trust;

(z) to repurchase or redeem Shares; and

(aa) to do all other such acts and things as are incident to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust and to carry out the provisions of this Declaration, including, without limitation, all powers of directors of a **[STATE]** business corporation.

3.3 OFFICERS.

(a) Election and Term of Office. The officers of the Trust (the “Officers”) shall be elected by the Trustees and shall be a Chief Executive Officer, a President, a Vice President (which includes any Executive Vice President, Senior Vice President or any variation thereof for all purposes of this Agreement), a Secretary and a Treasurer. The Trustees may also elect a Chairman, additional Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other Officers as it shall deem necessary or desirable; provided, however, that the initial Officers are listed on Schedule B and such Persons are deemed to have been elected to the offices set forth opposite their respective names thereon without any Trustee or other action. The Officers of the Trust shall hold office until their successors are elected and qualified, or until they resign or are removed. Each Officer shall perform such duties as may be prescribed by the Trustees or specified in this Agreement.

(b) Duties of the Chief Executive Officer. The Chief Executive Officer shall be responsible for formulating general policies and programs for the Trust for submission to the Trustees and for carrying out the programs and policies approved by the Trustees. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(c) Duties of the President. The President shall be the chief operating officer of the Trust and shall be responsible for the administration and operation of the business and affairs of the Trust. The President shall cause to be called special meetings of the Trustees in accordance herewith. The President shall perform such other duties and have such other powers as the Chief Executive Officer or the Trustees may from time to time prescribe. In the absence or disability of the Chief Executive Officer, the President shall perform the duties and exercise all the powers of the Chief Executive Officer, and shall be subject to all the restrictions upon the Chief Executive Officer. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(d) Duties of the Vice President. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Trustees, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as may be prescribed by the Trustees, the Chief Executive Officer or the President, under whose supervision he or she shall serve. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(e) Duties of the Secretary. The Secretary shall attend all meetings of the Trustees and all meetings of the Members and record all the proceedings of the meetings of the Members and of the Trustees in a book to be kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of

the Members and special meetings of the Trustees and shall perform such other duties as may be prescribed by the Trustees from time to time. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(f) Duties of the Treasurer. The Treasurer shall have the custody of the funds and securities of the Trust and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Trust and shall deposit all moneys and other valuable effects in the name and to the credit of the Trust in such depositories as may be designated by the Trustees. The Treasurer shall disburse the funds of the Trust as may be ordered by the Trustees, taking proper vouchers for such disbursements, and shall render to the President and the Trustees, at its regular meetings, or when the Trustees so requires, an account of all of his or her transactions as Treasurer and of the financial condition of the Trust. The Treasurer shall perform, in general, all the duties incident to the office of Treasurer and such other duties as may be prescribed by the Trustees from time to time. If required by the Trustees, the Treasurer shall give the Trust a bond in such sum and with such surety or sureties as shall be satisfactory to the Trustees for the faithful performance of the duties of the Office of Treasurer and for the restoration to the Trustees, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Trust. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(g) Duties of the Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Trustees (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Trustees may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(h) Duties of the Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Trustees (or if there shall be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Trustees may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Trust all documents and agreements.

(i) Compensation. No Officer shall receive compensation for his or her services to the Trust in such capacity.

(j) Resignations. Any Officer may resign at any time by giving written notice to the Trustees.

(k) Removal. Any Officer may be removed, with or without cause, at any time by the affirmative vote of the Managers in accordance with Section 5.1.

(l) Vacancies. Any vacancy occurring in any office of the Trust may be filled by the Trustees.

ARTICLE IV THE SHARES AND SHAREHOLDERS

4.1 DESCRIPTION OF SHARES. Subject to the provisions of Article VII hereof, the beneficial interest in the Trust shall be divided into an unlimited number of transferable shares of beneficial interest which shall have a par value per share of \$0.10, be evidenced by certificates and known as "Shares". All Shares issued hereafter shall be fully paid and nonassessable by the Trust upon receipt of full consideration for which they have been issued or without additional consideration if issued by way of share dividend or share split. Each holder of Shares shall as a result thereof be deemed to have agreed to and be bound by the terms of this Declaration. Shares may be issued for such consideration as the Trustees shall deem advisable.

