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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**AMENDMENT NO. 1  
TO  
FORM 10**

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**GENERAL FORM FOR REGISTRATION OF SECURITIES  
PURSUANT TO SECTION 12(b) OR 12(g) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

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**Copper Property CTL Pass Through Trust**

(Exact name of registrant as specified in its charter)

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New York  
(State or other jurisdiction of  
incorporation or organization)

3 Second Street, Suite 206 Jersey City, NJ  
(Address of principal executive offices)

85-6822811  
(I.R.S. Employer  
Identification No.)

07311-4056  
(Zip code)

(972) 431-1000  
(Registrant's telephone number, including area code)

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*Copies to:*

Casey Fleck  
Jonathon Jackson  
Alexander Gefter  
Milbank LLP  
2029 Century Park East  
Los Angeles, California 90067  
(424) 386-4000

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**Securities to be registered pursuant to Section 12(b) of the Act:  
None**

**Securities to be registered pursuant to Section 12(g) of the Act:  
Trust Certificates  
(Title of class)**

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<a href="#">Explanatory Note</a>	ii
<a href="#">Cautionary Statement Regarding Forward-Looking Statements</a>	iii
Item 1. <a href="#">Business</a>	1
Item 1A. <a href="#">Risk Factors</a>	14
Item 2. <a href="#">Financial Information</a>	23
Item 3. <a href="#">Properties</a>	27
Item 4. <a href="#">Security Ownership of Certain Beneficial Owners and Management</a>	28
Item 5. <a href="#">Directors and Executive Officers</a>	29
Item 6. <a href="#">Executive Compensation</a>	29
Item 7. <a href="#">Certain Relationships and Related Transactions and Director Independence</a>	30
Item 8. <a href="#">Legal Proceedings</a>	30
Item 9. <a href="#">Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters</a>	30
Item 10. <a href="#">Recent Sales of Unregistered Securities</a>	31
Item 11. <a href="#">Description of Registrant's Securities to be Registered</a>	31
Item 12. <a href="#">Indemnification of Directors and Officers</a>	34
Item 13. <a href="#">Financial Statements and Supplementary Data</a>	34
Item 14. <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>	35
Item 15. <a href="#">Financial Statements and Exhibits</a>	35

**Explanatory Note**

This registration statement is being filed by Copper Property CTL Pass Through Trust, a New York common law trust (the “Trust,” “we,” “our” or “us”), in order to voluntarily register the Trust Certificates (as defined below) under Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). As described further below, the Trust was formed in connection with the reorganization of Old Copper Company, Inc. (f/k/a J. C. Penney Company, Inc.) (“Old Copper”).

On May 15, 2020, Old Copper and certain of its subsidiaries (together with Old Copper the “Debtors”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the “Plan of Reorganization”) which was confirmed by the Bankruptcy Court on December 16, 2020.

On January 30, 2021 (the “Effective Date”), the Plan of Reorganization became effective pursuant to its terms, at which point Old Copper transferred its fee or leasehold interest (as applicable) in certain properties to the Trust. As of the Effective Date, Old Copper has no ability to exercise any control over the Properties, or have any control over or affiliation with, the Trust.

The Trust is not required to file this registration statement pursuant to the Securities Act of 1933, as amended (the “Securities Act”). This registration statement shall not constitute an offer to sell, nor a solicitation of an offer to buy, any of the Trust’s securities.

**Cautionary Statement Regarding Forward-Looking Statements**

This registration statement contains forward-looking statements, which are subject to a number of risks and uncertainties, many of which are beyond the Trust's control. All statements regarding the Trust's strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives are forward-looking statements. When used in this registration statement, the words "anticipate," "believe," "estimate," "expect," "intend," "plan," "project," "target," "can," "could," "may," "should," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words.

All forward-looking statements speak only as of the date of this registration statement. We disclaim any obligation to update these statements unless required by law, and we caution you not to place undue reliance on them. Although we believe that the Trust's plans, intentions and expectations reflected in or suggested by the forward-looking statements contained herein are reasonable, we can give no assurance that these plans, intentions or expectations will be achieved.

We disclose important known factors that could cause the Trust's actual results to differ materially from our expectations under "Item 1A. Risk Factors" in this registration statement. Additional risks or uncertainties that are not currently known to us, that we currently deem to be immaterial, or that could apply to any company could also materially adversely affect the Trust's business, prospects, financial condition and results of operations.

These cautionary statements qualify all forward-looking statements attributable to us or persons acting on the Trust's behalf.

**Item 1. Business**

**Summary**

*Overview*

The Trust is governed by the Amended and Restated Trust Agreement (the “Trust Agreement”, as further described under “—Description of the Trust Documents—Trust Agreement”), dated as of January 30, 2021 (the “Effective Date”), between Copper BidCo LLC and GLAS Trust Company LLC, as trustee (the “Trustee”). The Trust’s operations consist solely of (i) owning the Properties (as defined below), (ii) leasing the Properties under the terms of the Master Leases (as defined below) to one or more newly formed subsidiaries of Copper Retail JV LLC (collectively with its subsidiaries, “New JCP”), as the sole tenants, and (iii) subject to market conditions and the conditions set forth in the Trust Agreement, selling the Properties to third-party purchasers as promptly as practicable with the intent to complete the sale of all Properties within a short period of time, in each case through certain wholly-owned property holding companies (the “PropCos” as described under “—Description of the Trust and the Trustee—Organization”). The Trust retained an affiliate of Hilco Real Estate LLC as its independent third-party manager to perform asset management duties with respect to the Properties (together with any of its affiliates, replacement or successor, the “Manager”).

*Competitive Strengths*

*Highly attractive industrial assets (warehouses) and diverse portfolio of well-located retail assets.* Our large, geographically diverse portfolio consists of 160 retail properties (the “Retail Properties”) and six distribution centers (the “Warehouses” and, together with the Retail Properties, the “Properties”) across 37 U.S. states and Puerto Rico with a presence in 42 of the top 50 metropolitan statistical areas nationally. Our tenants are required to continue to maintain the properties in accordance with the maintenance standards set forth in the master leases, which we believe enhances the value of our properties and maintains their competitive market position. J. C. Penney is a 118 year old brand, and due to its long history, the Properties acquired by the Trust tend to be located in attractive suburban and urban locations. The assets are a combination of standalone and anchor properties at malls. Our portfolio consists of select Old Copper assets, chosen for their alignment with our goals as a Trust to maximize value for the holders of the Trust Certificates (the “Certificateholders”).

*Straightforward business plan designed to maximize value through sale of assets.* The Properties are governed by a triple-net master lease structure. We have no development or acquisition plans and have elected to organize as a pass-through trust. We have selected an experienced third-party manager that is contractually aligned with our goal of maximizing value through the sale of the Warehouses within six months and the Retail Properties within 12 months following (i) the expiration of Lockout Periods (as defined below) applicable to certain of the Properties or (ii) if not subject to a Lockout Period, the Effective Date. See “—Description of the Trust Documents—Master Leases—Lockout Periods.”

*Attractive cash flow yield from two separate well-structured master leases for owned warehouses and retail assets.* The Trust has a predictable contractual cash flow, with the rents from the Warehouses accounting for 22% of the aggregate rents under the Master Leases. The Master Leases have an initial term of 20 years and are triple-net with, beginning in the third year, (i) a 2% annual escalation for the Warehouses and (ii) an annual escalation (subject to a 2% cap) for the Retail Properties that is tied to the consumer price index. See “—Description of the Trust Documents—Master Leases.” Our dividend policy is to distribute net cash flow on a monthly basis, providing a recurring yield.

*Manager with unparalleled experience in maximizing value of real estate assets* We have engaged the Manager as an external manager to execute the business plan and bring extensive experience to the role. The Manager has been involved in the repositioning of over 35,000 leases and the disposition of over 200 million square feet of retail, industrial and office properties over the last 15-plus years. The Manager’s track record speaks to the expertise, capabilities and focus it will bring to optimizing the value of the Trust within the required timeframe.

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## **Table of Contents**

*Upside from alternative use on select landlord option retail properties.* The Retail Master Lease (as defined below) provides a landlord option on 23 of the Retail Properties (the “Landlord Retail Option Properties”), allowing current or future landlords to opportunistically terminate the Retail Master Lease with respect to a Landlord Retail Option Property and maximize value by selling such Landlord Retail Option Property with the ability for a buyer to utilize the Landlord Retail Option Property for an alternative purpose.

*Capital structure of the Trust as well as the Master Leases provide significant flexibility for maximizing value.* Capitalization of the Trust and the Master Leases have been carefully structured to facilitate the sale of individual Properties. Upon the sale of an individual Property, the Property is transferred out of the applicable Master Lease and a new individual property lease is created with the same key terms as the applicable Master Lease.

### ***Trust Certificates***

The Trust Agreement creates a series of equity trust certificates designated as “Copper Property CTL Pass Through Certificates” (the “Trust Certificates”), 75 million of which were issued on the Effective Date. Each Trust Certificate represents a fractional undivided beneficial interest in the Trust and represents the Certificateholders’ interests in the Trust. All Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the Trust Agreement. The Trust Certificates are the only instruments evidencing a fractional undivided interest in the Trust. The Trust Certificates do not represent indebtedness of the Trust. The Trust Certificates will not be repurchased by the Trust and no additional certificates will be issued by the Trust.

The issuance of the Trust Certificates under the Plan of Reorganization is exempt pursuant to Section 1145 of the Bankruptcy Code. Thus, the Trust Certificates are not “restricted securities,” as defined in Rule 144(a)(3) under the Securities Act, and are freely tradable and transferable by any initial recipient thereof that (i) is not an “affiliate” of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an “affiliate” within 90 days of such transfer, and (iii) is not an entity that is an “underwriter,” as defined in subsection (b) of Section 1145 of the Bankruptcy Code.

Certificateholders that actually or constructively own 4.9% or more of the Trust Certificates are required to deliver a certification set forth in the Trust Agreement. See “Item 11. Description of Registrant’s Securities to be Registered” for a detailed description of the ownership limitations relating to the Trust Certificates.

The Trust Certificates are not listed on a national securities exchange; however, the Trust intends to take actions to cause the Trust Certificates to be quoted on a market operated by OTC Markets Group. See “Item 1A. Risk Factors—Risks Relating to the Trust Certificates—There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate.”

The Trust Certificates have an identifying CUSIP number and are evidenced by book-entry form represented by one or more global certificates registered in the name of The Depository Trust Company (“DTC”), as depository, or Cede & Co., its nominee, for so long as DTC is willing to act in that capacity.

### **Description of the Trust and the Trustee**

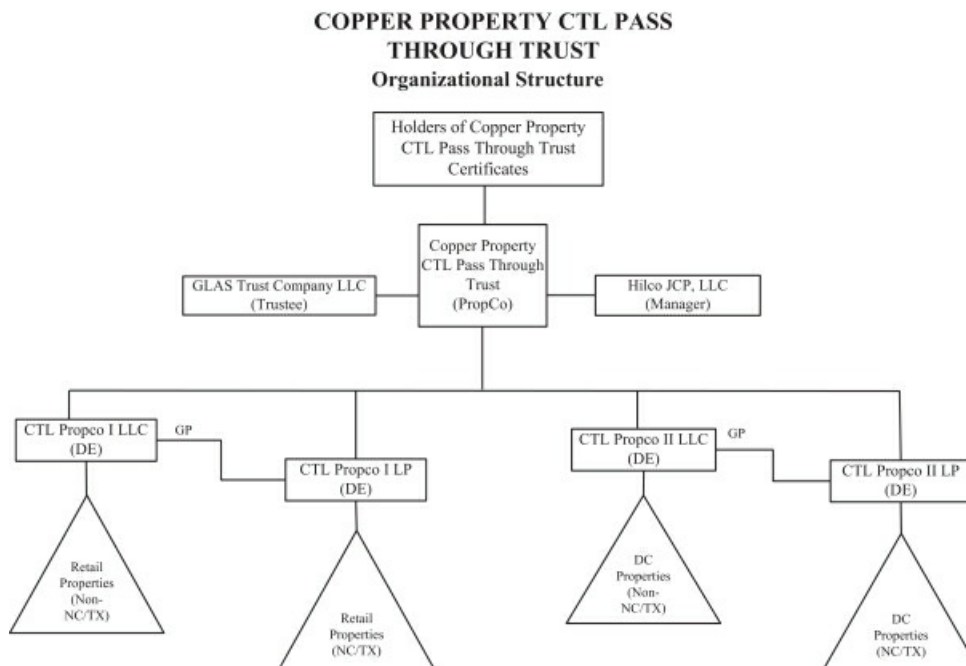
#### ***Organization***

The Trust owns directly or indirectly 100% of the PropCos: (i) CTL Propco I LLC, a Delaware limited liability company, and CTL Propco I L.P., a Delaware limited partnership, will collectively own the fee simple or ground leasehold title (as applicable) to the Retail Properties and (ii) CTL Propco II LLC, a Delaware limited liability company, and CTL Propco II L.P., a Delaware limited partnership, will collectively own the fee simple

[Table of Contents](#)

title to the Warehouses. The Properties are located in 37 U.S. states and Puerto Rico. In the aggregate, the Warehouses and Retail Properties comprise 10.1 million square feet and 21.7 million square feet, respectively, of leasable space, all of which is leased to the tenants under the Master Leases. See “Item 3. Properties” for a detailed description of the Properties.

The following organizational chart describes the organizational structure of the Trust as of the effective date of this registration statement. See Exhibit 21.1 to this registration statement for a list of subsidiaries of the Trust.



**Business**

The Trust exists for the sole purpose of collecting, holding, administering, distributing and monetizing the Properties for the benefit of Certificateholders.

The Trust’s operations consist solely of (i) owning the Properties, (ii) leasing the Properties to New JCP (who will operate the premises pursuant to the Master Leases, including for warehousing, distribution and retail operations), and (iii) subject to market conditions and the conditions set forth in the Trust Agreement (as further described under “—Description of the Trust Documents—Trust Agreement”), selling the Properties from time to time to third-party purchasers as promptly as practicable, in each case through the PropCos. Except for rental proceeds from leasing the Properties and sales proceeds from selling the Properties, the Trust has no other source of revenue or cash flow. Pursuant to the Trust Agreement, the Trust shall endeavor to complete the disposition of the Warehouses within six months following the Effective Date and the Retail Properties within 12 months following (i) the expiration of any applicable Lockout Periods or (ii) if not subject to such Lockout Period, the Effective Date, or in each case such longer period approved by the Certificateholders representing a majority of the Trust Certificates (the “Majority Certificateholders”). See “—Description of the Trust Documents—Master Leases—Lockout Periods.”

## Table of Contents

The Retail Properties are leased pursuant to a single retail master lease (as amended, modified or supplemented from time to time, the “Retail Master Lease”) to Penney Tenant I LLC (“Retail Tenant”), and the Warehouses are leased pursuant to the warehouse and distribution center master lease (as amended, modified or supplemented from time to time, the “DC Master Lease”; together with the Retail Master Lease, the “Master Leases” and individually, each a “Master Lease”) to Penney Tenant II LLC (“Warehouse Tenant”; together with Retail Tenant, the “Tenants” and individually, each a “Tenant”). Each of the Master Leases is a triple-net lease pursuant to which the Tenants are responsible for the payment of all taxes, insurance, maintenance, capital expenditures, operational costs, and other costs and expenses associated with the ownership, management, maintenance and operation of the Properties. The Tenants will pay all rent absolutely net to the Trust, without abatement, and unaffected by any circumstance (except in certain cases of major casualty or major condemnation where the applicable Tenant will have the right to terminate the applicable Master Lease with respect to the affected Property under certain circumstances or except in other limited situations expressly permitted under the Master Leases). The payment obligations of the Tenants under the Master Leases are unconditionally guaranteed by certain subsidiaries of New JCP (collectively, the “Lease Guarantors”), which are jointly controlled, as of the effective date hereof, by Simon Property Group, L.P. (“Simon”) and Brookfield Asset Management Inc. (“Brookfield”), and the obligations of Retail Tenant are further secured by a pledge of 100% of the equity interests in Retail Tenant.

Following the sale of all of the Properties and the subsequent distribution of all net sale proceeds and all net assets pursuant to the Trust Agreement, the existence of the Trust will terminate 90 days after the final tax returns and the final reports required to be filed with the Securities and Exchange Commission (the “SEC”) have been filed. To the extent that all of the Properties are not sold within a year after the Effective Date (or such longer period approved by the Majority Certificateholders), the Properties may be transferred into a newly-formed real estate investment trust (“REIT”), contributed to an existing REIT or transferred into other investment vehicles, each of which would be beneficially owned by the Certificateholders. Any such transfer will require approval from the Majority Certificateholders including at least three (3) Certificateholders who are not Affiliates of one another.

### ***Dividend Policy***

Commencing on March 10, 2021, the Trust will distribute on a monthly basis the proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold) and all sales proceeds from the disposition of Properties, in each case *pro rata*, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of (i) tax payments to be made by the Trust, (ii) fees and expenses of the Trustee, the Manager and any other professional advisors, and (iii) funds to be set aside for the Trustee’s and Manager’s reserve accounts.