No Shares shall be entitled to any preemptive rights. No holder of Shares shall be entitled as a matter of right to subscribe for or purchase any part of any new or additional issue of Shares of any class whatsoever of the Trust, or of securities convertible into any Shares of any class whatsoever of the Trust, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

4.2 RIGHTS, POWERS AND LIMITATIONS OF SHARES.

(a) DIVIDEND RIGHTS. The holders of Shares shall be entitled to receive such dividends as may be declared by the Trustees out of funds legally available therefor.

(b) RIGHTS UPON LIQUIDATION. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Trust, each holder of Shares shall be entitled to receive, ratably with each other holder of Shares, that portion of the assets of the Trust available for distribution to the holders of its Shares, as the number of Shares held by such holder bears to the total number of Shares then outstanding.

(c) VOTING RIGHTS. The holders of Shares shall have the right to vote on all matters (for which Shareholders shall be entitled to vote thereon) at all meetings of Shareholders of the Trust, and shall be entitled to one vote for each Share.

(d) LEGEND. Any certificate evidencing Shares shall be stamped or endorsed with a legend in substantially the following form:

THE SHARES OF BENEFICIAL INTEREST REPRESENTED BY THIS
CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE
SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE
SECURITIES LAWS, AND ACCORDINGLY NEITHER SUCH SHARES
NOR ANY INTEREST THEREIN MAY BE SOLD, TRANSFERRED,
PLEDGED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF

SUCH REGISTRATION OR ANY EXEMPTION THEREFROM UNDER SAID ACT AND ANY SUCH LAWS APPLICABLE THERETO AND THE RULES AND REGULATIONS THEREUNDER.

4.3 CERTIFICATES. Ownership of Shares shall be evidenced by certificates. Every Shareholder shall be entitled to receive a certificate, in such form as the Trustees shall from time to time approve, specifying the number and class of Shares held by such Shareholder. Such certificates shall be treated as negotiable and title thereto and to the Shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a stock certificate, and the shares represented thereby, of a **[STATE]** business corporation. Unless otherwise determined by the Trustees, such certificates shall be signed by the President or any Vice President and the Secretary or any Assistant Secretary, and such signatures may be facsimile signatures in accordance with Section 3.2(d) hereof.

4.4 FRACTIONAL SHARES. In connection with any issuance of Shares, the Trustees may issue fractional Shares or may provide for the issuance of scrip including, without limitation, the time within which any such scrip must be surrendered for exchange into full Shares and the rights, if any, of holders of scrip upon the expiration of the time so fixed, the rights, if any, to receive proportional distributions, and the rights, if any, to redeem scrip for cash, or the Trustees may in their discretion, or if they see fit at the option of each holder, provide in lieu of scrip for the adjustment of the fractions in cash. The provisions of Section 4.3 hereof relative to certificates for Shares shall apply so far as applicable to such scrip.

4.5 LEGAL OWNERSHIP OF TRUST ESTATE. The legal ownership of the Trust Estate and the right to conduct the business of the Trust are vested exclusively in the Trustees (subject to Section 3.2(t)), and the Shareholders shall have no interest therein other than beneficial interest in the Trust conferred by their Shares issued hereunder and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the Trust Estate.

4.6 SHARES DEEMED PERSONAL PROPERTY. The Shares shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth or provided for in this Declaration. The death, dissolution, liquidation, insolvency, bankruptcy or incapacity of a Shareholder shall not dissolve or terminate the Trust or affect its continuity nor give his legal representative any rights whatsoever, whether against or in respect of other Shareholders, the Trustees or the Trust Estate or otherwise except the sole right to demand and, subject to the provisions of this Declaration and any requirements of law, receive a new certificate for Shares registered in the name of such legal representative, in exchange for the certificate held by such Shareholder.

4.7 SHARE RECORD; ISSUANCE AND TRANSFERABILITY OF SHARES. Records shall be kept by or on behalf of and under the direction of the Trustees, which shall contain the names and addresses of the Shareholders, the number of Shares held by them respectively, and the numbers of the certificates representing the Shares, and in which there shall be recorded all transfers of Shares. The Trust, the Trustees and the officers, employees and agents of the Trust shall be entitled to deem the Persons in whose names certificates are registered on the records of the Trust to be the absolute

owners of the Shares represented thereby for all purposes of this Declaration; but nothing herein shall be deemed to preclude the Trustees or officers, employees or agents of the Trust from inquiring as to the actual ownership of Shares. Until a transfer is duly affected on the records of the Trust, the Trustees shall not be affected by any notice of such transfer, either actual or constructive.

Subject to the provisions of Article VII hereof, shares shall be transferable on the records of the Trust only by the record holder thereof or by his agent thereunto duly authorized in writing upon delivery to the Trustees of the certificate or certificates therefor, properly endorsed or accompanied by duly executed instruments of transfer and accompanied by all necessary documentary stamps together with such evidence of the genuineness of each such endorsement, execution or authorization and of other matters as may reasonably be required by the Trustees. Upon such delivery, the transfer shall be recorded in the records of the Trust and a new certificate for the Shares so transferred shall be issued to the transferee and in case of a transfer of only a part of the Shares represented by any certificate, a new certificate for the balance shall be issued to the transferor. Any Person becoming entitled to any Shares in consequence of the death of a Shareholder or otherwise by operation of law shall be recorded as the holder of such Shares and shall receive a new certificate therefor but only upon delivery to the Trustees of instruments and other evidence required by the Trustees to demonstrate such entitlement, the existing certificate for such Shares and such releases from applicable governmental authorities as may be required by the Trustees. In case of the loss, mutilation or destruction of any certificate for Shares, the Trustees may issue or cause to be issued a replacement certificate on such terms and subject to such rules and regulations as the Trustees may from time to time prescribe. Nothing in this Declaration shall impose upon the Trustees a duty or limit their rights to inquire into adverse claims.

4.8 DIVIDENDS OR DISTRIBUTIONS TO SHAREHOLDERS. The Trustees may from time to time declare and pay to Shareholders such dividends or distributions in cash, property or assets of the Trust or Securities issued by the Trust, out of current or accumulated income, capital, capital gains, principal, surplus, proceeds from the increase or financing or refinancing of Trust obligations, or from the sale of portions of the Trust Estate or from any other source as the Trustees in their discretion shall determine. Shareholders shall have no right to any dividend or distribution unless and until declared by the Trustees.

4.9 TRANSFER AGENT, DIVIDEND DISBURSING AGENT AND REGISTRAR. The Trustees shall have power to employ one or more transfer agents, dividend disbursing agents and registrars and to authorize them on behalf of the Trust to keep records, to hold and to disburse any dividends or distributions, and to have and perform, in respect of all original issues and transfers of Shares, dividends and distributions and reports and communications to Shareholders, the powers and duties usually had and performed by transfer agents, dividend disbursing agents and registrars of a [STATE] business corporation.

4.10 SHAREHOLDERS' MEETINGS. There shall be an annual meeting of the Shareholders on the second Monday in July of each year, at which the Trustees shall be elected and any other proper business may be conducted (the "Annual Meeting of

Shareholders"). Special meetings of Shareholders may be called by the President or by a majority of the Trustees and shall be called by the President upon the written request of Shareholders holding in the aggregate not less than ten percent (10%) of the total votes authorized to be cast by the outstanding Shares of the Trust entitled to vote at such meeting. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders entitled to vote for the election of successor Trustees. Notice of any special meeting shall state the purpose of the meeting. Upon receipt of a written request either in person or by registered mail stating the purpose of a special meeting requested by Shareholders, the Trust shall provide all Shareholders, within ten (10) business days after receipt of said request, written notice of such special meeting and the purpose of such special meeting to be held on a date not less than twenty (20) nor more than sixty (60) days after receipt of said request, at a time and place convenient to Shareholders.