### ***The Trustee***

GLAS Trust Company LLC serves as trustee of the Trust (the “Trustee”) under the Trust Agreement. The Trustee has its principal place of business at 3 Second Street, Suite 206, Jersey City, New Jersey 07311. The Trustee is unaffiliated with the Trust and the Tenants. The Trustee will have no objective or authority to engage in the conduct of a trade or business, except to the extent reasonably necessary to carry out, and consistent with, the purpose of the Trust. In particular, the Trustee will not engage in activities other than (i) facilitating the sales of the Properties; (ii) cooperating with the Manager with respect to the marketing and sale of the Properties and causing the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith; (iii) cooperating with the Manager to consummate any merger, acquisition, amalgamation, consolidation or similar transaction involving the Trust or one or more of its subsidiaries (“Strategic Disposition Transaction”); (iv) causing the Trust to enter into any purchase and sale agreement pursuant to which one or more Properties are to be sold; (v) incurring certain *de minimis* permitted indebtedness in the ordinary course of business of the Trust (or its subsidiaries); (vi) complying with the requirements of the Trust Agreement and the Management Agreement (as defined below); and (vii) entering into all contracts and



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## Table of Contents

engaging in all related activities incidental, complementary or ancillary to the foregoing. The Trustee will not act other than as required pursuant to the Trust Agreement. In addition, the Trustee is required to use commercially reasonable efforts to assist the Manager in causing the Tenants to comply with their obligations under the Master Leases. The Trustee is permitted to retain professionals to assist in performing duties under the Trust Agreement. Notwithstanding the foregoing, the Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Manager or any other person.

Fees are paid to the Trustee prior to any distributions to Certificateholders. The Trustee is compensated by the Trust and indemnified by the Trust against any expenses it incurs relating to, or arising out of, the formation, operation or termination of the Trust, or the performance of its duties pursuant to the Trust Agreement, except to the extent that such expenses result from the gross negligence, willful misconduct or bad faith of the Trustee.

The Trustee may resign at any time as Trustee of the Trust by giving 30 days' prior written notice thereof to the Certificateholders and the Manager. The Trustee may be removed at any time and for any reason as Trustee of the Trust by direction of the Majority Certificateholders.

### ***The Manager***

Hilco JCP, LLC ("Hilco") serves as manager of the Trust under the Management Agreement and will provide a management team, along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust. The Manager has its principal place of business at 5 Revere Drive, Suite 410, Northbrook, Illinois. The Manager is unaffiliated with the Trust, except that each of the Trust's officers is an officer of the Manager.

Hilco is an affiliate of Hilco Real Estate LLC ("HRE"), a national provider of strategic real estate disposition and repositioning services. HRE provides strategic advisory and transactional services designed to minimize costs and maximize value of real estate assets. The Manager has been involved in the repositioning of over 35,000 leases and the disposition of over 200 million square feet of retail, industrial and office properties over the last 15-plus years.

Except as otherwise provided in the Trust Agreement, the Manager, on behalf of the Trust, has full power and authority to sell any and all of the Properties without further action or approval of the Certificateholders or the Trustee.

The Manager maintains a contractual, as opposed to a fiduciary, relationship with the Trust. No Certificateholder shall be a third-party beneficiary of the Management Agreement and neither the Manager nor any of its affiliates has any duties, obligations or responsibilities towards Certificateholders except for obligations expressly set forth in the Management Agreement to the Trust.

### ***Trust Operating Expenses***

The Trust will incur recurring expenses in connection with, among other things, payment of the fees and expenses of the Trustee; payment of the fees, expenses and commissions of the Manager; legal, accounting and auditing fees; all insurance costs incurred in connection with the Trust (including director, trustee and officer liability insurance); and all other costs and expenses of operating the Trust, other than those to be specifically borne by Manager pursuant to the Management Agreement. See "*—Description of the Trust Documents—Trust Agreement*" and "*—Description of the Trust Documents—Management Agreement*." The Trust may also incur certain extraordinary, non-recurring expenses, including, but not limited to, taxes and governmental charges, expenses and costs of any extraordinary services performed by the Trustee, the Manager or any other service provider or counterparty of the Trust, on behalf of the Trust to protect the Trust or the interests of Certificateholders, or payments to indemnify the Trustee, the Manager or other agents, service providers or counterparties of the Trust, as applicable.

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## Table of Contents

### ***Tax Status***

The Trust is intended to qualify as a liquidating trust within the meaning of United States Treasury Regulation (hereinafter “Treasury Regulation”) Section 301.7701-4(d) or, in the event it is not so treated, a partnership other than a partnership taxable as a corporation under Section 7704 of the Internal Revenue Code of 1986, as amended (the “Code”).

### ***Competition***

The Properties compete on a local level with other retail and warehouse properties with regards to both operations and the disposition of the Properties, which could impact the Trust’s ability to sell the Properties and the sale price that can be achieved for such sales. With respect to the assets that we own, we compete for buyers based on a number of factors that include location, rental rates and suitability of the property’s design to prospective tenants’ needs.

We consider our peer group to be public and private triple-net lease REITs, particularly retail-focused REITs such as Essential Properties Realty Trust (NYSE: EPRT), Four Corners Property Trust Inc. (NYSE: FCPT), National Retail Properties (NYSE: NNN), Realty Income (NYSE: O), Store Capital (NYSE: STOR) and Vereit Inc. (NYSE: VER). Similar to our business, each of these peers own geographically diverse portfolios of triple-net leased retail properties, generally tenanted by national brands, with weighted average remaining lease terms of 10 years or greater, and with contracted lease step-ups providing high visibility of future cash flow.

Many competitors have substantially greater marketing budgets and financial resources than we do, which could limit our success when we compete with them directly. Competition could have a material effect on our occupancy levels, rental rates and property operating expenses. We also may compete for tenants with other entities advised or sponsored by affiliates of New JCP. Our ability to compete is also impacted by national and local economic trends, availability and cost of capital, maintenance and renovation costs, existing laws and regulations, new legislation and population trends. We cannot assure you that the competitive pressures we face will not have a material adverse effect on our business and our net assets in liquidation. See “Item 1A. Risk Factors—Risks Relating to Real Estate Assets.”

### ***Employees***

We do not have any employees. We are externally managed by the Manager pursuant to the Management Agreement. Our principal executive officers serve as officers of the Manager, and are employed by an affiliate of the Manager.

### ***Insurance***

The Master Leases require the Tenants to maintain, with financially sound insurance companies, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. In particular, the Tenants are required to maintain (i) “replacement cost” casualty insurance coverage insuring against customary hazards, including earthquake and flood coverage, (ii) commercial liability coverage and (iii) environmental liability coverage. In addition, the Manager maintains (a) business interruption / contingent loss of rents and property insurance to protect the Trust for real property and loss of rents if primary insurance maintained by the Tenants fails, is inadequate or is not obtained by New JCP, (b) contingent lessors’ risk insurance to protect the Trust against exposure for third party bodily injury and property damage claims if primary insurance maintained by the Tenants fails, is inadequate or is not obtained by New JCP, (c) customary professional liability insurance with respect to services provided by the Manager to the Trust pursuant to the Management Agreement, (d) customary directors’ and officers’ liability insurance coverage and (e) customary environmental liability insurance coverage.

***Environmental Matters***

The Properties are subject to various environmental laws regulating, among other things, air emissions, wastewater discharges and the release of, or exposure to, hazardous materials (including asbestos). Failure to comply could result in material fines and penalties. Certain environmental laws can impose joint and several liability without regard to fault of responsible parties, including current and former owners and operators of real property, related to contamination. We could be liable with respect to contamination at currently owned properties for contamination that occurred prior to the term of ownership, at a formerly owned or operated property for contamination caused during our ownership or operation or with respect to a site to which we sent wastes for disposal. Based on Phase I environmental site assessments prepared in connection with the acquisition of the Properties, we do not believe that environmental liabilities present prior to the effective date of this registration statement or that arise following the effective date of this registration statement will have a material adverse effect on our financial condition or results of operations. In addition, we carry customary environmental liability insurance coverage. However, we cannot predict the impact of unforeseen environmental liabilities or new or changed laws or regulations on properties in which we hold an interest. The Tenants and the Lease Guarantors have entered into that certain Environmental Indemnity Agreement, dated as of December 7, 2020, pursuant to which they are required to comply with applicable environmental laws with respect to the Properties from and after the effective date of the Master Leases and to indemnify us if their noncompliance results in losses or claims against us.

***Statements, Filings and Reports***

The Trust will comply with all reporting obligations required of companies with a class of securities registered under the Exchange Act, including timely filing Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other customary filings. In particular, after the end of each fiscal year, the Manager will cause to be prepared for the Trust an annual report containing audited financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”). The annual report will be in such form and contain such information as will be required by applicable laws, rules and regulations and may contain such additional information that the Manager determines shall be included. The annual report will be filed with the SEC and distributed to such persons and in such manner, as shall be required by applicable laws, rules and regulations.

Each month, the Trustee, in consultation with the Manager, will distribute to the Certificateholders a schedule (a “Distribution Date Schedule”) setting forth the payments, transfers, deposits and distributions to be made as described under “—Description of the Trust Documents—Trust Agreement—Distributions.” Each Distribution Date Schedule will be distributed to the Certificateholders through an investor website established by the Trustee. Each month the Trustee will also distribute to Certificateholders a reporting package including operating performance of the Tenants under each of the Master Leases and operating performance of the Master Lease guarantor.

The Trustee will make elections, file tax returns and prepare, disseminate and file tax reports, as advised by the Manager, the Trust’s counsel or accountants or as required by any applicable statute, rule or regulation.

***Fiscal Year***

The fiscal year of the Trust is the period ending December 31 of each calendar year. The Trustee may in the future select an alternate fiscal year at the direction of the Majority Certificateholders.

**Description of the Trust Documents**

The summaries presented below of the Trust Agreement, the Master Leases and the Management Agreement (collectively, the “Trust Documents”) are not complete and are qualified in their entirety by reference to the full text of the applicable agreements, which are included as exhibits to this registration statement.

***Trust Agreement***

The Trust is governed by the Trust Agreement. The following is a description of the material terms of the Trust Agreement.

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## Table of Contents

*Governance and Approval Rights.* The Trust Agreement establishes the roles, rights and duties of the Trustee. The Trustee will have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to carry out, and consistent with, the purpose of the Trust. In particular, the Trustee will not engage in activities other than (i) collecting and distributing rental payments and sales proceeds to the Certificateholders; (ii) facilitating the sales of the Properties; (iii) facilitating Strategic Disposition Transactions (iv) cooperating with the Manager with respect to the marketing and sale of the Properties and causing the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith; (v) causing the Trust to enter into any purchase and sale agreement pursuant to which one or more Retail Properties or Warehouses are to be sold; (vi) incurring certain de minimis permitted indebtedness in the ordinary course of business of the Trust (or its subsidiaries); (vii) complying with the requirements of the Trust Agreement and the Management Agreement; and (viii) entering into all contracts and engaging in all related activities incidental, complementary or ancillary to the foregoing. The Trustee will not act other than as required pursuant to the Trust Agreement. In addition, the Trustee is required to use commercially reasonable efforts to assist the Manager in causing the Tenants to comply with their obligations under the Master Leases. The Trustee is permitted to retain professionals to assist in performing duties under the Trust Agreement. Notwithstanding the foregoing, the Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Manager or any other person.

The Trustee shall not be authorized at any time on behalf of the Trust or the Certificateholders (and shall not permit the PropCos) to reinvest the Properties or take any action, in each case, that would preclude the Trust from being treated as a “grantor trust” for U.S. federal income tax purposes or would cause the Trust to be treated as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

The Manager, which will initially be Hilco, is an independent third-party manager engaged to perform certain asset management duties and other services with respect to the Properties. In particular, the Manager is responsible for arranging for the sale or other disposition of the Properties (including through Strategic Disposition Transactions).

Under the Trust Agreement, the approval rights of the Certificateholders are limited to (i) approval of the incurrence of indebtedness in excess of \$5,000,000, (ii) approval of sales of the Properties at prices below certain thresholds, (iii) approval of sales of the Properties beyond the targeted sales period, (iv) approval of a Strategic Disposition Transaction (v) approval of the engagement of any Financial Advisor or Leasing Agent (each as defined in the Trust Agreement), (vi) approval to increase the size of, or the duration for holding, Post-Closing Reserves (as defined in the Trust Agreement), (vii) approval to increase the Reserve Amount (as defined in the Trust Agreement), (viii) the engagement of a new Trustee or Manager, (ix) the conversion of one or more subsidiaries of the Trust to a REIT, (x) any material amendment, modification, supplement or waiver of the Master Leases and (xi) any amendment, modification, supplement or waiver of the Management Agreement or the Trust Agreement.

*Distributions of Proceeds from Lease Payments.* Commencing on March 10, 2021, the Trust will distribute on a monthly basis the cash proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold), pro rata, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors in connection with operating or providing services to the Trust, and funds to be set aside for the Trustee’s and Manager’s reserve accounts, including for future costs and expenses. Distributions will be made only from assets of the Trust and only to the extent that the Trust has sufficient assets (over reserves for contingent liabilities and future costs and expenses, among other things) to make such payments in accordance with the Plan of Reorganization and the Trust Agreement.

*Distributions of Proceeds from Disposition of Properties.* The Trust will distribute proceeds from the disposition of any Properties and related payments received by the Trust prior to the related distribution date with

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## Table of Contents

the same frequency and in the same order of priority as the distributions of proceeds from the lease payments, net of any fees (including brokers fees), commissions or other amounts payable to the Manager in connection with such disposition.

### ***Master Leases***

The 160 Retail Properties have been leased pursuant to the Retail Master Lease to Retail Tenant and the six Warehouses have been leased pursuant to the DC Master Lease to Warehouse Tenant. Subsidiaries of the Trust are the landlord (the “Landlords”) to the Tenants under each of the Master Leases. As of the Effective Date, the Trust will own, directly or indirectly, 100% of the equity interests in the Landlords under each of the Master Leases. Subject to Landlords’ right to sever each Master Lease as described below, each Master Lease is a single, unitary lease of all of the applicable Properties, such that in the event of a bankruptcy proceeding, the Tenant shall only be entitled to assume, reject or assign the entire Master Lease and not merely a portion thereof.

*Guaranties.* The payment obligations of the Tenants under each of the Master Leases are unconditionally guaranteed by the Lease Guarantors pursuant to two separate guaranties (each, a “Lease Guaranty”), and the obligations of Retail Tenant is further secured by a pledge of 100% of the equity interests in Retail Tenant.

*Term.* Each Master Lease has an initial term of 20 years, followed by five extension option periods of five years each, for a fully-extended term of 45 years. Each five-year extension period may be exercised by the Tenant provided that (i) with respect to the DC Master Lease, no event of default then exists and (ii) with respect to the Retail Master Lease, no Major Event of Default (as defined in the Retail Master Lease) or other Disabling Event (as defined in the Retail Master Lease) with respect to a particular Property then exists. A Major Event of Default includes, in addition to the Tenant’s failure to pay rent, breaches of the permitted use or subletting covenants under the Retail Master Lease for Properties comprising 15% or more of the aggregate base rent allocation amounts for the first lease year of the Properties then subject to the Retail Master Lease. Other than upon mutual agreement, or in limited circumstances in the case of certain casualty or condemnation events or with respect to Tenant Option Properties (as defined in the Retail Master Lease), the Tenants do not have a right to terminate the Master Leases. The Trust only has the right to terminate the Master Leases (a) upon the occurrence of an event of default under the DC Master Lease, (b) upon the occurrence of a Major Event of Default under the Retail Master Lease (or upon the occurrence of an event of default with respect to a particular Property (a “Defaulted Property”), but only with respect to such Defaulted Property), or (c) with respect to Landlord Option Properties (as defined in the Master Leases).

*Rent—Retail Master Lease.* The base rent from the commencement of the Retail Master Lease (December 7, 2020) through December 31, 2021 is \$129.5 million, 50% of which (\$64.8 million) is subject to a rental abatement. The first year rent abatement is the only material concession provided to the Tenant. During each subsequent lease year, commencing with the third lease year, the base rent shall be subject to a consumer price index adjustment, provided that such adjustment shall not (i) result in an increase that exceeds 2% of the then-applicable base rent or (ii) decrease the then-applicable base rent. Such adjustment is described more fully in “Item 2. Financial Information— Management’s Discussion and Analysis of Financial Condition and Results of Operations—Results of Operations—Revenue.” During each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (a) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (b) the fair market rent for such renewal term, as determined in accordance with a valuation procedure set forth in the Retail Master Lease. In addition to base rent, the rent under the Retail Master Lease includes the payment by Retail Tenant of all triple-net costs and expenses attributable to the Retail Properties as additional rent.

*Rent—DC Master Lease.* The initial base rent for the DC Master Lease is \$35.4 million per year. During each subsequent lease year commencing with the third lease year, the base rent shall be subject to a 2% escalation. During each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (i) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (ii) the fair market rent for such renewal term, as

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## Table of Contents

determined in accordance with a valuation procedure set forth in the DC Master Lease. In addition to base rent, the rent under the DC Master Lease includes the payment by Warehouse Tenant of all triple-net costs and expenses attributable to the Warehouses as additional rent.

*Triple-Net Lease; Alterations.* Each Master Lease is structured as a triple-net lease, with each Tenant responsible for the payment of all taxes, insurance, maintenance, capital expenditures, operational costs, and other costs and expenses associated with the ownership, management, maintenance and operation of the Properties (subject to exceptions in certain limited scenarios as set forth in the Master Leases). In addition, each Tenant is required to indemnify, defend and hold the Landlord harmless from and against various claims, litigation and liabilities arising in connection therewith. The Tenant will pay all rent absolutely net to the Landlord, without abatement, and unaffected by any circumstance (except in certain cases of major casualty and major condemnation events or otherwise upon certain limited events expressly permitted under the Master Leases).

*Landlord Option Properties.* The Retail Master Lease provides the landlord thereunder (the "Retail Landlord") with several independent options, exercisable from time to time in the Retail Landlord's sole discretion and upon 24 months' prior written notice to Retail Tenant, to terminate the Retail Master Lease as to any one or more of the 23 Landlord Retail Option Properties in accordance with the terms and conditions of the Retail Master Lease; provided, that landlord may only exercise such option with respect to up to eight Landlord Option Properties in any individual lease year. The DC Master Lease provides the landlord thereunder (the "Warehouse Landlord") with several independent options, exercisable from time to time in Warehouse Landlord's sole discretion and upon 24 months' prior written notice to Warehouse Tenant, to terminate the DC Master Lease as to any Landlord Option Properties (as defined in the DC Master Lease) in accordance with the terms and conditions of the DC Master Lease.