The holders of Shares entitled to vote at the meeting representing a majority of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote on any question present in person or by proxy shall constitute a quorum at any such meeting for action on such question. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, whether or not a quorum is present, and the meeting may be reconvened without further notice. At any reconvened session of the meeting at which there shall be a quorum, any business may be transacted at the meeting as originally noticed.

Whenever any action is to be taken by the Shareholders, it shall, except as otherwise clearly indicated in this Declaration, require, and may be effected by, the affirmative vote of the holders of a majority of the Shares present or represented and entitled to vote and voting on such matter, provided that such majority shall be at least a majority of the number of Shares required to constitute a quorum for action on such matter. Any election of Trustees by Shareholders shall be determined by a plurality of the votes cast by the Shareholders entitled to vote at the election. No ballot shall be required for such election unless requested by a Shareholder present or represented at the meeting and entitled to vote in the election.

Whenever Shareholders are required or permitted to take any action, such action may be taken without a meeting by written consents setting forth the action so taken, signed by the holders of a majority (or such higher percentage as may be specified elsewhere in this Declaration) of the outstanding Shares that would be entitled to vote thereon at a meeting.

Except with respect to matters on which a Shareholders' vote shall be required for or shall determine action of the Trustees as expressly set forth in this Declaration, no action taken by the Shareholders at any meeting shall in any way bind the Trustees.

4.11 PROXIES. Whenever the vote or consent of a Shareholder entitled to vote is required or permitted under this Declaration, such vote or consent may be given either directly by such Shareholder or by a proxy in the form prescribed by the Trustees. The Trustees may solicit such proxies from the Shareholders or any of them entitled to vote in any matter requiring or permitting the Shareholders' vote or consent. No proxy for any meeting of Shareholders entitled to vote shall be effective unless such proxy

shall have been placed on file with such officer of the Trust as the Trustees shall have designated for such purposes for verification prior to such meeting.

4.12 **FIXING RECORD DATE.** The Trustees may fix, in advance, a date as the record date for determining the Shareholders entitled to notice of or to vote at any meeting of Shareholders or to express consent to any proposal without a meeting or for the purpose of determining Shareholders entitled to receive payment of any dividend or distribution (whether before or after dissolution of the Trust) or other communication from the Trustees, or for any other purpose. Except otherwise provided herein, the record date so fixed shall be not less than five (5) days nor more than sixty (60) days prior to the date of the meeting or event for the purpose of which it is fixed.

4.13 **NOTICE TO SHAREHOLDERS.** Any notice of meeting or other notice, communication or report to any Shareholder shall be deemed duly delivered to such Shareholder when such notice, communication or report is deposited, with postage thereon prepaid in the United States mail, addressed to such Shareholder at his address as it appears on the records of the Trust or is delivered in person to such Shareholder.

ARTICLE V LIABILITY OF TRUSTEES, SHAREHOLDERS, OFFICERS, EMPLOYEES AND AGENTS AND OTHER MATTERS

5.1 **EXCULPATION OF TRUSTEES, OFFICERS AND OTHERS.** No Trustee, officer, agent or employee shall be personally liable to the Trust or its Shareholders for monetary damages for breach of fiduciary duty by such Person as a Trustee, officer, employee or agent notwithstanding any provision of law imposing such liability, except to the extent provided by applicable law for liability (a) for breach of such Person's duty of loyalty to the Trust or its Shareholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, or (c) for any transaction from which such Person derived an improper personal benefit.

5.2 **LIMITATION OF LIABILITY OF SHAREHOLDERS, TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS.** The Trustees, officers, employees and agents of the Trust in incurring any debts, liabilities or obligations or in taking or omitting any other actions for or in connection with the Trust are, and shall be deemed to be, acting as Trustees, officers, employees or agents of the Trust and not in their own individual capacities. The Trustees shall have no power to bind the Shareholders personally, or to call upon them for the payment of any money or any assessment whatsoever other than such sums as the Shareholders may at any time personally agree to pay for new Shares to be acquired from the Trust. No Shareholder and, except to the extent provided in Section 5.1, no Trustee, officer, employee or agent shall be liable for (a) any debt, liability or obligation of any kind of, or with respect to, the Trust or (b) any claim, demand, judgment or decree against the Trust (in any such case in tort, contract or otherwise) arising out of any action taken or omitted for or on behalf of the Trust and the Trust shall be solely liable therefor and resort shall be had solely to the Trust Estate for the payment or performance thereof, and no Shareholder and, except as aforesaid, no Trustee, officer, employee or agent shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other Person or Persons in connection with the Trust Estate or the affairs of the Trust (or any actions taken or

omitted for or on behalf of the Trust), and all such other Persons shall look solely to the Trust Estate for satisfaction of claims of any nature arising in connection with the Trust Estate or the affairs of the Trust (or any action taken or omitted for or on behalf of the Trust). Each Shareholder shall be entitled to pro rata indemnity from the Trust Estate if, contrary to the provisions hereof, such Shareholder shall be held to any personal liability.

5.3 EXPRESS EXCULPATORY CLAUSES AND INSTRUMENTS. Any written instrument creating an obligation of the Trust shall include a reference to this Declaration and provide that neither the Shareholders nor the Trustees nor officers, employees or agents of the Trust shall be liable thereunder and that all Persons shall look solely to the Trust Estate for the payment of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the Shareholders or any Trustee, officer, employee or agent of the Trust liable nor shall the Trustees or any officer, employee or agent of the Trust be liable to anyone for such omission.

5.4 INDEMNIFICATION AND REIMBURSEMENT OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS. Subject to the provisions of Section 5.10 hereof, the present and former Trustees, officers, employees, agents and Affiliates of the Trust (or any person who serves or served, at the Trust's request, as a director, officer, employee or agent of another organization or who serves or served at the Trust's request in any capacity with respect to any employee benefit plan) shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by them in connection with service in such capacity, except, in the case of each such Person, to the extent that such losses, judgments, liabilities, expenses and amounts paid in settlement were the result of gross negligence or willful misconduct on the part of such Person for which such Person would have liability under Section 5.1, and PROVIDED, that such Person gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense or settlement thereof. In the event of a settlement approved by the Trustees of any such claim, alleged liability, action, suit or proceeding, indemnification and reimbursement shall be provided except as to such matters covered by the settlement that arose out of or are based upon such Person's gross negligence or willful misconduct. Such rights of indemnification and reimbursement shall be satisfied only out of the Trust Estate. The Trust shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited. The rights accruing to any Person under these provisions shall not exclude any other right to which he may be lawfully entitled, nor shall anything contained herein restrict such Person's right to contribution as may be available under applicable law. The Trust shall provide advances to any such Person for legal expenses and other costs related to a claim which may be indemnified hereunder, provided that such Person undertakes to repay the advanced funds to the Trust in cases where it is determined that such Person was not entitled to such indemnification.

Any action taken by or conduct on the part of a Trustee, officer, employee or agent of the Trust in conformity with or in good faith reliance upon the provisions of Section 5.5 and 5.6 shall not, for the purposes of this Declaration (including without

limitation Sections 5.1, 5.2 and 5.3 and this Section 5.4) constitute negligence or misconduct.