*Tenant Option Properties.* The Retail Master Lease provides Retail Tenant with several independent options, exercisable from time to time in Retail Tenant's sole discretion and upon 24 months' prior written notice to Landlord, to terminate the Retail Master Lease as to all or a portion of any one or more of the six Tenant Option Properties in accordance with the terms and conditions of the Retail Master Lease; provided, that Retail Tenant may only exercise such option with respect to up to five Tenant Option Properties in any individual lease year.

*Substitution Options and Go Dark Rights.* The Retail Master Lease provides Retail Tenant with several independent options to terminate the Retail Master Lease with respect to one or more sub-performing properties upon replacement of such sub-performing properties with a qualified replacement property in accordance with the terms and conditions of the Retail Master Lease. Notwithstanding the foregoing, Retail Tenant shall only be entitled to exercise a substitution option (i) between the third and 15<sup>th</sup> anniversary of the commencement date of the Retail Master Lease and (ii) if the aggregate allocated base rent amounts for all Go Dark/Substitution Properties (as defined in the Retail Master Lease) during the applicable period (as described in the Retail Master Lease) is less than or equal to 15% of the aggregate first year's base rent. The Retail Master Lease also provides Retail Tenant with the limited right to "go dark" (i.e., cease operations) at one or more Retail Properties in certain limited circumstances as set forth in the Retail Master Lease; provided that such right does not relieve Retail Tenant of its obligation to make any rent payments that are due and owing.

*Tenant Offer Rights.* The Master Leases contain preferential offer rights in favor of the Tenant with respect to certain Properties, which enable the Tenant, in connection with a potential sale of such Properties, to acquire such Properties for a price determined in accordance with the procedures set forth in the Master Leases.

*Lockout Periods.* The Landlord has agreed not to deliver notice to the Tenant formally commencing the sales process at those Properties subject to the "Tenant Offer Rights" described above prior to the dates specified in the applicable Master Lease for such Properties (the "Lockout Periods"), the latest of which is in the second quarter of 2021. Approximately 70 of the Retail Properties, and each of the Warehouses, are subject to a Lockout Period.

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## **Table of Contents**

*Lease Severance.* The Landlords may at any time and from time to time, upon notice to a Tenant, in conjunction with a sale or otherwise, sell one or more Properties and sever such Properties from the Master Leases, and such severed Properties shall (upon such severance) be subject to a separate severed lease, which shall be effective as of the date of severance. The effect of severance is more fully described in the Master Leases.

*Assignment and Subletting.* Under the Master Leases, subject to certain affiliate transactions and other limited exceptions (which include a change of control of the Tenant or a Lease Guarantor if, following such transaction, the transferee or the Lease Guarantor has a tangible net worth of \$500,000,000 or more), the Tenant does not have the right to assign any portion of the Master Leases. The Tenant has the right to sublet, without the Landlord's consent, up to (i) 15% of the aggregate gross leasable square footage of the Retail Properties and (ii) 25% of the aggregate gross leasable square footage of the Warehouses. In connection with any proposed sublease, the Landlord does not have a right to recapture the subleased portion of the premises or to share in the profits received by the Tenant in connection with such sublease (subject to the Warehouse Landlord's limited right to share in such profits in relation to two Warehouses, as described in the DC Master Lease); provided, however that such sublease does not relieve the Tenant or the Lease Guarantors from the obligation to make any rent payments that are due and owing if the sublessee fails to do so.

*Excess Development Parcels.* Under the DC Master Lease, the Warehouse Landlord is permitted to subdivide certain of the Warehouses to create excess development parcels so long as such parcels do not contain any existing improvements or materially interfere with Warehouse Tenant's access to or other rights to use and enjoy such Warehouses, and to thereafter sell such subdivided parcels to third-party buyers.

*Insurance.* The Master Leases require the Tenants to maintain, with financially sound insurance companies, insurance (subject to New JCP's deductibles in effect as of the effective date) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations. The Master Leases provide that the amount and type of insurance that the Tenants had in effect as of the date upon which the Master Leases became effective satisfies for all purposes the requirements to insure the Properties. However, such insurance coverage does not currently contain rental interruption coverage and only requires that the insurance companies providing such coverage maintain ratings with A.M. Best Company. The Master Leases require each Tenant to obtain, upon the request of the Landlord, quotations from insurers to enhance the Tenant's then-existing coverage by adding both rental interruption coverage and by requiring that the other insurance coverage being maintained by the Tenant be provided by insurance companies that maintain ratings with Standard & Poor's Ratings Services in addition to A.M. Best Company, and also permits the Landlord to obtain independent quotes to provide such enhanced coverage pursuant to a separate policy or policies obtained by the Landlord at the Landlord's expense; provided that the Tenant has agreed to contribute up to \$300,000 per year for the additional premium cost to obtain rental interruption coverage. In addition to the foregoing, the Master Leases require each Tenant to obtain, upon the request of the Landlord, quotations from insurers to reduce the Tenant's then-existing deductibles, and also permits the Landlord to obtain independent quotes to reduce such deductibles pursuant to a separate policy or policies obtained by the Landlord at the Landlord's expense. The foregoing insurance coverage may not be sufficient to fully cover all losses.

*Other Terms.* The Master Leases contain various terms and conditions related to indemnification, casualty and condemnation, financial reporting and other customary matters. The Master Leases also include events of default. Among other remedies, the Landlords have the right to terminate the Master Leases during an event of default (as described in "—Term" above, and subject to notice and cure periods (including any extended cure period) in favor of the Tenants and certain Property substitution rights of the Tenants).

### ***Management Agreement***

The Trust entered into a management agreement with the Manager (the "Management Agreement") on January 30, 2021, pursuant to which the Manager is the exclusive provider of certain management and other

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## Table of Contents

services with respect to the Properties, including (i) arranging for the sale or other disposition of the Properties (including through Strategic Disposition Transactions), (ii) coordinating with the Trustee in connection with the disbursement and collection of the Trust's funds, (iii) paying the debts and fulfilling the obligations of the Trust (but only to the extent the Trust has working capital to pay and fulfill same on deposit in the Manager's reserve account and (iv) supervising the performance of professionals engaged by or on behalf of the Trust, in each case upon the terms and subject to the conditions in the Management Agreement.

Pursuant to the Management Agreement, the Manager will provide a management team along with appropriate support personnel, including individuals who shall serve as the principal executive officer (the "Executive Officer") and the principal financial officer (the "Financial Officer" and, together with the Executive Officer, the "Officers"), of the Trust to provide the management services.

*Operations and Management.* Pursuant to the terms of the Management Agreement, the Manager is responsible for the sale or other disposition of the Properties (including through Strategic Disposition Transactions). Except as otherwise provided in the Trust Agreement, the Manager, on behalf of the Trust, has full power and authority to sell any and all of the Properties without further approval of the Certificateholders or the Trustee.

In addition, the Manager is responsible for the day-to-day operations of the Trust and its subsidiaries and performs (or causes to be performed) such services and activities relating to the Trust's subsidiaries' assets and operations as may be appropriate, which may include the following:

- i. administer the Master Leases and activities relating to compliance therewith, including (a) enforcement of all and remedies of the Landlords with respect to all Properties then leased thereunder and (b) review of financial information and financial and other reporting received from the Tenants and the Lease Guarantors pursuant to the Master Leases and the preparation of the periodic Reporting Package (as such term is defined in each Master Lease) for the benefit of the Certificateholders;
- ii. property level management, including, without limitation, (a) review and monitoring of lease payments and common area maintenance and real estate tax payments, (b) review capital expenditure plans and activities, and (iii) collection of rent and other income due to the Trust in accordance with the Master Leases or otherwise related to the Properties;
- iii. develop, review and certify all Trust filings required pursuant to the Securities Act or the Exchange Act;
- iv. all required accounting functions;
- v. investor relations matters, including quarterly earnings calls, attendance and coordination of investor meetings and development and maintenance of the Trust website with relevant investor materials;
- vi. create and distribute property sales and marketing status activity reports;
- vii. review of property condition reports;
- viii. oversight and administration of environmental remediation measures;
- ix. oversight and support of key property counterparties, including, among other parties, ground lessors, reciprocal easement agreement counterparties and municipal counterparties;
- x. creation of global marketing strategy, structuring plan and sales process, including the direction and management of third-party brokers as appropriate;
- xi. third party broker management and supervision, including the selection of such brokers, development of a marketing plan and coordination of a negotiating strategy; and
- xii. such other services related to the management of the business and affairs of the Trust as may be mutually agreed between the parties to the Management Agreement in writing from time to time.



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## Table of Contents

*Term.* The Management Agreement has an initial term of 24 months. The Management Agreement shall be automatically extended in successive six-month increments until all of the Properties are sold and the Trust is dissolved or unless otherwise earlier terminated in accordance with its terms. The Trust may terminate the Management Agreement (i) in the event of any action or omission by the Manager that constitutes fraud, willful material misrepresentation, willful misconduct, material breach of the Management Agreement, willful misapplication or misappropriation of funds or gross negligence (ii) in the event of a liquidation or dissolution of the Manager; (iii) upon the occurrence of certain events with respect to the bankruptcy or insolvency of the Manager; or (iv) for any reason or no reason by providing not less than 90 days' prior written notice thereof to Manager. In conjunction with a termination of the Management Agreement by the Trust, unless the termination is as a result of the Manager's fraud, willful material misrepresentation, willful misconduct, material breach of the Management Agreement, willful misapplication or misappropriation of funds or gross negligence (in which case the Management Agreement may be terminated immediately and no termination fee shall be due), the Trust will pay the Manager a termination fee. For additional information, refer to the Management Agreement attached as Exhibit 10.4 hereto.

*Liability and Indemnification.* The Manager assumes no responsibility other than to render the services called for under the Management Agreement. The Trust will provide the Manager with a customary indemnity with respect to the Manager's liability for any negligence related to, arising out of or in connection with the services to be provided by the Manager under the Management Agreement or related to the Properties or any portion thereof, and the Manager is not responsible for any action of the Trustee in following or declining to follow any advice or recommendation of the Manager, except where any actions or losses arise out of or are based on any action or failure to act by the Manager and are determined, by a final non-appealable judgment by a court of competent jurisdiction, to have resulted or arisen from the Manager's bad faith, gross negligence or willful misconduct. The Manager will not be indemnified for any actions or losses in respect of or arising from the Manager's bad faith, willful misconduct or gross negligence or reckless disregard of its duties under the Management Agreement, as determined by a final adjudication.

*Compensation and Reimbursement of Expenses.* As compensation for its services thereunder, the Manager shall receive a monthly base management fee equal to the greater of: (i) 5.75% of the Lease Payments (as defined in the Trust Agreement but excluding the impact of any rent abatements under the Retail Master Lease or the DC Master Lease unless to the extent covered by business interruption or lost profits insurance) of the Properties per month; and (ii) \$333,000 per month. In addition, upon the closing of each sale of a Property, the Manager shall receive an asset management fee that will consist, to the extent applicable, of: (a) a closing fee in an amount equal to \$50,000 per warehouse sold and (b) a success fee as set forth in the parameters agreed by the Trustee on behalf of the Trust and Manager. In addition, we are required to reimburse the Manager for its reasonable and documented, out-of-pocket costs and expenses incurred in performing services for us in connection with the operation of our business, including property management, legal, property accounting, IT and operations.

### **Emerging Growth Company Status**

The Trust is an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). As an emerging growth company, we are eligible to take advantage of certain exemptions from various reporting and disclosure requirements that are applicable to public companies that are not emerging growth companies. For as long as the Trust is an emerging growth company, unlike other public companies, it will not be required to, among other things:

- provide an auditor's attestation report on management's assessment of the effectiveness of its system of internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002; or
- comply with any new audit rules adopted by the Public Company Accounting Oversight Board after April 5, 2012, unless the SEC determines otherwise.

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## Table of Contents

In addition, Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards that have different effective dates for public and private companies. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies.

The Trust will remain an emerging growth company until the earliest to occur of the following: (i) the last date of the fiscal year during which it has \$1.07 billion or more in annual gross revenues; (ii) the date on which the Trust becomes a “large accelerated filer,” as defined in Rule 12b-2 of the Exchange Act; (iii) the date on which the Trust has issued more than \$1.0 billion of non-convertible debt over the previous three-year period; and (iv) the last day of the fiscal year following the fifth anniversary of the date of the first sale of Trust Certificates pursuant to an effective registration statement.

We do not believe that being an emerging growth company will have a significant impact on the Trust’s business. Even once we are no longer an emerging growth company, for so long as we are not a large accelerated filer or an accelerated filer under Section 12b-2 of the Exchange Act, we will not be subject to auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002. In addition, even once we are no longer an emerging growth company, so long as we are managed by the Manager and we do not directly compensate our executive officers, or reimburse the Manager for the salaries, bonuses, benefits and severance payments for any persons who also serve as one of our executive officers or as an officer of the Manager, we do not expect to include disclosures relating to executive compensation in our periodic reports or proxy statements. As a result, we do not expect to be required to seek the Certificateholders’ approval of executive compensation and golden parachute compensation arrangements pursuant to Section 14A(a) and (b) of the Exchange Act regardless of our emerging growth status.

### **Investment Policies**

Our investment objective is to sell the Properties to third-party purchasers as promptly as practicable. The Trust does not expect to acquire new real estate assets to supplement or diversify its portfolio. Neither the Trust, the Trustee nor the Manager shall be permitted to invest or reinvest the Properties except as otherwise provided herein.

### **Item 1A. Risk Factors**

An investment in the Trust Certificates involves various risks. Any of the risk factors set forth below could significantly and adversely affect the Trust’s business, prospects, financial condition and results of operations. The risks and uncertainties described below are not the only ones the Trust faces, but they do represent those risks and uncertainties that we believe are material to an investment in the Trust Certificates.

#### **Risks Relating to Limited Purpose and Recent Formation**

***The Trust has a limited purpose and does not expect to generate or receive cash other than from limited sources.*** Pursuant to the Trust Agreement, the Trust was established and exists for the purpose of collecting, holding, administering, distributing and liquidating the Properties for the benefit of the Certificateholders. The Trust Agreement further provides that the Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to carry out, and consistent with, the purpose of the Trust as set forth therein. The Trust does not expect to receive cash other than through lease payments from the Tenants and from sales of the Properties.

***The Trust has no operating history.*** The Trust was established in December 2020. The Trust has no operating history upon which to forecast, among other things, its future cash proceeds from sales of the Properties. In assessing its business prospects, you should consider various risks and difficulties encountered by newly organized companies. These risks include the Trust’s ability to implement and execute its business plan and respond effectively to operational and competitive challenges.

***The Trust will incur significant costs as a result of the registration of the Trust Certificates under the Exchange Act and the Trust becoming a reporting issuer under the Exchange Act.*** As a reporting entity under the Exchange Act, the Trust will incur significant legal, accounting and other expenses that a non-reporting entity would not incur. In addition, the Exchange Act imposes various requirements on reporting entities that will require the Executive Officer, the Financial Officer and the Manager's employees, management and other personnel to devote a substantial amount of time to compliance initiatives.

#### **Risks Relating to Real Estate Assets**

***There is limited liquidity in real estate investments.*** Real estate is a relatively illiquid asset. The Trust may not be able to sell the Properties at the optimal time or for an optimal price in order to maximize its recovery. The number of potential buyers for the Retail Properties may be limited by the presence of such properties in retail or mall complexes. In addition, the Trust's ability to sell or dispose of the Properties may be hindered by the fact that such Properties are subject to the Master Leases, as the terms of the Master Leases or the fact that the Properties are subject to the leasehold rights of the Tenants may make such Properties less attractive to a potential buyer than alternative properties that may be for sale.

***The Trust's real estate asset portfolio's tenant base is not diversified.*** The Properties consist entirely of retail stores and distribution centers leased to New JCP under the Master Leases. Pursuant to the Trust Agreement, the Trust will not acquire new real estate assets to diversify the tenants in its portfolio. This lack of diversification means that the Trust is particularly subject to the risks and fluctuations in the price of retail-related real estate, and any worsening of the downturn in this particular market would result in a significant and outsized negative impact on the Trust. In addition, periods of economic slowdown or recession or declining demand for real estate in the United States, or the public perception that any of these events may occur, could result in a general decline in property values, which could materially adversely affect the Trust's business, financial position, results of operations or cash flow. This could, in turn, adversely affect the Trust's ability to make distributions to the Certificateholders.

***If the Trust is unable to sell the Properties within a reasonable period of time, it may need to consider bulk marketing and disposition.*** The pool of potential buyers for the Properties is limited and, depending on market conditions, price reductions or bulk sales may be necessary. One or more bulk sales of the Properties may not yield as high an aggregate value as individual property sales, and a bulk sale may possibly depress prices in that market, negatively affecting the Trust's ability to recover the highest value for its remaining properties.

***If the Trust is unable to sell the Properties within the approved sale period, the Properties may be transferred into a REIT.*** The Trust may not be able to sell all of the Properties within the one-year sale period (or such longer period as may be approved by the Majority Certificateholders including at least three (3) Certificateholders who are not Affiliates of one another). In such case, the Manager may develop a plan for the conversion of one or more subsidiaries of the Trust to a REIT, the contribution of one or more of the Properties to an existing REIT, or the transfer of the Properties to an alternative investment vehicle. If the remaining Properties are held by a newly-formed REIT, the requirements applicable to such a REIT may delay further sales of Properties. Upon transfer of properties into a REIT, the amount or timing of distributions may be negatively affected.