5.5 RIGHT OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS TO OWN SHARES OR OTHER PROPERTY AND TO ENGAGE IN OTHER BUSINESS. Any Trustee or officer, employee or agent of the Trust may acquire, own, hold and dispose of Shares in the Trust, for his individual account, and may exercise all rights of a Shareholder to the same extent and in the same manner as if he were not a Trustee or officer, employee or agent of the Trust. Any Trustee or officer, employee or agent of the Trust may, in his personal capacity or in the capacity of trustee, officer, director, stockholder, partner, member, adviser or employee of any Person or otherwise, have business interests and engage in business activities similar to or in addition to those relating to the Trust, which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for his own account or for the account of such Person or others, of interests in Real Property, or interests in Persons engaged in the real estate business. Each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity which comes to him in any capacity other than solely as Trustee, officer, employee or agent of the Trust, even if such opportunity is of a character which, if presented to the Trust, could be taken by the Trust. Subject to the provisions of 5.6, any Trustee or officer, employee or agent of the Trust may be interested as trustee, officer, director, stockholder, partner, member, adviser or employee of, or otherwise have a direct or indirect interest in, any Person who may be engaged to render advice or services to the Trust, and may receive compensation from such Person as well as compensation as Trustee, officer, employee or agent or otherwise hereunder.

5.6 TRANSACTIONS BETWEEN TRUSTEES, OFFICERS, EMPLOYEES OR AGENTS AND THE TRUST. Subject to the provisions of Article VII hereof, in the absence of fraud, a contract, act or other transaction, between the Trust and any other Person, or in which the Trust is interested, shall be valid and no Trustee, officer, employee or agent of the Trust shall have any liability as a result of entering into any such contract, act or transaction, even though (a) one or more Trustees, officers, employees or agents are directly or indirectly interested in or connected with, or are trustees, partners, members, managers, directors, employees, officers, or agents of or serve in another capacity with such other Person, or (b) one or more of the Trustees, officers, employees or agents of the Trust, individually or jointly with others, is a party or are parties to, or directly or indirectly interested in, or connected with, such contract, act or transaction, provided that (i) such interest or connection is disclosed or known to the Trustees and thereafter the Trustees authorize or ratify such contract, act or other transaction by affirmative vote of a majority of the Trustees who are not so interested or (ii) such interest or connection is disclosed or known to the Shareholders, and thereafter such contract, act or transaction is approved by Shareholders holding a majority of the Shares, then outstanding and entitled to vote thereon or (iii) such contract, act or transaction is fair as to the Trust as of the time it is authorized, approved or ratified by the Trustees or the Shareholders.

This Section 5.6 shall not prevent any sale of Shares issued by the Trust for the public offering thereof in accordance with a registration statement filed with the

Securities and Exchange Commission under the Securities Act of 1933, as amended. The Trustees are not restricted by this Section 5.6 from forming a corporation, partnership, trust or other business association owned by any Trustee, officer, employee or agent or by their nominees for the purpose of holding title to property of the Trust or managing property of the Trust, provided that the Trustees make a determination that the creation of such entity for such purpose is in the best interest of the Trust.

5.7 RESTRICTION OF DUTIES AND LIABILITIES. The Shareholders, Trustees, officers, employees and agents shall in no event have any greater duties or liabilities than those established by this Declaration of Trust or, in cases as to which such duties or liabilities are not so established, than those of the shareholders, directors, officers, employees and agents of a **[STATE]** business corporation in effect from time to time.

5.8 PERSONS DEALING WITH TRUSTEES, OFFICERS, EMPLOYEES OR AGENTS. Any act of the Trustees, officers, employees or agents purporting to be done in their capacity as such, shall, as to any Persons dealing with such Trustees, officers, employees or agents, be conclusively deemed to be within the purposes of this Declaration and within the powers of the Trustees, officers, employees or agents. No Person dealing with the Trustees or any of them, or with the officers, employees or agents of the Trust, shall be bound to see to the application of any funds or property passing into their hands or control. The receipt of the Trustees or any of them, or of authorized officers, employees or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