***Competition from other sellers of commercial real properties in the markets in which the Properties are located may adversely affect the Trust's financial condition and net assets in liquidation.*** The addition of new retail properties and warehouses in the markets where the Properties are located may increase the available supply of similar properties, creating downward pressure on sales prices and protracted sales periods for the Properties. In addition, any sales that do not satisfy the guidelines set out in the Trust Agreement may require the consent of up to two-thirds of the Certificateholders. Other sellers of retail properties or warehouses will generally not be subject to similar selling restrictions, which may put the Trust at a competitive disadvantage relative to other sellers.

***The land underlying some of the Properties is subject to ground leases, which could limit our use of such Properties, and a breach or termination of the ground leases could materially and adversely affect us.*** We lease a portion of the land underlying some of the Properties from third parties through ground leases covering such land. As a lessee under a ground lease, we are exposed to the possibility of losing the right to use the portion of the Properties covered by the ground lease upon termination, or an earlier breach by us, of the ground lease. The ground lease may also restrict our use of such Properties, which may limit our flexibility in renting such Properties and may adversely impact our ability to sell such Properties. In addition, certain ground leases contain options in favor of the ground lessor to purchase the ground lessee's leasehold interest under certain circumstances, including cessation of the operation of retail business at the applicable Property.

***Environmental compliance costs and liabilities associated with the Properties may materially impair the value of those assets.*** As an owner of real property, the Trust is subject to various federal, state and local environmental and health and safety laws and regulations. Although the Trust does not operate or manage the Properties, the Trust may be held primarily or jointly and severally liable for costs relating to the investigation and clean-up of any property from which there has been a release or threatened release of a regulated material as well as other affected properties, regardless of whether the Trust knew of or caused the release. The failure to properly clean a Property may adversely affect our ability to lease, sell or rent the Property or to borrow funds using the Property as collateral. Further, some environmental laws create a lien on a contaminated site in favor of the government for damages and the costs the government incurs in connection with such contamination. In addition, the presence of contamination or the failure to remediate contamination may adversely affect the Trust's ability to sell the Properties.

***Adverse weather conditions and natural disasters could adversely affect the Trust's operations and results. Additionally, the Trust may not be able to obtain insurance at reasonable rates for natural disasters and other events that are beyond its control.*** Although the Tenants are required to maintain property insurance coverage, such coverage is subject to deductibles and limits on maximum benefits. We cannot assure you that the Tenants or the Trust will be able to fully insure such losses or that, in the case of business interruption coverage, such insurance will be maintained at all, or that the Tenants or the Trust will be able to fully collect, if at all, on claims resulting from such natural disasters. Inflation, changes in building codes and ordinances, environmental considerations and other factors also might make it infeasible to use insurance proceeds to replace the damaged property. Furthermore, the Tenants or the Trust may not be able to obtain insurance for these types of events for all of the Properties at reasonable rates.

#### **Risks Relating to Leasing to the Tenants**

***The Trust is dependent on New JCP as a tenant until the Properties are sold. Therefore, an event that has a material adverse effect on New JCP's businesses, financial positions or results of operations could have a material adverse effect on the Trust's business, financial position or results of operations.*** New JCP is the sole lessee of the Properties pursuant to the Master Leases. Together with the proceeds from sales of the Properties, the rent and other payment obligations under the Master Leases will account for all of the Trust's revenues. Additionally, because the Master Leases are triple-net leases, the Trust will depend on New JCP to pay all insurance, taxes, utilities and maintenance and repair expenses in connection with the Properties and to indemnify, defend and hold the Landlords harmless from and against various claims, litigation and liabilities arising in connection therewith. See "Item 1. Business—Description of the Trust Documents—Master Leases—Triple-Net Lease; Alterations" for more information. Although the Lease Guarantors guarantee the Tenants' obligations under the Master Leases, there can be no assurance that the Lease Guarantors and the Tenants will have sufficient assets, income and access to financing to enable them to satisfy their payment obligations on account of the Master Leases. The inability or unwillingness of the Tenants and the Lease Guarantors to meet their rent and other obligations under the Master Leases and the related Lease Guaranty could materially adversely affect the Trust's business, financial position or results of operations, including the Trust's ability to make distributions to the Certificateholders. In addition, due to the Trust's dependence on rental payments from the Tenants as a primary source of revenues (in addition to sales proceeds from the sale of Properties), the Trust

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## Table of Contents

may be limited in its ability to enforce its rights under the Master Leases or to terminate the Master Leases. Failure by a Tenant and the Lease Guarantors to comply with their obligations under the Master Leases and the Lease Guaranties, as applicable, could require the Trust to find another tenant for such Property, and there could be a decrease or cessation of rental payments. In such event, the Trust may be unable to locate a suitable tenant at similar rental rates or at all, which would have the effect of reducing the Trust's rental revenues.

***The bankruptcy or insolvency of the Tenants and the Lease Guarantors could result in the termination of the Master Leases and material losses to the Trust.*** A bankruptcy or insolvency of the Tenants (which are the Trust's sole tenants) and the Lease Guarantors (which are the Trust's sole source of credit support for the Tenants' obligations under the Master Leases) could result in a loss of a substantial portion of the Trust's revenue and materially and adversely affect the Trust. Each Master Lease is a single, unitary lease of all of the applicable Properties, such that in the event of a bankruptcy proceeding, the Tenant shall only be entitled to assume, reject or assign the entire Master Lease and not merely a portion thereof. Any claims against a bankrupt Tenant for unpaid future rent are subject to statutory limitations that would likely result in the Landlord's receipt, if at all, of rental revenues that are substantially less than the contractually specified rent owed. In addition, any claim such Landlord has for unpaid past rent would likely not be paid in full. If a Tenant becomes bankrupt or insolvent, federal law may prohibit the Landlord from evicting such Tenant based solely upon such bankruptcy or insolvency. The Trust may also be unable to re-lease a terminated or rejected space or re-lease it on comparable or more favorable terms. If the Trust does re-lease rejected space, it will likely incur significant costs for brokerage, marketing and tenant inducement expenses. In addition, although the Trust believes that the Master Leases are "true leases" for purposes of bankruptcy law, it is possible that a bankruptcy court could re-characterize the lease transactions set forth in the Master Leases as a secured lending transaction, in which case the Trust would not be treated as the owner of the property and could lose certain rights as the owner in the bankruptcy proceeding.

***The Trust is dependent on the retail industry and may be susceptible to the risks associated with it, which could materially adversely affect its business, financial position or results of operations.*** As the landlord of retail stores and warehouses, the Trust is impacted by the risks associated with the retail industry, which could be adversely affected by economic conditions in general, changes in consumer trends and preferences and other factors over which the Trust has no control. As the Trust is subject to risks inherent in substantial investments in a single industry, a decrease in the retail industry would likely have a greater adverse effect on its revenues than if the Trust owned a more diversified real estate portfolio, particularly because the ability of the Tenants and the Lease Guarantors to pay the rent under the Master Leases is based, over time, on the performance of the retail stores operated by New JCP at the Properties and New JCP's other properties. The retail industry is characterized by a high degree of competition among a large number of participants, and competition is intense in most of the markets where the Properties are located. Additionally, decreases in discretionary consumer spending brought about by weakened general economic conditions such as lackluster recoveries from recessions, high unemployment levels, higher income taxes, low levels of consumer confidence, cultural and demographic changes and increased stock market volatility may negatively impact the Trust's revenues and operating cash flows. In particular, the global outbreak of the COVID-19 coronavirus and its rapid and continuing spread across the globe, including the United States, is having an unprecedented impact on the global and the U.S. economy in general, and the retail industry in particular.

### **Risks Relating to the Trust Certificates**

***The Trust cannot predict with certainty the timing or amount of distributions to the Certificateholders.*** It is not possible to predict with certainty the timing and amount of future distributions to the Certificateholders. The cash receipts that distributions are based on cannot be predicted with certainty because they are subject to conditions that are beyond the Trust's control or that are inherently uncertain, such as the amount and timing of the Trust's sale of the Properties. As the Trust continues to sell Properties, the cash available from lease payments will decrease and correspondingly so will distributions to the Certificateholders. In addition, as such payments decrease, it is possible that the amount to be distributed will not be sufficient to cover expenses, which

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## Table of Contents

must be paid prior to distributions to the Certificateholders. It is therefore possible that for any distribution date there may be a limited distribution or no distribution to Certificateholders. Further, the Trust's objective is to sell all Properties to third-party investors as promptly as practicable after the Effective Date, and the Trust is not permitted to acquire new or additional properties, which may increase certain of the risks discussed herein. In addition, certain Properties cannot be sold immediately and therefore Certificateholders may need to hold the Trust Certificates for an extended period of time in order to receive distributions that include the proceeds of the sales of such Properties. See "Item 1. Business—Description of the Trust Documents—Master Leases—Lockout Periods."

***The Trust Certificates are not suitable as a long-term investment.*** The Trust intends to complete the sale of the Properties in as short a time as is consistent with the maximization of the value of its assets, without regard to the potential long-term capital appreciation of the Properties. In particular, subject to market conditions, the Trust has the stated objective of, subject to any Lockout Periods, selling the Warehouses within six months and selling the Retail Properties within 12 months. See "Item 1. Business—Description of the Trust Documents—Master Leases—Lockout Periods."

***The value of the Trust Certificates is expected to decrease over time.*** The value of the Trust Certificates will depend primarily on the anticipated net liquidation value of the assets of the Trust, which is expected to decrease with each sale of a Property.

***There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate.*** There is no currently established trading market for the Trust Certificates. The Trust may in the future pursue listing of the Certificates on a national securities exchange, but there can be no assurance that the Trust will successfully obtain listing of the Certificates. The Trust currently intends to make efforts to cause the Trust Certificates to be traded over-the-counter, but there can be no assurance that any application for the listing of the Trust Certificates on an automated quotation system will be approved or that a market maker will agree to file the necessary documents with the Financial Industry Regulatory Authority; nor can there be any assurance that such an application for quotation will be approved or that, if approved, such trading will commence. In addition, over-the-counter trading of securities can halt for a variety of reasons. To the extent that trading in the Trust Certificates is suspended or halted for any reason, whether on a temporary or permanent basis, investors may not be able to buy or sell Trust Certificates in an efficient manner, which could adversely affect the value of the Trust Certificates. Also, a secondary market for the Trust Certificates may not develop. If a secondary market does develop, it might not continue or it might not be sufficiently liquid to allow you to resell any of your Trust Certificates.

***If a trading market for Trust Certificates develops, the market price may be volatile.*** Many factors could cause the market price of the Trust Certificates to rise and fall, including the following:

- sales of Properties held by the Trust;
- changes in real estate market conditions;
- actual or anticipated fluctuations in the Trust's quarterly or annual financial results;
- the financial guidance and projections the Trust may provide to the public, any changes in such guidance and projections, or the failure to meet such guidance and projections;
- changes in the market valuations of other companies in the same industry as the Trust;
- various market factors or perceived market factors, including rumors, whether or not correct, involving the Trust, the Properties, potential buyers of the Properties, the impact of the preferential offer rights held by the Tenants and the Trust's competitors;
- sales, or anticipated sales, of large blocks of Trust Certificates, including short selling by investors;
- regulatory developments;

## [Table of Contents](#)

- litigation and governmental or regulatory investigations; and
- general economic, political and financial market conditions or events.

To the extent that there is volatility in the price of Trust Certificates, the Trust may also become the target of securities litigation. Securities litigation could result in substantial costs and divert the Trustee's attention and the Trust's resources as well as depress the value of the Trust Certificates.

***Certain Certificateholders may be deemed under the Bankruptcy Code to be "underwriters" and may not be able to sell or transfer their Trust Certificates in reliance upon the Bankruptcy Code's exemption from the registration requirements of federal and state securities laws provided by Section 1145 of the Bankruptcy Code.*** The issuance of the Trust Certificates is expected to be exempt pursuant to Section 1145 of the Bankruptcy Code. However, any initial recipient thereof that (i) is an "affiliate" of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has been such an "affiliate" within 90 days of such transfer, or (iii) is an entity that is an "underwriter," as defined in subsection (b) of Section 1145 of the Bankruptcy Code will not be permitted to freely sell their Trust Certificates. Such persons may include holders of 10% or more of the Trust Certificates, and such persons may not be able to offer or sell their Trust Certificates without registration under the Securities Act or applicable state securities (i.e., "blue sky") laws unless such offer and sale is exempted from the registration requirements of such laws. The offer and sale of Trust Certificates by statutory underwriters in reliance upon an exemption from registration under the Securities Act may require compliance with the requirements and conditions of Rule 144 of such law, including those regarding the holding period, the adequacy of current public information regarding the Trust, sale volume restrictions, broker transactions and the filing of a notice. Although the Trust intends to enter into a customary registration rights agreement in order to register the Trust Certificates for resale, such registration statement may not be effective at the time when a statutory underwriter wishes to sell its Trust Certificates.

***The Trust Agreement includes provisions that limit the Certificateholders' approval rights.*** Under the Trust Agreement, the Certificateholders have limited approval rights and the Trust will not have regular Certificateholder meetings. The Certificateholders take no part in the management or control of the Trust. Accordingly, the Certificateholders do not have the right to authorize actions, appoint service providers or take other actions as may be taken by shareholders of other trusts or companies where shares carry such rights. The Certificateholders' limited voting rights give almost all control under the Trust Agreement to the Manager and the Trustee. The Manager and the Trustee may take actions in the operation of the Trust that may be adverse to the interests of the Certificateholders and may adversely affect the value of the Trust Certificates.

***The value of the Trust Certificates will be adversely affected if the Trust is required to indemnify the Trustee or the Manager under the Trust Documents.*** Under the Trust Documents, each of the Trustee and the Manager has a right to be indemnified by the Trust for certain liabilities or expenses that it incurs without gross negligence, bad faith or willful misconduct on its part. If the Trust is required to indemnify the Trustee or the Manager under the Trust Documents, it would reduce the value of the Trust Certificates.

### **Risk Relating to the Trustee, the Manager and Brokers**

***Certificateholders will have only limited rights against the Trustee, and the Trustee has limited liability to the Trust*** The Trust Agreement provides that the Trustee (and its affiliates, directors, officers, employees and representatives) and any officer, employee or agent of the Trust or its affiliates shall not incur any liability to the Trust or the Certificateholders for any act or omission thereunder unless the Trustee has acted with gross negligence, bad faith or willful misconduct. The Certificateholders will therefore have no recourse to such parties for actions taken or not taken for which they disagree with absent such gross negligence, bad faith or willful misconduct.

***The Trust's success depends on the efforts of third-party managers and real estate brokers.*** The Trust has retained the Manager, who is an independent third party, to perform asset management duties with respect to the

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## Table of Contents

Properties, and the Manager will retain third-party real estate brokers to sell the Properties. Any of these third-party service providers may terminate its relationship with the Trust at any time upon relatively short notice or no notice. In addition, the Certificateholders may disagree with the third parties chosen by the Manager but will not have the ability to change or remove such third parties other than pursuant to limited approval rights.

***The Manager has a limited history of managing investment vehicles like the Trust and its experience may be inadequate or unsuitable to manage the Trust.*** Although the Manager has a history of property management, the past performances of the Manager in other investment vehicles is not an indication of its ability to manage an investment vehicle such as the Trust. If the experience of the Manager and its employees is inadequate or unsuitable to manage the Trust, the operations of the Trust may be adversely affected.

***The Trust may need to find and appoint a replacement Manager quickly, which could pose a challenge to the operations of the Trust.***The Majority Certificateholders could decide to replace Hilco as the Manager. Transferring responsibilities to another party will likely be complex and could subject the Trust to the risk of loss during the transfer, which could have a negative impact on the value of the Trust Certificates or result in loss of the Trust's assets and the Manager may also resign. The Trustee and the Certificateholders may not be able to find a party willing to serve as the Manager under the same terms as the current Management Agreement. To the extent that the Trustee and the Certificateholders are not able to find a suitable party willing to serve as the Manager, or to the extent that doing so requires entering into a modified Management Agreement that is less favorable for the Trust, the value of the Trust Certificates could be adversely affected.

### **Risks Relating to Taxes**

***If the Trust is not treated as a liquidating trust for federal tax purposes, there may be adverse tax consequences to the Trust and the Certificateholders.*** Pursuant to the Trust Agreement, the Trust was organized with the intention that it qualify as a liquidating trust under applicable federal income tax rules. A liquidating trust is treated as a grantor trust, which is a pass-through entity for federal income tax purposes. However, no legal opinions have been requested from counsel, and no rulings have been or will be requested from the Internal Revenue Service (the "IRS"), as to the tax treatment of the Trust. Accordingly, there can be no assurance that the IRS will not assert, and that a court would not conclude, that the Trust does not qualify as a liquidating trust. If the Trust does not qualify as a liquidating trust, it is intended that the Trust be treated as a partnership for U.S. federal income tax purposes (which would also be a pass-through entity for federal income tax purposes although the tax consequences of owning a partnership may differ from those of owning a grantor trust in some respects, possibly adversely); however, that treatment as a partnership is also not certain. Because a significant proportion of the Trust's income is expected to be real property rents received from New JCP or an assignee or sub-lessee thereof, the Trust Agreement includes restrictions on the transferability of Trust Certificates to Certificateholders that directly or indirectly own 4.9% or more of the Trust Certificates, which restrictions are intended to ensure that the Trust's rental income is not treated as received from a lessee or sub-lessee that is treated as related to the Trust for purposes of the publicly traded partnership "qualifying income" rules. These restrictions are intended to preserve the status of the Trust's rental income as "qualifying income" and thus, preserve the Trust's status as a partnership for U.S. federal income tax purposes in the event that the Trust is not treated as a grantor trust. However, New JCP is permitted to transfer its rights and obligations under the Master Leases in a variety of situations and the Trust may be unable to control who becomes a lessee or sublessee thereunder. Accordingly, even if the Trust Agreement's transfer restrictions are complied with, they may not prevent some or all of the Trust's rental income from being treated as related party rent for purposes of the publicly traded partnership rules, which could cause the Trust to fail to qualify as a partnership. If the Trust does not qualify as a liquidating trust and is not treated as a partnership for federal income tax purposes, there may be adverse federal income tax consequences, including taxation of the income of the Trust at the entity level, which could reduce the amount of cash available for distributions to the Certificateholders, and additional tax payable by the Certificateholders upon their receipt of distributions.