5.9 RELIANCE. The Trustees and the officers, employees and agents of the Trust may consult with counsel and the advice or opinion of such counsel shall be prima facie evidence of good faith and lack of negligence of all the Trustees and the officers, employees and agents of the Trust in respect of any action taken or suffered by them in reliance on or in accordance with such advice or opinion. In discharging their duties, Trustees or officers, employees or agents of the Trust, when acting in good faith, may rely upon financial statements of the Trust represented to them to fairly present the financial position or results of operations of the Trust by the President of the Trust or the officer of the Trust having charge of its books of account, or stated in a written report by an independent certified public accountant fairly to present the financial position or results of operations of the Trust. The Trustees and the officers, employees and agents of the Trust may rely, and shall be personally protected in acting, upon any instrument or other document believed by them in good faith to be genuine.

5.10 SUBORDINATION OF INDEMNIFICATION CLAIMS. Notwithstanding anything to the contrary in this Declaration, the obligations of the Trust to Lender in respect of the Loan described in Article VII hereof are secured to the extent provided in and by the Mortgage and the other Loan Documents. To the extent that payment in respect of claims for indemnification under this Article V is sought from assets of the Trust which collaterally secure the obligations of the Trust to Lender in respect of the Loan, such claims for indemnification are subordinate in right of payment to such obligations of the Trust in respect of the Loan.

ARTICLE VI
DURATION, DISSOLUTION AND AMENDMENT OF TRUST

6.1 DURATION OF TRUST.

Subject to the provisions of Article VII hereof, the Trust shall continue without limitation of time, PROVIDED, HOWEVER, that, subject to the provision of Article VII hereof, the Trust may be dissolved at any time upon a determination by a majority of the Trustees to dissolve the Trust and approval of such dissolution by the affirmative vote of the holders of Shares representing a majority of the total number of votes authorized to be cast by Shares, then outstanding and entitled to vote thereon.

6.2 DISSOLUTION OF TRUST.

(a) Upon the dissolution of the Trust:

- (i) the Trust shall carry on no business except for the purposes of winding up its affairs;
- (ii) the Trustees shall proceed to wind up the affairs of the Trust and all the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Estate to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, Securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; and
- (iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining Trust Estate, in cash or in kind or partly each, among the Shareholders according to their respective rights.

(b) After dissolution of the Trust payment or adequate provision for payment of all liabilities and distribution to the Shareholders as herein provided, the Trust shall terminate upon filing of a certificate of cancellation relating to the Trust with the **[STATE]** Secretary of State, which certificate of cancellation may be signed by any one Trustee, and the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such dissolution, with a copy of such writing provided to the other Trustees, and such distribution and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder and the rights and interests of all Shareholders shall thereupon cease.

6.3 AMENDMENT PROCEDURE. Subject to the provisions of Article VII hereof, this Declaration may be amended by a majority of the Trustees with the approval of the holders of Shares representing a majority of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote thereon. A

majority of the Trustees may also amend this Declaration without the vote or consent of Shareholders to change the name of the Trust or if they deem it necessary to conform this Declaration to the requirements of (i) applicable federal laws or regulations or (ii) any state securities or “blue sky” laws or requirements of administrative agencies thereunder in connection with any public offering of Shares, but the Trustees shall not be liable for failing so to do.

6.4 SALE OF ASSETS, MERGER, ETC. Subject to the provisions of Article VII hereof, the Trustees, with the approval of a majority of the Trustees and the affirmative vote or written consent of the holders of Shares representing a majority of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote thereon, may: (a) sell, lease or exchange all or substantially all of the property and assets of the Trust, (b) merge the Trust with or into any corporation, association, partnership, limited liability company, trust or other organization or entity or (c) convert the Trust into a corporation, partnership, limited liability company other organization or entity.

ARTICLE VII PROVISIONS RELATING TO FINANCING

[RESERVED FOR INSERTION AT A LATER DATE]

ARTICLE VIII MISCELLANEOUS

8.1 APPLICABLE LAW. This Declaration and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the statutes and laws of the State of **[STATE]**.