***A Certificateholder's tax liability could exceed distributions.*** Given the intended treatment of the Trust as a liquidating trust treated as a grantor trust for federal income tax purposes, the Certificateholders will be subject to



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## Table of Contents

tax on their share of the Trust's income, regardless of whether any distributions are made by the Trust. Therefore, for any particular year, taxable income recognized by a Certificateholder with respect to its Trust Certificates may exceed the amount of distributions, if any, that are made, in which case such Certificateholder would need to satisfy any tax liabilities arising from the ownership of Trust Certificates from such Certificateholder's own funds.

***Before purchasing Trust Certificates, investors are urged to engage in careful tax planning with a tax professional.*** The federal income tax treatment of the Trust Certificates is complex and may not be clear in all cases. Additionally, the federal income tax treatment of the Trust Certificates may vary depending on the investor's particular facts and circumstances. Investors other than individual citizens or residents of the United States or United States corporations should consider the impact of their status on the tax treatment of such an investment.

***Purchasers of Trust Certificates may be required to make special calculations to determine tax gain or loss on the sale of Trust Certificates.*** The owner of beneficial interests in a grantor trust (like a Trust Certificate) for most federal income tax purposes is treated as owning its proportionate share of the trust's assets, incurring its proportionate share of the trust's liabilities and earning its proportionate share of the income of the trust. The Trust does not expect to maintain a separate basis account for any subsequent purchaser of a Trust Certificate in an open market transaction. However, to the extent the Trust is treated as a grantor trust, such a subsequent purchaser may be treated as though such purchaser purchased the assets of the Trust deemed to have been owned by the selling Certificateholder by reason of owning Trust Certificates. The subsequent purchaser should have a fair market value tax basis in the acquired Trust Certificates equal to such purchaser's purchase price of the Trust Certificates. However, the books and records of the Trust may not reflect this new basis. Upon the sale of assets by the Trust, such a subsequent purchaser may need to make special calculations to report correctly its share of gain or loss for federal income tax purposes. Investors are urged to consult with their tax advisors regarding the acquisition, ownership and disposition of Trust Certificates.

***The ownership and disposition of Trust Certificates may give rise to adverse tax consequences for non-U.S. and certain tax-exempt Certificateholders.*** The Trust is expected to sell or otherwise dispose of its assets as quickly as commercially possible. Until individual assets are sold, such assets will generate rental income pursuant to the Master Leases. Such income will be allocated to the Certificateholders, and each Certificateholder should assume this income may be treated as income from the active conduct of a trade or business in the United States for federal income tax purposes. As a result, a non-U.S. Certificateholder that is not otherwise required to file federal income tax returns or pay federal income tax may be deemed engaged in such a U.S. trade or business and required to file a federal income tax return and pay federal income tax with respect to income (including income allocated to it by the Trust) that is connected to such trade or business. If the rental income is not treated as income from the active conduct of a U.S. trade or business, a non-US. Certificateholder generally would be subject to 30% gross basis withholding tax (or such lower rate specified by an applicable tax treaty) on distributions that are attributable to such rental income unless a special election is made to treat such rental income as income from a U.S. trade or business. In addition, gain arising in connection with the disposition of Properties is expected to be treated as gain from the disposition of a U.S. real property interest, subject to federal income tax for a non-U.S. Certificateholder. A withholding agent may withhold at the highest applicable rate on distributions to non-U.S. Certificateholders that are attributable to any such dispositions, and non-U.S. Certificateholders will be required to file federal income tax returns and pay federal income tax, to the extent not previously withheld, on their allocable share of any gain. A Certificateholder that is a non-U.S. corporation may be subject to a 30% branch profits tax (or such lower rate specified by an applicable tax treaty) of its effectively connected earnings and profits for each taxable year, as adjusted for certain taxes.

If a Certificateholder disposes of Trust Certificates, such disposition generally will be treated for federal income tax purposes as a disposition of an undivided interest in each of the underlying assets of the Trust. As such, unless the Trust Certificates are considered to be regularly traded on an established securities market for purposes of the Foreign Investment in Real Property Tax Act ("FIRPTA"), any amounts received on the

## Table of Contents

disposition of the Trust Certificates that are attributable to a non-U.S. Certificateholder's deemed disposition of a U.S. real property interest held by the Trust generally will be taxed on a net income basis in the manner described above. In addition, a buyer of Trust Certificates generally would be required to withhold 15% of the purchase price for such Trust Certificates to the extent the disposition of such Trust Certificates by the seller is attributable to the deemed disposition of underlying assets that constitute U.S. real property interests. If the Trust Certificates are considered to be regularly traded on an established securities market for purposes of FIRPTA, the disposition of the Trust Certificates generally would be subject to the rules under FIRPTA that govern publicly traded interests in publicly traded corporations. In such case, a non-U.S. Certificateholder that is not otherwise required to file federal income tax returns or pay federal income tax generally would only be subject to federal income tax under FIRPTA if such non-U.S. Certificateholder owned more than 5% of the Trust Certificates at any time during an applicable measuring period. It is not clear whether the Trust Certificates will be considered to be regularly traded on an established securities market for purposes of FIRPTA. These restrictions and the restrictions described below may make ownership and disposition of the Trust Certificates less attractive.

Certain tax-exempt Certificateholders may be subject to tax with respect to their share of the Trust's income if such income is unrelated business taxable income ("UBTI"), including income treated as "debt financed" income. Tax-exempt Certificateholders are strongly encouraged to consult their own tax advisors regarding all aspects of UBTI.

***The Certificateholders may be subject to state, local and Puerto Rican income taxes and may have to file tax returns in each jurisdiction where a Property is located.*** The Trust owns real property located in a significant number of U.S. states, as well as Puerto Rico. Many U.S. states, as well as Puerto Rico, impose income taxes on income earned with respect to real property located in such jurisdiction, including gain arising on the disposition of such property. States or localities (including Puerto Rico) that respect the pass-through nature of the Trust for tax purposes may require a Certificateholder to file a tax return and pay income tax in their jurisdiction. Because the Trust owns properties in 37 U.S. states, as well as Puerto Rico, this could result in the Certificateholders being required to file tax returns and paying taxes in a large number of jurisdictions.

***Expenses incurred by the Trust may not be deductible by the Certificateholders.*** Expenses incurred by the Trust generally will be deemed to have been proportionately paid by each Certificateholder. As such, these expenses may not be deductible or may be subject to limitations on deductibility. Investors are urged to consult with their tax advisors regarding the acquisition, ownership and disposition of Trust Certificates.

### **Risks Relating to Accounting, Financial Reporting and Information Management**

***The historical and pro forma financial information included in this registration statement may not be a reliable indicator of future results.*** The financial statements and the pro forma financial information included herein may not reflect what the Trust's business, financial position or results of operations will be in the future. The Properties were historically operated by Old Copper as part of its larger corporate organization and not as a stand-alone business. As a result, Old Copper unaudited financial statements as of and for the three and nine months ended October 31, 2020 as well as its audited financial statements as of February 1, 2020 and February 2, 2019 and for the fiscal years ended February 1, 2020, February 2, 2019 and February 3, 2018 incorporated by reference herein are not the financial results of the Trust and should not be relied upon as indicative of what the Trust's financial condition, results of operations or cash flows will be in the future. In addition, the pro forma financial information included in this registration statement may not reflect what the Trust's financial condition, results of operations or cash flows would have been had the Trust existed as a stand-alone business or independent entity during the periods presented. Significant differences exist between the Trust's cost structure, financing and business operations as compared to those of Old Copper. Moreover, the pro forma financial information included in this registration statement was prepared on the basis of assumptions derived from available information that we believe to be reasonable. However, these assumptions may change or may be incorrect, and actual results may differ, perhaps significantly. Therefore, the financial information included in this registration statement may not necessarily be indicative of what the Trust's financial condition, results of

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## Table of Contents

operations or cash flows will be in the future. For additional information about the basis of presentation of the financial information included in this registration statement, see “Item 2. Financial Information” and “Item 13. Financial Statements and Supplementary Data.”

***The Properties may be subject to impairment charges that may materially affect our financial results.*** Economic and other conditions may adversely impact the valuation of our assets, resulting in impairment charges that could have a material adverse effect on our results of operations and earnings. On a regular basis, we evaluate our assets for impairments based on various triggers, including changes in the projected cash flows of such assets and market conditions. If we determine that an impairment has occurred, then we would be required to make an adjustment to the net carrying value of the asset, which could have a material adverse effect on our results of operations in the accounting period in which the adjustment is made. Furthermore, changes in estimated future cash flows due to a change in our plans, policies or views of market and economic conditions could result in the recognition of additional impairment losses for already impaired assets, which, under the applicable accounting guidance, could be substantial.

***If the Trust is unable to maintain effective internal control over financial reporting in the future, the accuracy and timeliness of its financial reporting may be adversely affected.*** If the Trust identifies one or more material weaknesses or significant deficiencies in the Trust’s internal control over financial reporting, the Trust may be required to disclose that its internal control over financial reporting is ineffective. Were this to occur, the Trust could lose investor confidence in the accuracy and completeness of its financial reports, which could have a material adverse effect on the Trust’s reputation and the value of the Trust Certificates.

***Any decision on the part of the Trust, as an emerging growth company, to choose reduced disclosures applicable to emerging growth companies could make the Trust Certificates less attractive to investors.*** The Trust is an “emerging growth company,” as defined in the Securities Act, and for so long as it continues to be an emerging growth company, it may choose to take advantage of certain exemptions from various reporting requirements applicable to other public companies, including the extended transition period for complying with new or revised financial accounting standards. See “Item 1. Business—Emerging Growth Company Status.” As a result of our reduced reporting, investors may be unable to compare our business with other companies in our industry if they believe that our financial accounting is not as transparent or complete as other companies in our industry. No assurance can be given that this reduced reporting will not have an impact on the price of the Trust Certificates.

***Information technology, data security breaches and other similar events could harm the Trust.*** The Trust and its service providers, including the Manager, rely on information technology and other computer resources to perform operational activities as well as to maintain the Trust’s business records and financial data. These computer systems are subject to damage or interruption from power outages, computer attacks by hackers, viruses, catastrophes, hardware and software failures and breach of data security protocols by its personnel or third-party service providers. Although the Trust has implemented administrative and technical controls and taken other actions to minimize the risk of cyber incidents and otherwise protect its information technology, computer intrusion efforts are becoming increasingly sophisticated and even the controls that the Trust has installed might be breached. Further, most of these computer resources are provided to the Trust or are maintained on behalf of the Trust by third-party service providers pursuant to agreements that specify certain security and service level standards, but which ultimately are outside of the Trust’s control. Additionally, security breaches of the Trust’s information technology systems could result in the misappropriation or unauthorized disclosure of proprietary, personal and confidential information, which could result in significant financial or reputational damages to the Trust.

## **Item 2. Financial Information**

### **Management’s Discussion and Analysis of Financial Condition and Results of Operations**

As of the date of this registration statement, the Trust owns, directly or indirectly, the Properties. Prior to the transfer of Old Copper fee or leasehold interest (as applicable) in the Properties to the PropCos, the Properties

## Table of Contents

did not have business activities or rental history with respect to third parties; rather such assets were owned or ground leased by Old Copper and used by Old Copper in its operations. Accordingly, the following does not include a discussion and analysis of the historical results of operations for the Trust or the Properties.

This following discussion contains forward-looking statements that involve risks and uncertainties. The Trust's actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those which are discussed below and elsewhere in this registration statement. See "Cautionary Statement Regarding Forward-Looking Statements."

### ***Overview***

On December 21, 2020, the Trust was established in accordance with the Plan of Reorganization. On January 30, 2021 (the "Effective Date"), Copper BidCo LLC, an entity controlled by certain of the Debtors' lenders (replacing Old Copper Company, Inc. (f/k/a J. C. Penney Company, Inc.) ("Old Copper")), and GLAS Trust Company LLC, continuing as trustee, entered into an Amended and Restated Trust Agreement (the "Trust Agreement"). In connection therewith, Old Copper transferred its fee or leasehold interest (as applicable) in the Properties to the PropCos and assigned the Master Leases relating to the Properties to the Trust. As a result, the Trust owns, indirectly through separate property holding companies (referred to in this registration statement as the PropCos), 160 Retail Properties and six Warehouses, all of which are leased to New JCP under the Master Leases.

The Trust's operations are expected to consist solely of, in each case through the PropCos, owning the Properties, leasing the Properties to New JCP under the Master Leases, and subject to market conditions, selling the Properties to third-party investors as promptly as practicable. The Trust retained the Manager, who is an independent third party and will initially be Hilco, to perform asset management duties with respect to the Properties and one or more third-party real estate brokers to sell the Properties. Together with the proceeds from sales of the Properties, the Master Leases account for all of the Trust's revenues.

### ***Results of Operations***

*Revenues.* The Trust's earnings primarily consist of rental payments by New JCP under the Master Leases and sales proceeds from the disposition of Properties. Under the Master Leases, base rent is initially expected to be \$156.6 million per year (\$121.2 million for the Retail Master Lease and \$35.4 million for the DC Master Lease), subject to a rental abatement of 50% (\$64.8 million) through December 31, 2021 under the Retail Master Lease. Commencing on the third lease year, the base rent under each Master Lease is subject to annual adjustments as follows: (i) for the Retail Master Lease, the annual base rent will be adjusted, commencing on December 7, 2023 and continuing each following year during the term, by the per annum percentage increase (cumulative and compounded) in the consumer price index reported for the month of September immediately preceding the applicable base rent adjustment over the consumer price index reported for the month of September in the calendar year immediately preceding the year of such adjustment, subject to a 2% cap on any such annual increase for the Retail Master Lease, provided that such adjustment shall not decrease the then-applicable base rent and (ii) for the DC Master Lease, the annual base rent will be increased by 2% per annum (cumulative and compounded) for each lease year over the rent for immediately preceding lease year. With respect to both Master Leases, during each lease year during any renewal term, the base rent shall be an annual amount equal to the greater of (a) the base rent for the immediately preceding lease year (as adjusted by subtracting the base rent allocation amounts allocable to any terminated properties) and (b) the fair market rent for such renewal term, as determined in accordance with a valuation procedure set forth in the Master Leases.

Under the Master Leases, the Tenants are required to make all expenditures reasonably necessary to maintain the premises in good appearance, repair and condition. Revenues from tenant reimbursement income will equal expenditures for which the Tenants reimburse the Trust pursuant to the terms of the Master Leases.

*Expenses.* General and administrative expenses are expected for items such as professional services, legal expenses, property management and leasing costs. The Trust is not expected to have any employees other than

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## **Table of Contents**

the Executive Officer and the Financial Officer (who are employees of the Manager provided to the Trust pursuant to the Management Agreement), and to the extent requested by the Trust, New JCP will provide the Trust with certain administrative and support services pursuant to the Transition Services Agreement. The fees charged to the Trust for the services furnished pursuant to such agreement will generally be determined on cost plus basis.

The Master Leases are triple-net leases, meaning that New JCP will generally be required to pay all expenditures necessary to maintain the premises in good appearance, repair and condition, and will generally be required to pay all real estate taxes, ground rent, insurance premiums and other amounts attributable to the ownership and operation of the Properties. If Tenant exercises its right to terminate the Retail Master Lease as to a portion of one of the six Tenant Option Properties, the Retail Landlord may incur costs to operate the terminated portion. Accordingly, it is not anticipated that the Trust will be required to expend any material amounts for such expenditures, excluding the cost of any enhanced insurance coverage that the Trust may elect to obtain. See “Item 1. Business—Description of the Trust and the Trustee—Insurance” for additional information.

The Trust will incur depreciation expense related to the Properties. Depreciation expense are determined based on the useful lives of the Properties.

### ***Liquidity and Capital Resources***

The Trust’s primary sources for meeting its capital requirements are its cash received from New JCP pursuant to the Master Leases and proceeds from the sale of the Properties. The Trust has initial cash on hand of \$25.0 million.

The Trust’s primary uses of funds is general and administrative costs, all of which the Trust expects to be able to adequately fund over the next 12 months from its primary sources of capital. Capital expenditures for the Properties will be the responsibility of New JCP as the tenant.

### ***Critical Accounting Policies and Estimates***

The preparation of our financial statements in conformity with GAAP requires that we make estimates and use assumptions that in some instances may materially affect amounts reported in the Combined Schedules of Investments of Real Estate Assets to be Acquired included in this registration statement in “Item 15. Financial Statements and Exhibits.” In preparing these financial statements, we have made our best estimates and judgments based on historical experience and current trends that we believe are reasonable under the circumstances, as well as other factors that we believe are relevant at the time of the preparation of the Combined Schedules of Investments of Real Estate Assets to be Acquired. Actual results could differ from our assumptions and estimates. See Note 2 to the Combined Schedules of Investments of Real Estate Assets to be Acquired in “Item 15. Financial Statements and Exhibits” for a description of our significant accounting policies.

*Long-Lived Assets.* Land, buildings and improvements are stated at cost less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the useful lives of the respective assets are expensed as incurred. Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method. The range of lives is generally between 10 and 50 years for buildings and improvements.

*Impairment of Long-Lived Assets and Real Estate.* We periodically assess whether there are any indicators that the value of our long-lived real estate and related intangible assets such as building and improvements or operating lease assets may be impaired or that their carrying value may not be recoverable. These impairment indicators include, but are not limited to, vacancies, an upcoming lease expiration, a tenant with credit difficulty, the termination of a lease by a tenant, significant underperformance relative to historical or projected future operating results or a likely disposition of the property.

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## Table of Contents

For real estate assets held for investment and related intangible assets in which an impairment indicator is identified, we follow a two-step process to determine whether an asset is impaired and to determine the amount of the charge. First, we compare the carrying value of the property's asset group to the estimated future net undiscounted cash flow that we expect the property's asset group will generate, including any estimated proceeds from the eventual sale of the property's asset group. The undiscounted cash flow analysis requires us to make our best estimate of market rents, residual values and holding periods. We estimate market rents and residual values using market information from outside sources such as third-party market research, external appraisals, broker quotes or recent comparable sales.

As the Trust's objective is to sell the Properties as promptly as practicable after the PropCo Closing with the intent to complete the sale of all Properties within a short period of time, the holding periods used in the undiscounted cash flow analysis will reflect the short-term nature of the investment. Depending on the assumptions made and estimates used, the future cash flow projected in the evaluation of long-lived assets and associated intangible assets can vary within a range of outcomes. We consider the likelihood of possible outcomes in determining our estimate of future cash flows and, if warranted, we apply a probability-weighted method to the different possible scenarios. If the future net undiscounted cash flow of the property's asset group is less than the carrying value, the carrying value of the property's asset group is considered not recoverable. We then measure the impairment loss as the excess of the carrying value of the property's asset group over its estimated fair value.

*Assets Held for Sale.* We generally classify real estate assets that are subject to operating leases or direct financing leases as held for sale when we have entered into a contract to sell the property, all material due diligence requirements have been satisfied, we received a non-refundable deposit, and we believe it is probable that the disposition will occur within one year. When we classify an asset as held for sale, we compare the asset's fair value less estimated cost to sell to its carrying value, and if the fair value less estimated cost to sell is less than the property's carrying value, we reduce the carrying value to the fair value less estimated cost to sell. We base the fair value on the contract and the estimated cost to sell on information provided by brokers and legal counsel. We then compare the asset's fair value (less estimated cost to sell) to its carrying value, and if the fair value, less estimated cost to sell, is less than the property's carrying value, we reduce the carrying value to the fair value, less estimated cost to sell. We will continue to review the property for subsequent changes in the fair value and may recognize an additional impairment charge, if warranted.

### **Quantitative and Qualitative Disclosures About Market Risk**

The Trust does not expect to have any market risk exposure as defined by Item 305 of Regulation S-K promulgated by the SEC. In particular, the Trust Agreement does not authorize the Trustee to borrow for payment of the Trust's ordinary expenses, the Trust may not engage in transactions in foreign currencies which could expose the Trust or the Certificateholders to any foreign currency related market risk, the Trust may not invest in derivative financial instruments, and the Trust has no foreign operations or long-term debt instruments.

[Table of Contents](#)

**Item 3. Properties**

The Trust owns six Warehouses and 160 Retail Properties across 37 U.S. states and Puerto Rico. In the aggregate, the Warehouses and Retail Properties comprise 10.1 million square feet and 21.7 million square feet, respectively, of leasable space, all of which is leased to the Tenants under the Master Leases. See “Item 1. Business—Description of the Trust Documents—Master Leases” for additional information regarding the Master Leases. The following tables summarize certain features of the owned and ground-leased properties that comprise the Properties:<sup>(1)</sup>

**Warehouses**

Location	Square Feet	Owned Acreage	Annual Rent	Annual Rent (% of Total)
Reno, NV	1,838,800	200.8	\$ 8,734,300	24.7%
Forest Park (Atlanta), GA	2,233,475	107.2	\$ 7,817,163	22.1%
Columbus, OH	2,000,000	120.1	\$ 6,500,000	18.4%
Lenexa, KS	2,308,100	150.7	\$ 6,294,059	17.8%
Haslet, TX	1,133,027	67.3	\$ 4,248,851	12.0%
Statesville, NC	595,209	32.0	\$ 1,785,627	5.0%
<b>Total Warehouses</b>	<b>10,108,611</b>	<b>678.2</b>	<b>\$ 35,380,000</b>	<b>100.0%</b>

**Retail Properties**

State	# of Properties			Square Feet	Annual Rent	Annual Rent (% of Total)
	Fee Owned	Ground Lease	Total			
CA	22	6	28	4,433,580	\$ 24,302,383	20.0%
TX	26	4	30	3,269,745	\$ 21,297,084	17.6%
FL	8	1	9	1,292,316	\$ 9,874,971	8.1%
WA	3	1	4	666,272	\$ 4,515,948	3.7%
IL	5	0	5	845,224	\$ 4,414,248	3.6%
NV	2	1	3	437,937	\$ 3,941,433	3.3%
AZ	5	0	5	651,164	\$ 3,848,169	3.2%
MI	6	0	6	863,012	\$ 3,699,717	3.1%
NJ	5	0	5	882,946	\$ 3,510,571	2.9%
OH	5	0	5	645,447	\$ 3,504,477	2.9%
VA	5	0	5	736,563	\$ 3,330,898	2.7%
PA	4	0	4	555,087	\$ 2,984,042	2.5%
NY	2	2	4	673,802	\$ 2,830,244	2.3%
MD	4	0	4	559,312	\$ 2,424,176	2.0%
NM	2	0	2	265,910	\$ 2,014,848	1.7%
Other	33	8	41	4,933,630	\$ 24,734,170	20.4%
<b>Total Retail</b>	<b>137</b>	<b>23</b>	<b>160</b>	<b>21,711,947</b>	<b>\$ 121,227,377</b>	<b>100.0%</b>

129.5 million

<sup>(1)</sup> The base rent for the Retail Properties from the commencement of the Retail Master Lease (December 7, 2020) through December 31, 2021 is \$129.5 million, 50% of which (\$64.8 million) is subject to a rental abatement. The first year rent abatement is the only material concession provided to the Tenant.

[Table of Contents](#)

**Landlord Retail Option Properties**

Under the Retail Master Lease, the Trust has several independent options, exercisable from time to time, to terminate the Retail Master Lease as to any one or more of the 23 Landlord Retail Option Properties. See “Item 1. Business—Description of the Trust Documents—Master Leases—Landlord Option Properties” for additional information. The following table summarizes certain features of the owned and ground-leased properties that comprise the Landlord Retail Option Properties:

<u>Store Name</u>	<u>Location</u>	<u>Ownership Type</u>	<u>Annual Rent</u>	<u>Annual Rent (% of Total Retail Properties)</u>
Springfield Town Center	Springfield, VA	Fee	\$ 1,234,632	1.0%
Queens Center	Elmhurst, NY	Fee	\$ 1,226,040	1.0%
Westfield Culver City	Culver City, CA	Fee	\$ 1,222,992	1.0%
SouthBay Pavilion at Carson	Carson, CA	Fee	\$ 1,204,182	1.0%
Stonebriar Centre	Frisco, TX	Fee	\$ 982,800	0.8%
Fashion Valley	San Diego, CA	Ground Lease	\$ 941,007	0.8%
Barton Creek Square	Austin, TX	Fee	\$ 864,774	0.7%
Memorial City S/C	Houston, TX	Fee	\$ 842,916	0.7%
Westfield Annapolis	Annapolis, MD	Fee	\$ 760,392	0.6%
Westfield Santa Anita	Arcadia, CA	Ground Lease	\$ 715,971	0.6%
Newport Centre	Jersey City, NJ	Fee	\$ 648,655	0.5%
Twelve Oaks Mall	Novi, MI	Fee	\$ 545,325	0.4%
Westminster Mall	Westminster, CA	Ground Lease	\$ 533,985	0.4%
The Woodlands Mall	The Woodlands, TX	Fee	\$ 511,000	0.4%
The Shops at Tanforan	San Bruno, CA	Fee	\$ 446,464	0.4%
Fair Oaks Mall	Fairfax, VA	Fee	\$ 386,844	0.3%
Pheasant Lane Mall	Nashua, NH	Fee	\$ 366,926	0.3%
Stoneridge S/C	Pleasanton, CA	Fee	\$ 311,838	0.3%
Park Meadows	Lone Tree, CO	Fee	\$ 302,586	0.2%
Freehold Raceway Mall	Freehold, NJ	Fee	\$ 299,216	0.2%
The Oaks	Thousand Oaks, CA	Fee	\$ 289,918	0.2%
Danbury Fair	Danbury, CT	Fee	\$ 272,750	0.2%
Gateway Shopping Center I & II	Brooklyn, NY	Ground Lease	\$ 247,884	0.2%
<b>Total Landlord Retail Option Properties</b>			<b><u>\$15,159,095</u></b>	<b><u>12.5%</u></b>

**Item 4. Security Ownership of Certain Beneficial Owners and Management**

The Trust has 75 million Trust Certificates issued and outstanding. The following table sets forth estimated information regarding the beneficial ownership of the Trust Certificates immediately following the Effective Date with respect to each Certificateholder that is a beneficial owner of more than 5% of the Trust Certificates. The Trust does not have directors. The Executive Officer and the Financial Officer of the Trust do not and are not permitted to, directly or indirectly, own any of the Trust Certificates.

Beneficial ownership of the Trust Certificates is determined under rules of the SEC and generally includes any Trust Certificates over which a person exercises sole or shared voting or investment power. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons named in the table below have sole voting and investment power with respect to all Trust Certificates shown as beneficially owned by them.

<u>Name of Beneficial Owner</u>	<u>Number of Trust Certificates Owned</u>	<u>Percentage of Trust Certificates Owned</u>
H/2 Credit Manager LP	29,711,680	39.62%
Silver Point Finance, LLC	9,492,258	12.65%
Sixth Street Partners, LLC	7,353,908	9.81%
Owl Creek Asset Management, L.P.	7,079,171	9.44%
Sculptor Capital Investments, LLC	4,000,308	5.33%



## [Table of Contents](#)

### **Item 5. Directors and Executive Officers**

The Trust does not currently have, and will not have, directors.

Below is a list of names, ages and a brief account of the business experience as of February 1, 2021 of our executive officers.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Neil Aaronson	47	Principal Executive Officer
Larry Finger	67	Principal Financial Officer

*Neil Aaronson, Principal Executive Officer.* Mr. Aaronson is our principal executive officer. Mr. Aaronson also currently serves as CEO of Hilco Real Estate LLC, an affiliate of the Manager. He has served in that role since 2008. Previously, Mr. Aaronson served as the Executive Vice President of Hilco Global from 2006 to 2008. Prior to joining Hilco Global, Mr. Aaronson served as Senior Vice President of Business Development for Cendant Corporation from 2003 to 2006, where he oversaw deal-making for the company's hotel and timeshare businesses and as Vice President of Cendant's Strategic Development Group from 2000 to 2003. Earlier, he served as an associate investment banker with ING Barings, where he handled the analysis and negotiations of acquisitions, divestitures and financings for several public and private companies. Mr. Aaronson brings extensive experience in all aspects of retail, restaurant, industrial, hospitality, office and medical office real estate to the role. Mr. Aaronson received a Bachelor of Economics degree from the Wharton School of the University of Pennsylvania and a Juris Doctor degree from the University of Pennsylvania Law School.

*Larry Finger, Principal Financial Officer.* Mr. Finger is our principal financial officer. Mr. Finger also currently serves as Executive Vice President of Hilco Real Estate LLC, an affiliate of the Manager. From April 2020 until his appointment as Executive Vice President of Hilco Real Estate LLC, Mr. Finger served as a full-time consultant with Hilco Real Estate LLC. Prior to joining Hilco Real Estate LLC, Mr. Finger served as president of Strategic Advisory, Inc., an advisory services company specializing in improving public REIT valuations with a particular focus on the retail sector, from 2008 to April 2020. Prior to forming Strategic Advisory, Inc., Mr. Finger served as chief financial officer of Federal Realty Investment Trust from 2002 until 2007. From 1993 until 2001, Mr. Finger served as chief financial officer of Washington Real Estate Investment Trust. From 1978 until 1991, Mr. Finger served in various senior management positions, including chief operating officer of Savage/Fogarty Companies, Inc., a real estate development company. Mr. Finger served as a member of the Board of Directors of American Assets Trust (NYSE: AAT) from the completion of its initial public offering in 2011 through June 2019, and during that period, he also served as chairperson of the Audit Committee and a member of the Compensation Committee. Mr. Finger received his Juris Doctor degree from Georgetown University Law Center and his Bachelor of Science degree in accountancy from the University of Illinois. Mr. Finger was licensed as a Certified Public Accountant in Maryland in 1976 and was admitted to the District of Columbia Bar in 1981.

### **Item 6. Executive Compensation**

Pursuant to the terms of the Management Agreement, the Manager will provide a management team, along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust, including individuals who shall serve as the Executive Officer and Financial Officer of the Trust, solely in connection with SEC reporting requirements and for no other purpose, to provide the management services thereunder.

The Trust began conducting operations as of the date of entry into the Management Agreement. Compensation to the individuals who are our executive officers will ultimately be paid pursuant to the terms of the Management Agreement. See "Item 1. Business—Description of the Trust Documents—Management Agreement" for additional details.

**Item 7. Certain Relationships and Related Transactions and Director Independence**

**Registration Rights Agreement**

The Trust has entered into a registration rights and resale cooperation agreement (the “Registration Rights Agreement”) providing for, among other things, (i) a resale registration statement at the request of Certificateholders holding, together with their affiliates, in excess of 9% of the outstanding Trust Certificates, (ii) customary “piggy-back rights” for all Certificateholders, holding, together with their affiliates, at least 0.5% of the outstanding Trust Certificates, and (iii) cooperation assistance for sales of the Trust Certificates pursuant to an exemption from the registration requirements of the Securities Act. The Trust has advised us that at this time it has not identified any Certificateholder who would require resale registration for their Trust Certificates at this time; however, each Certificateholder will need to make their own determination as to whether such registration rights are needed. See “Item 9. Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters—Trust Certificates Eligible for Future Sale.”

Other than the Registration Rights Agreement, there is not currently proposed any transaction or series of similar transactions following the Effective Date to which the Trust will be a party in which the amount involved exceeded or will exceed \$120,000 and in which any related person had or will have a direct or indirect material interest.

**Director Independence**

The Trust does not have any directors.

**Item 8. Legal Proceedings**

From time to time, the Trust may be party to various legal actions and administrative proceedings and subject to various claims arising in the ordinary course of business. Pursuant to the Plan of Reorganization, any liability arising from, or relating to, legal proceedings involving the businesses and operations located at the Properties prior to the Effective Date is retained by Old Copper.

**Item 9. Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters**

**Market Information and Holders**

There is currently no established public market for the Trust Certificates.

As of January 30, 2021, there are approximately 250 Certificateholders that in the aggregate hold 75 million Trust Certificates.

**Trust Certificates Eligible for Future Sale**

Pursuant to Section 1145 of the Bankruptcy Code, except as noted below, the offering, issuance and distribution of the Trust Certificates pursuant to the Plan of Reorganization is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution or sale of securities. The Trust Certificates issued in reliance on Section 1145 of the Bankruptcy Code are not “restricted securities,” as defined in Rule 144(a)(3) under the Securities Act, and are freely tradable and transferable by any initial recipient thereof that (i) is not an “affiliate” of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an “affiliate” within 90 days of such transfer, and (iii) is not an entity that is an “underwriter,” as defined in Section 1145(b) of the Bankruptcy Code.

Section 1145(b)(1) of the Bankruptcy Code defines an “underwriter” as any person who:

- purchases a claim against, an interest in, or a claim for an administrative expense against the debtor, if that purchase is with a view to distributing any security received in exchange for such a claim or interest;

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## Table of Contents

- offers to sell securities offered under a plan of reorganization for the holders of those securities;
- offers to buy those securities from the holders of the securities, if the offer to buy is (a) with a view to distributing those securities; and (b) under an agreement made in connection with the plan of reorganization, the completion of the plan of reorganization, or with the offer or sale of securities under the plan of reorganization; or
- is an issuer with respect to the securities, as the term “issuer” is defined in section 2(a)(11) of the Securities Act.

To the extent that persons who received Trust Certificates issued under the Plan of Reorganization that are exempt from registration under the Securities Act or other applicable law by Section 1145 of the Bankruptcy Code are deemed to be “underwriters,” resales by those persons would not be exempted from registration under the Securities Act or other applicable law by Section 1145 of the Bankruptcy Code and may only be sold pursuant to a registration statement or pursuant to exemption therefrom, such as the exemption provided by Rule 144 under the Securities Act. We have agreed to register such Trust Certificates for resale pursuant to the Registration Rights Agreement. See “Item 7. Certain Relationships and Related Transactions—Registration Rights Agreement.”

Whether or not any particular person would be deemed an “underwriter” with respect to the Trust Certificates received pursuant to the Plan of Reorganization would depend upon various facts and circumstances applicable to that person. Accordingly, we express no view as to whether any particular person that will receive the Trust Certificates pursuant to the Plan of Reorganization will be deemed an “underwriter” with respect to such Trust Certificates. As a result, we cannot estimate the number of Trust Certificates that may be sold under Rule 144(a) of the Securities Act. The Trust has not agreed to issue any additional Trust Certificates in the future.