8.2 INDEX AND HEADINGS FOR REFERENCE ONLY. The index and headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration.

8.3 SUCCESSORS IN INTEREST. This Declaration shall be binding upon and inure to the benefit of the undersigned Trustees and their successors, assigns, heirs, distributees and legal representatives, and every Shareholder and his successors, assigns, heirs, distributees and legal representatives.

8.4 INSPECTION OF RECORDS. Trust records shall be available for inspection by Shareholders as provided in the Act.

8.5 COUNTERPARTS. This Declaration may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

8.6 PROVISIONS OF THE TRUST IN CONFLICT WITH LAW OR REGULATIONS; SEVERABILITY. If any provision of this Declaration shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this Declaration, and this Declaration shall be carried out as if any such invalid or unenforceable provision were not contained herein.

8.7 CERTIFICATIONS. The following certifications shall be final and conclusive as to any Persons dealing with the Trust:

(a) a certification of a vacancy among the Trustees by reason of resignation, removal, increase in the number of Trustees, incapacity, death or otherwise, when made in writing by a majority of the remaining Trustees;

(b) a certification as to the individuals holding office as Trustees or officers at any particular time, when made in writing by any one of the president, vice president, treasurer, assistant treasurer, secretary or assistant secretary of the Trust or by any Trustee;

(c) a certification that a copy of this Declaration is a true and correct copy thereof as then in force, when made in writing by any one of the president, vice president, treasurer, assistant treasurer, secretary or assistant secretary of the Trust or by any Trustee; and

(d) a certification as to any actions by Trustees, other than the above, when made in writing by any one of the president, vice president, treasurer, assistant treasurer, secretary or assistant secretary of the Trust or by any Trustee.

8.8. ENTIRE AGREEMENT. This Declaration and the Certificate contain the entire agreement among the parties with respect to the subject matters hereof and supersede any prior agreements or understandings with respect thereto, including without limitation, the Original Declaration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have signed these presents all on the day and year first above written.

TRUSTEES:

Thomas H. Nolan, Jr., not individually
but solely in the capacity as Co-Trustee

Robert A. Michaels, not individually but
solely in the capacity as Co-Trustee

Edmund J. Hoyt, not individually but
solely in the capacity as Co-Trustee

[ADD IF STATE = DELAWARE]

Michelle A. Dreyer, not individually but
solely in the capacity as Resident
Trustee

SHAREHOLDER:

GGP IVANHOE II, INC., a Delaware
corporation

By: _____
Linda J. Wight, Vice President

JOINDER BY INDEPENDENT TRUSTEES

Effective as of December ____, 2009 the undersigned hereby joins in the execution of the Declaration of Trust dated December ____, 2009 (the “Trust Agreement”) of **[ENTITY NAME]**, a **[STATE]** business trust to which this joinder is attached for the limited purpose of (i) accepting his/her appointment as an Independent Trustee, and (ii) accepting and agreeing to be bound by all the terms and provisions of the Trust Agreement applicable to the undersigned as Independent Trustee.

INDEPENDENT TRUSTEES:

Name:

Name:

**SCHEDULE A
TO
DECLARATION OF TRUST
OF
[ENTITY NAME]**

INDEPENDENT TRUSTEES

**SCHEDULE B
TO
DELEGATION OF TRUST
OF
[ENTITY NAME]
OFFICERS**

<u>Name</u>	<u>Office</u>
Adam S. Metz	Chief Executive Officer
Thomas H. Nolan, Jr.	President and Chief Operating Officer
Robert A. Michaels	Vice Chairman
Sharon M. Polonia	Executive Vice President
Ronald L. Gern	Senior Vice President and Secretary
Kathleen M. Courtis	Vice President
Linda J. Wight	Vice President and Assistant Secretary
Edmund J. Hoyt	Treasurer
Michael Chimitris	Assistant Secretary
Howard A. Sigal	Assistant Secretary
Carol A. Williams	Assistant Secretary