### **Dividend Policy**

Commencing on March 10, 2021, the Trust will distribute on a monthly basis the proceeds from lease payments under the Master Leases (until such time as all of the Properties have been sold) and all sales proceeds from the disposition of Properties, in each case pro rata, to the Certificateholders as of the record date immediately preceding the applicable distribution date. Such distributions shall be net of tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors, and funds to be set aside for the Trustee’s and Manager’s reserve accounts.

### **Item 10. Recent Sales of Unregistered Securities**

Pursuant to the Plan of Reorganization, the Trust has issued and distributed 75 million Trust Certificates to certain lenders of the Debtors. Pursuant to Section 1145 of the Bankruptcy Code, the offering, issuance and distribution of the Trust Certificates as contemplated by the Plan of Reorganization is exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable U.S. state or local law requiring registration prior to the offering, issuance, distribution or sale of securities.

### **Item 11. Description of Registrant’s Securities to be Registered**

#### **Trust Certificates**

The Trust Agreement creates a series of equity trust certificates designated as “Copper Property CTL Pass Through Certificates.” 75 million Trust Certificates of such series have been issued. Each Trust Certificate represents a fractional undivided beneficial interest in the Trust created thereby and represents Certificateholders’ interests in the Trust. All Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the

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## **Table of Contents**

Trust Agreement. The Trust Certificates are the only instruments evidencing a fractional undivided interest in the Trust. The Trust Certificates do not represent indebtedness of the Trust. The Trust Certificates will not be repurchased by the Trust, and no additional certificates will be issued by the Trust.

The issuance of the Trust Certificates under the Plan of Reorganization is expected to be exempt pursuant to Section 1145 of the Bankruptcy Code. Thus, the Trust Certificates (i) would not be “restricted securities,” as defined in Rule 144(a)(3) under the Securities Act and (ii) would be freely tradable and transferable by any initial recipient thereof that (i) is not an “affiliate” of the Debtors or the Trust, as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an “affiliate” within 90 days of such transfer, and (iii) is not an entity that is an “underwriter,” as defined in subsection (b) of Section 1145 of the Bankruptcy Code.

Certificateholders that actually or constructively own 4.9% or more of the Trust Certificates are required to deliver a certification to the Trustee, as described in the Trust Agreement, that such person (i) either (a) does not own, and will not own (so long as such person actually or constructively owns 4.9% or more of the Trust Certificates), actually or constructively, any stock, partnership or member interest or other equity or beneficial interest in (or, as applicable, in the assets or net profits of) (any such interest, a “Relevant Equity Interest”) in any Tenant listed on Schedule III of the Trust Agreement as of the date of such certification or (b) does not own, and will not own (so long as such person actually or constructively owns 4.9% or more of the Trust Certificates), actually or constructively, a Relevant Equity Interest in any Tenant listed on Schedule III as of the date of such certification in excess of the specified percentage of the aggregate outstanding Relevant Equity Interests in such Tenant to which the Trustee has consented; and (ii) agrees to provide in a timely manner any information as the Trustee or the Manager may request in order to determine the accuracy of such certification or the effect, if any, that such person’s ownership of Trust Certificates would have on the Trust’s status as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a “business entity” (rather than a grantor trust) for U.S. federal income tax purposes. A Certificateholder that has delivered such a certification is referred to as an “Exempted Holder.”

The Trust Certificates are not listed on a national securities exchange; however, the Trust intends to take actions to cause the Trust Certificates to be quoted on a market operated by OTC Markets Group. See “Item 1A. Risk Factors—Risks Relating to the Trust Certificates—There is no currently established trading market for the Trust Certificates, which could limit liquidity, and it may be difficult to establish a price per Trust Certificate.”

### **Interest in Assets**

Beneficial interests in the Trust do not entitle any Certificateholder to any title in, or to any of the assets of, the Trust. Without limitation, the Certificateholders have no right with respect to, or interest in, cash, cash equivalents, any real properties or the net proceeds from sales of real properties.

### **Sum Certain**

Beneficial interests in the Trust do not represent an obligation of any person to pay a sum certain amount.

### **Voting**

Under the Trust Agreement, all Trust Certificates shall vote as a single class and shall be in all respects equally and ratably entitled to the benefits of the Trust Agreement without preference, priority or distinction on account of the actual time or times of authentication and delivery, all in accordance with the terms and provisions of the Trust Agreement. Notwithstanding the generality of the foregoing, Trust Certificates owned by certain holders, including the debtors, Simon, Brookfield, the Tenants, the Trustee, Manager or any other advisor engaged by or on behalf of the Trust at any time during the term of the Trust Agreement, certain creditors of the trust any party to a Strategic Disposition Transaction or any affiliate of any of the foregoing shall be disregarded and deemed not be outstanding for the purposes of any direction. The Trust Certificates are the only instruments evidencing a fractional undivided interest in the Trust.

### Approval Rights

Under the Trust Agreement, the approval rights of the Certificateholders are limited to the following: (i) approval of the incurrence of indebtedness in excess of \$5,000,000; (ii) approval of sales of Properties at prices below certain thresholds; (iii) approval of sales of properties beyond the targeted sales period; (iv) approval of a Strategic Disposition Transaction; (v) approving the engagement of any Financial Advisor or Leasing Agent (each as defined in the Trust Agreement); (vi) increasing the size of, or the duration for holding, Post-Closing Reserves (as defined in the Trust Agreement); (vii) increasing the Reserve Amount (as defined in the Trust Agreement); and (viii) the engagement of a new Trustee or Manager.

### Distributions

The Trust Certificates represent a right to receive a pro rata portion of distributions by the Trust pursuant to the terms of the Trust Agreement. Prior to distributions to Certificateholders, the Trust will make distributions in respect of certain tax payments to be made by the Trust, fees and expenses of the Trustee, the Manager and any other professional advisors, and funds to be set aside for the Trustee's and Manager's reserve accounts.

### Certification and Transfer Restrictions

The Trust Certificates are evidenced by book-entry form represented by one or more global certificates registered in the name of DTC, as depository, or Cede & Co., its nominee, for so long as DTC is willing to act in that capacity.

Currently, the transfer agent of the Trust is GLAS Trust Company LLC. The transfer agent may be contacted by phone for customer service between the hours of 8:30 a.m. and 5:30 p.m. EST, Monday through Friday, at (201) 839-2200 and may be contacted via e-mail at ClientServices.Americas@glas.agency. Written correspondence to the transfer agent may be directed to GLAS Trust Company LLC, 3 Second Street, Suite 206, Jersey City, New Jersey 07311.

The Trust Certificates are subject to certain restrictions on transfer under the Trust Agreement (in addition to those which may apply to certain Certificateholders who have determined they are statutory underwriters as described above). The Trust is intended to be treated as a grantor trust, and not a business entity, for U.S. federal income tax purposes. However, no ruling or opinion of counsel has been given regarding the Trust's tax status. In the event the Trust is treated as a business entity rather than a grantor trust, it would be treated as a partnership for U.S. federal income tax purposes unless it is treated as a publicly traded partnership taxable as a corporation. To mitigate the likelihood that the Trust is treated as a corporation for tax purposes, the Trust Certificates are subject to certain restrictions on transfer, as summarized in the following paragraph, for the purpose of allowing the Trust to satisfy the "qualifying income" requirements of Sections 7704(c)(1) and (2) of the Code. Certificateholders should carefully review the transfer restrictions in their entirety, which are set forth in Section 4.05 of the Trust Agreement.

No person may (i) actually or constructively own 4.9% or more of the Trust Certificates unless such person is an Excepted Holder or (ii) actually or constructively own any Trust Certificates that would cause the Trust to own in the aggregate (a) in the case of any tenant or sub-tenant listed on Schedule III of the Trust Agreement (as of the date ownership of such Trust Certificate was obtained) that is a corporation for U.S. federal income tax purposes, stock of such tenant or sub-tenant possessing 10% or more of the total combined voting power of all classes of stock entitled to vote or 10% or more of the total value of shares of all classes of stock of such tenant or sub-tenant within the meaning of Section 856(d)(2)(B)(i) of the Code; or (b) in the case of any tenant or sub-tenant listed on Schedule III of the Trust Agreement (as of the date ownership of such Trust Certificate was obtained) that is not a corporation for U.S. federal income tax purposes, an interest of 10% or more in the assets or net profits of such tenant or sub-tenant within the meaning of Section 856(d)(2)(B)(ii) of the Code. Any person

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## Table of Contents

who attempts to own a Trust Certificate that would result in a violation of either (i) or (ii) above must notify the Trustee in writing as promptly as practicable. Any transfer in violation of either (i) or (ii) above shall be void ab initio. If the restrictions in this paragraph are violated, the relevant Trust Certificate will be transferred automatically and by operation of law to a charitable trust and shall be designated as a "Designated Trust Interest" under the Trust Agreement.

The transfer restrictions described above may have the effect of delaying, deferring or preventing a change in control of the Trust.

### **Other Rights and Restrictions**

Certificateholders do not have preemptive rights or liquidation rights, and they have no right to convert their Trust Certificates into any other securities. Certificateholders are not liable for the liabilities and obligations of the Trust by reason of holding Trust Certificates. The Trust Certificates are not subject to redemption by the Trust.

The Trustee may resign at any time as Trustee of the Trust by giving 30 days' prior written notice thereof to the Certificateholders and the Manager. The Trustee may be removed at any time and for any reason as Trustee of the Trust by direction of the Majority Certificateholders.

### **Item 12. Indemnification of Directors and Officers**

Under New York law, the Trust has the power to indemnify and hold harmless any person from and against any and all claims and demands whatsoever, subject to such standards and restrictions, if any, as are set forth in its governing instrument. The Trust is governed by the Trust Agreement, which states that the Trustee and each of its agents, assigns, attorneys, directors, employees, executors, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives and successors (each, a "Trustee Indemnified Party") will be indemnified for, and defended and held harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense, including the reasonable fees and expenses of their respective professionals (collectively, "Damages") incurred without gross negligence, willful misconduct or bad faith on the part of the applicable Trustee Indemnified Party (which gross negligence, willful misconduct or bad faith, if any, must be determined by a final, non-appealable order of a court of competent jurisdiction) for any action taken, suffered or omitted to be taken by the Trustee Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Trust Agreement. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence or willful misconduct.

In addition, the Trust Agreement provides that, to the fullest extent permitted by law, each Trustee Indemnified Party shall be indemnified for, and defended and held harmless against, any and all Damages arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Trust if the applicable Trustee Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Trust or its Certificateholders.

The Trust Agreement also requires the Manager to obtain all reasonable insurance coverage for the Trustee. The cost of any such insurance coverage is an expense of the Trust.

### **Item 13. Financial Statements and Supplementary Data**

See "Item 15. Financial Statements and Exhibits."

The historical audited and unaudited financial statements of Old Copper as the owner of the retail and operating assets sold to New JCP (the Trust's significant lessee upon consummation of the PropCo Formation)

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## Table of Contents

have been filed with the SEC. Old Copper files annual, quarterly and current reports and other information with the SEC, which are available to the public at the SEC's web site at [www.sec.gov](http://www.sec.gov). Old Copper's unaudited financial statements as of and for the three and nine months ended October 31, 2020, which are included in Old Copper's Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2020, filed with the SEC on December 10, 2020, as well as its audited financial statements as of February 1, 2020 and February 2, 2019 and for the fiscal years ended February 1, 2020, February 2, 2019 and February 3, 2018, which are included in Old Copper's Annual Report on Form 10-K for the fiscal year ended February 1, 2020, filed with the SEC on March 20, 2020, are incorporated by reference herein.

**Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

**Item 15. Financial Statements and Exhibits**

(a) The following financial statements are being filed as part of this registration statement:

INDEX TO FINANCIAL STATEMENTS

**Pro Forma Financial Statements**

	<b><u>Page</u></b>
<a href="#">Basis of Pro Forma Presentation</a>	37
<a href="#">Unaudited Pro Forma Consolidated Balance Sheet as of September 30, 2020</a>	39
<a href="#">Unaudited Pro Forma Consolidated Statements of Operations for the Nine Months Ended September 30, 2020 and the Year Ended December 31, 2019</a>	40
<a href="#">Notes to Unaudited Pro Forma Consolidated Financial Statements</a>	42

**Historical Financial Statements**

	<b><u>Page</u></b>
<a href="#">Copper Property CTL Pass Through Trust</a>	
<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-1
<a href="#">Balance Sheet as of December 21, 2020 (Formation Date)</a>	F-2
<a href="#">Notes to Balance Sheet</a>	F-3
<a href="#">Combined Schedules of Investments of Real Estate Assets to be Acquired</a>	
<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-6
<a href="#">Combined Schedules of Investments of Real Estate Assets to be Acquired</a>	F-7
<a href="#">Notes to the Combined Schedules of Investments of Real Estate Assets to be Acquired</a>	F-8
<a href="#">Schedule III – Real Estate and Accumulated Depreciation</a>	F-14



### **Basis of Pro Forma Presentation**

The Trust is a newly formed grantor trust that was formed pursuant to the Initial Trust Agreement as a New York common law trust on December 21, 2020.

On December 21, 2020, to establish the Trust as provided in the Plan of Reorganization, Old Copper Company, Inc. (f/k/a J. C. Penney Company, Inc.) (“Old Copper”) entered into the Initial Trust Agreement with GLAS Trust Company LLC, as trustee. Pursuant to the Plan of Reorganization, the following transactions (which are referred to in this registration statement collectively as the PropCo Formation Transactions), among others, are expected to occur:

- i. the JCP Sellers will transfer their fee or leasehold interest (as applicable) in the Properties to the PropCos (which transfer is referred to in this registration statement as the Properties Transfer);
- ii. the Initial Trust Agreement will be amended and restated to be between Copper BidCo LLC, an entity controlled by certain of the Debtors’ lenders (replacing Old Copper Company, Inc. (f/k/a J. C. Penney Company, Inc.) (“Old Copper”)), and GLAS Trust Company LLC, continuing as trustee;
- iii. Old Copper will assign to the Trust the Master Leases and the Transition Services Agreement with New JCP; and
- iv. the Trust Certificates, which in the aggregate represent 100% of the beneficial interests in the Trust, will be issued to certain of the Debtors’ lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders’ claims against the Debtors.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to in this registration statement as the Effective Date. As of the date of this registration statement, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer. Also prior to the Effective Date, the Trust will have no liabilities.

The Trust’s future operations are expected to consist solely of, in each case through the PropCos, owning the Properties, leasing the Properties to New JCP, and subject to market conditions set forth in the Trust Agreement, selling the Properties from time to time to third-party purchasers as promptly as practicable after the Effective Date. On or about the Effective Date, the Trust intends to retain the Manager, who is an independent third-party unrelated to Old Copper or New JCP, to perform asset management duties with respect to the Properties and one or more third-party real estate brokers to sell the Properties. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust’s revenues.

The following Unaudited Pro Forma Consolidated Statements of Operations of the Trust for the nine months ended September 30, 2020 and for the twelve months ended December 31, 2019 are presented as if the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements had occurred on January 1, 2019. The following Unaudited Pro Forma Consolidated Balance Sheet of the Trust as of September 30, 2020 is presented as if the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements had occurred on September 30, 2020.

The following unaudited pro forma consolidated financial statements are presented based on information currently available, are intended for informational purposes only, and do not purport to represent what the Trust’s financial position and results of operations actually would have been had the PropCo Formation Transactions and the other adjustments described in the Notes to Unaudited Pro Forma Consolidated Financial Statements occurred on the dates indicated, or to project the Trust’s financial performance for any future period.

The unaudited pro forma consolidated financial statements and the accompanying notes should be read in conjunction with the Combined Schedules of Investments of Real Estate Assets to be Acquired and accompanying notes included elsewhere in this registration statement.

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[Table of Contents](#)

The Pro Forma column in the Unaudited Pro Forma Consolidated Statements of Operations reflect pro forma adjustments, which are further described in the accompanying Notes to Unaudited Pro Forma Consolidated Financial Statements. Because there are no historical operations for the Trust, only the resulting pro forma values are presented. The Pro Forma Adjustments column in the Unaudited Pro Forma Consolidated Balance Sheet reflects pro forma adjustments from the historical balance sheet balances presented in the Combined Schedules of Investments of Real Estate Assets to be Acquired included elsewhere in this registration statement.

**Copper Property CTL Pass Through Trust**  
 Unaudited Pro Forma Consolidated Balance Sheet  
 As of September 30, 2020

(in thousands)	Historical (a)	Pro Forma Adjustments		Pro Forma Copper Property CTL Pass Through Trust
<b>ASSETS</b>				
Investment in real estate assets:				
Land	\$ 112,663	\$ 622,940	(b)	\$ 735,603
Buildings and improvements, less accumulated depreciation	985,842	223,891	(b)	1,209,733
Land, buildings and improvements, net	1,098,505	846,831	(b)	1,945,336
Construction in progress	406	—	(b)	406
Total investment in real estate, net	1,098,911	846,831	(b)	1,945,742
Cash and cash equivalents	—	25,000	(c)	25,000
Rent and tenant receivables	—	—	(d)	—
Operating lease assets	26,376	110,425	(e)	136,801
In-place lease intangibles	—	160,121	(f)	160,121
Favorable lease intangibles	—	22,604	(g)	22,604
<b>TOTAL ASSETS</b>	<b>\$ 1,125,287</b>	<b>\$ 1,164,981</b>		<b>\$ 2,290,268</b>
<b>LIABILITIES</b>				
Operating lease liabilities	\$ 31,482	\$ 7,837	(e)	\$ 39,319
Accounts payable and accrued expenses	—	—	(h)	—
Deferred developer credits	21,313	(21,313)	(i)	—
Unfavorable lease intangibles	—	226,368	(g)	226,368
Other liabilities	912	1,948	(j)	2,860
Total liabilities	\$ 53,707	\$ 214,840		\$ 268,546
<b>EQUITY</b>				
Trust Certificates, no par value	\$ —	\$ —	(k)	\$ —
Additional paid-in capital	—	2,021,722	(k)	2,021,722
Allocated predecessor equity	1,071,580	(1,071,580)	(k)	—
Retained earnings	—	—	(k)	—
Total equity	1,071,580	950,141		2,021,722
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 1,125,287</b>	<b>\$ 1,164,981</b>		<b>\$ 2,290,268</b>

[Table of Contents](#)

**Copper Property CTL Pass Through Trust**  
Unaudited Pro Forma Consolidated Statement of Operations  
Nine Months Ended September 30, 2020

(in thousands, except for per Trust Certificate amounts)	<u>Pro Forma</u>
Revenues:	
Rental income	\$ 134,828 (aa)
Total revenues	134,828
Expenses:	
General and administrative expenses	7,687 (bb)
Property operating expenses	6,909 (cc)
Depreciation and amortization	35,593 (dd)
Total operating expenses	\$ 50,189
Operating income	\$ 84,639
Net income (loss)	\$ 84,639
TRUST CERTIFICATES	
Weighted average number of Trust Certificates	
Basic	75,000 (ee)
Diluted	75,000 (ee)
Basic income (loss) per Trust Certificate	\$ 1.13 (ee)
Diluted income (loss) per Trust Certificate	\$ 1.13 (ee)

[Table of Contents](#)

**Copper Property CTL Pass Through Trust**  
Unaudited Pro Forma Consolidated Statement of Operations  
For the Year Ended December 31, 2019

(in thousands, except for per Trust Certificate amounts)	<u>Pro Forma</u>
<b>Revenues:</b>	
Rental income	\$ 181,482 (aa)
Total revenues	181,482
<b>Expenses:</b>	
General and administrative expenses	16,234 (bb)
Property operating expenses	10,980 (cc)
Depreciation and amortization	47,458 (dd)
Total operating expenses	\$ 74,672
Operating income	\$ 106,810
Net income (loss)	\$ 106,810
<b>TRUST CERTIFICATES</b>	
Weighted average number of Trust Certificates	
Basic	75,000 (ee)
Diluted	75,000 (ee)
Basic income (loss) per Trust Certificate	\$ 1.42 (ee)
Diluted income (loss) per Trust Certificate	\$ 1.42 (ee)

**Copper Property CTL Pass Through Trust**  
Notes to Unaudited Pro Forma Consolidated Financial Statements

**1. Adjustments to the Pro Forma Consolidated Balance Sheet**

- a. Represents Old Copper's historical cost basis of the Properties to be transferred to the newly formed Trust, which will be the ultimate parent entity upon the completion of the PropCo Formation Transactions. The Trust is anticipated to be the reporting entity under the Exchange Act. The Trust has not had any operating activity since its formation on December 21, 2020. Accordingly, under GAAP, we will consolidate the assets, liabilities and results of operations of the Trust and its subsidiaries.
- b. Represents the adjustment to fair value of the Properties upon the completion of the PropCo Formation Transactions, based on application of "fresh start" reporting in accordance with Financial Accounting Standards Board Accounting Standards Codification 852, *Reorganizations* ("Fresh Start Accounting"), reflecting the change in the financial reporting basis of assets. Land has an indefinite useful life and is not depreciated. Buildings and improvements generally have a remaining useful life of 10 to 50 years.
- c. Represents the adjustment to cash and cash equivalents for cash to be contributed to the Trust on the Effective Date.
- d. Represents tenant receivables. In accordance with the Master Leases, the annual base rent for each lease year shall be payable in equal one-twelfth monthly installments in advance on the first business day of each calendar month during the lease year. As a result, no amount is estimated as of September 30, 2020.
- e. Represents lease liability and right-of-use assets for ground leases transferred as part of the PropCo Formation Transactions. In accordance with Fresh Start Accounting, the Trust determined the lease classification to be an operating lease and will recognize a lease liability and right-of-use asset. The lease liability is measured as the present value of unpaid lease payments measured based on the reasonably certain lease term and corresponding discount rate. The right-of-use asset as determined in accordance with Fresh Start Accounting is measured as the lease liability as adjusted for any off-market rental terms at the acquisition date (the Effective Date) based on a preliminary purchase price allocation.
- f. Represents the fair value of identified intangible assets related to in-place leases where we are the lessor and have acquired an owned property with an existing tenant, based on a preliminary allocation in accordance with Fresh Start Accounting. In-place intangibles are amortized over 20 years, which represents the lease term, as a component of amortization expense.
- g. Represents the fair value of identified intangible assets related to the fair value of favorable or unfavorable terms where we are the lessor with an acquired lease in place with off-market rental terms based on a preliminary purchase price allocation. A lease with favorable terms as lessor represents an asset and a lease with unfavorable terms as lessor represents a liability, both of which are amortized over 20 years, which represents the lease term.
- h. Represents expected accruals for timing of payments associated with expenses described in adjustments (bb) and (cc) below.
- i. Represents the fair value of deferred developer credits received as consideration historically from third-party mall developers in the form of an incentive to be used towards improvement of owned Properties. Amounts received have been utilized and no outstanding claw back rights exist for the third-party mall developers. Because the consideration received from deferred developer credits has been received in the past and has been fully utilized, no value has been assigned based on a preliminary purchase price allocation and the adjustment to deferred developer credits removes the full value of the historical balance.

## Table of Contents

- j. Represents the adjustment to other liabilities to classify negative right-of-use assets after the application of Fresh Start Accounting. For further description regarding the measurement of right-of-use assets, please refer to adjustment (e).
- k. Represents the adjustment to eliminate the allocated predecessor equity and record the net value of the trust certificates following the formation of PropCo. All equity value is recorded within paid-in-capital as the trust certificates have no par value.

The Properties transferred pursuant to the PropCo Formation Transactions will be recorded at fair value as the PropCo Formation Transactions will be accounted for in accordance with Fresh Start Accounting. These fair values were based, in part, on preliminary third-party market valuations. Because these fair values were based on currently available information and assumptions and estimates that we believe are reasonable at this time, they are subject to reallocation as additional information becomes available. As we finalize our Fresh Start Accounting allocation, actual adjustments may differ from the pro forma adjustments and the difference, if any, may be material. For further description regarding the components of the preliminary purchase price allocation, please refer to adjustment (b) for land, buildings and improvements, net; adjustment (f) for in-place leases; and adjustment (g) for in-place leases with favorable or unfavorable market leases.

### **2. Adjustments to the Pro Forma Consolidated Income Statements**

- aa. Reflects rental revenue pursuant to the terms of the Retail Master Lease. As a triple-net lease, the Retail Master Lease rental revenue excludes costs associated with real estate taxes, insurance and operating costs, which are to be paid directly by New JCP. Rental revenue is \$2.3 million lower and \$57.6 million higher than lease payments due as a result of recording rental revenue on a straight-line basis for the nine months ended September 30, 2020 and twelve months ended December 31, 2019, respectively. The initial base rent for the Retail Master Lease is \$121.2 million per year, subject to a rental abatement of 50% (\$60.6 million) in the first year, which impacts the difference between rental revenue and straight-line rent expense for the twelve months ended December 31, 2019. During each subsequent lease year, commencing with the third anniversary of the lease commencement date, the base rent shall be subject to a consumer price index adjustment, provided that such adjustment shall not (i) result in an increase that exceeds 2% of the then-applicable base rent or (ii) decrease the then-applicable base rent. Such adjustment is described more fully in “Item 2. Financial Information— Management’s Discussion and Analysis of Financial Condition and Results of Operations—Results of Operations—Revenue.” The rental revenue rates also include amounts collected from the tenant for ground leases whereby we are also a lessee.

Additionally, reflects rental revenue pursuant to the terms of the DC Master Lease. As a triple-net lease, the DC Master Lease rental revenue excludes costs associated with real estate taxes, insurance and operating costs, which are to be paid directly by New JCP. Rental revenue is \$5.1 million and \$6.8 million higher than lease payments due as a result of recording rental revenue on a straight-line basis for the nine months ended September 30, 2020 and twelve months ended December 31, 2019, respectively. The initial base rent for the DC Master Lease is \$35.4 million per year. The base rent during each subsequent lease year commencing with the third lease year, shall be increased by 2%.

Also reflects an increase for the accretion and amortization related to leases with unfavorable terms where we are the lessor of \$8.5 million and \$11.3 million for the nine months ended September 30, 2020 and twelve months ended December 31, 2019, respectively, and a decrease for leases with favorable terms where we are the lessor of \$.8 million and \$1.1 million for the nine months ended September 30, 2020 and twelve months ended December 31, 2019, respectively, based on a preliminary purchase price allocation.

Also reflects an increase of \$6.9 million and \$11.0 million for the nine months ended September 30, 2020 and twelve months ended December 31, 2019, respectively, for the impacts of ground lease rent to be paid by New JCP directly to third party lessors where PropCo has not been relieved of their primary obligation under the original lease, creating an in-substance sublease arrangement and resulting in gross presentation of the rental revenue and ground lease expense associated with the ground lease.

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## Table of Contents

- bb. Represents amounts to be paid annually to Hilco for services rendered as the Manager in accordance with the Management Agreement and other ongoing operational costs, such as accounting and financial reporting, investor relations, insurance, legal, professional fees and other. Remaining amounts are not factually supportable, and as a result, further adjustment for general and administrative costs has been excluded.
- cc. Represents expenses expected to be incurred for ground lease rent expense. These expenses were based on historical expenses incurred by Old Copper ground lease rent expense, and include ground lease expense of \$5.1 million and \$8.5 million for the nine months ended September 30, 2020 and the twelve months ended December 31, 2019, respectively, and amortization of above/below market ground leases of \$1.8 million and \$2.5 million for the nine months ended September 30, 2020 and the twelve months ended December 31, 2019, respectively, are included in the adjustment to property operating expenses based on the terms of the executed ground leases. As the Master Leases are triple-net leases, costs associated with maintenance, real estate taxes and insurance will be paid directly by New JCP.
- dd. Reflects depreciation and amortization expense related to the building and improvements and the remaining useful lives of the properties. Depreciation and amortization also reflects amortization of in-place lease intangible assets based on fair values pursuant to Fresh Start Accounting. Depreciation and amortization expense is recorded over the estimated useful lives of the respective assets for building and improvements and the lease term for intangible in-place lease assets using the straight-line method.
- ee. We compute net earnings (loss) per Trust Certificate for both basic and diluted net earnings (loss). Basic net earnings (loss) per Trust Certificate is computed using the weighted-average number of Trust Certificates outstanding during the period. Diluted net earnings (loss) per Trust Certificate is computed using the weighted-average number of Trust Certificates and the effect of potentially dilutive securities outstanding during the period. There were no potentially dilutive securities included in the pro forma calculation of earnings (loss) per Trust Certificate.



**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and Board of Directors  
J. C. Penney Company, Inc.:

*Opinion on the Balance Sheet*

We have audited the accompanying balance sheet of Copper Property CTL Pass Through Trust (the Company) as of December 21, 2020 (Formation Date) and the related notes (collectively, the balance sheet). In our opinion, the balance sheet presents fairly, in all material respects, the financial position of the Company as of December 21, 2020 (Formation Date) in conformity with U.S. generally accepted accounting principles.

*Basis for Opinion*

This balance sheet is the responsibility of the Company's management. Our responsibility is to express an opinion on the balance sheet based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the balance sheet, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the balance sheet. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the balance sheet. We believe that our audit provides a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2020.

Chicago, IL  
December 29, 2020

**Copper Property CTL Pass Through Trust**

**Balance Sheet  
December 21, 2020 (Formation Date)  
(in thousands)**

<b>Assets</b>	
Cash	\$ —
Total assets	<u>\$ —</u>
<b>Certificateholders' Equity</b>	
Trust Certificates, no par value, 50,000,000 certificates authorized, no certificates issued and outstanding	\$ —
Additional paid-in capital	—
Total Certificateholders' equity	<u>\$ —</u>

*See accompanying notes to the Balance Sheet.*

## Copper Property CTL Pass Through Trust

### Notes to the Balance Sheet

#### 1. Organization and Description of Business

Copper Property CTL Pass Through Trust (the “Trust”) is a newly formed grantor trust, established as a New York common law trust on December 21, 2020 by entering into the Pass-Through Trust Agreement (the “Initial Trust Agreement”).

The Trust was formed in connection with the reorganization of J. C. Penney Company, Inc. (and together with its subsidiaries as the context requires or indicates, “J. C. Penney”). On May 15, 2020, J. C. Penney and certain of its subsidiaries (together with J. C. Penney, the “Debtors”) commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas. On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the “Plan of Reorganization”). The Bankruptcy Court entered an order confirming the Plan of Reorganization on December 16, 2020.

Pursuant to the Plan of Reorganization, the following transactions, among others, are expected to occur (collectively, the “PropCo Formation Transactions”):

- i. J. C. Penney and certain of its subsidiaries (collectively, the “JCP Sellers”) will transfer (the “Properties Transfer”) their fee or leasehold interest (as applicable) in 160 retail properties (the “Retail Properties”) and six warehouses (the “Warehouses”) and, together with the Retail Properties, the “Properties”) to the Trust’s wholly-owned property holding company subsidiaries (the “PropCos”);
- ii. the Initial Trust Agreement will be amended and restated (such amended and restated agreement, the “Amended Trust Agreement”) to be between Copper BidCo LLC, an entity controlled by certain of the Debtors’ lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;
- iii. J. C. Penney will assign to the Trust the master leases relating to the Properties (the “Master Leases”); and
- iv. the Trust Certificates will be issued to certain of the Debtors’ lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders’ claims against the Debtors.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to as the “PropCo Closing Date.” Prior to such date, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer.

After the PropCo Closing Date, the Trust’s future operations are expected to consist solely of (i) owning the Properties, (ii) leasing the Properties under the terms of the Master Leases to the tenants thereunder (“New JCP”), as the sole tenant, and (iii) subject to market conditions and the conditions set forth in the Trust Agreement, selling the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date with the intent to complete the sale of all Properties within a short period of time, in each case through the PropCos. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust’s revenues.

On or about the PropCo Closing Date, the Trust intends to retain an affiliate of Hilco Real Estate LLC as its independent third-party manager, unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties. After the PropCo Closing Date, J. C. Penney will have no ability to exercise any control over, or have any affiliation with, the Trust.

## 2. Summary of Significant Accounting Policies

### *Basis of Presentation*

The accompanying Balance Sheet is prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”).

### *Impairment of Long-Lived Assets*

The Trust’s impairment policy reflects the go-forward accounting policy for the Trust upon the acquisition of the Properties.

*Real Estate*—The Trust periodically assesses whether there are any indicators that the value of its long-lived real estate and related intangible assets such as building and improvements or operating lease assets may be impaired or that their carrying value may not be recoverable. These impairment indicators include, but are not limited to, vacancies, an upcoming lease expiration, a tenant with credit difficulty, the termination of a lease by a tenant, significant underperformance relative to historical or projected future operating results or a likely disposition of the property.

For real estate assets held for investment and related intangible assets in which an impairment indicator is identified, the Trust follow a two-step process to determine whether an asset is impaired and to determine the amount of the charge. First, we compare the carrying value of the property’s asset group to the estimated future net undiscounted cash flow that we expect the property’s asset group will generate, including any estimated proceeds from the eventual sale of the property’s asset group. The undiscounted cash flow analysis requires us to make our best estimate of market rents, residual values, and holding periods. We estimate market rents and residual values using market information from outside sources such as third-party market research, external appraisals, broker quotes or recent comparable sales.

As the Trust’s objective is to sell the Retail Properties over a period of 12 months and the Warehouses over a period of six months, the holding periods used in the undiscounted cash flow analysis will reflect the short-term nature of the investment. Depending on the assumptions made and estimates used, the future cash flow projected in the evaluation of long-lived assets and associated intangible assets can vary within a range of outcomes. We consider the likelihood of possible outcomes in determining our estimate of future cash flows and, if warranted, we apply a probability-weighted method to the different possible scenarios. If the future net undiscounted cash flow of the property’s asset group is less than the carrying value, the carrying value of the property’s asset group is considered not recoverable. We then measure the impairment loss as the excess of the carrying value of the property’s asset group over its estimated fair value.

*Assets Held for Sale*—We generally classify real estate assets that are subject to operating leases or direct financing leases as held for sale when we have entered into a contract to sell the property, all material due diligence requirements have been satisfied, we have received a non-refundable deposit, and we believe it is probable that the disposition will occur within one year. When we classify an asset as held for sale, we compare the asset’s fair value less estimated cost to sell to its carrying value, and if the fair value less estimated cost to sell is less than the property’s carrying value, we reduce the carrying value to the fair value less estimated cost to sell. We base the fair value on the contract and the estimated cost to sell on information provided by brokers and legal counsel. We then compare the asset’s fair value (less estimated cost to sell) to its carrying value, and if the fair value, less estimated cost to sell, is less than the property’s carrying value, we reduce the carrying value to the fair value, less estimated cost to sell. We will continue to review the property for subsequent changes in the fair value, and may recognize an additional impairment charge, if warranted.

**3. Income Taxes**

The Trust identifies its major tax jurisdiction as the United States. The Trust is classified as a “grantor trust” for U.S. federal income tax purposes. As a result, the Trust itself will not be subject to U.S. federal income tax, and the Trust expects any state tax liability would be immaterial. Instead, the Trust’s income and expenses will “flow through” to the Certificateholders, and the Trust’s trustee will report the Trust’s proceeds, income, deductions, gains and losses to the Internal Revenue Services on that basis.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Stockholders and Board of Directors  
J. C. Penney Company, Inc.:

*Opinion on the Financial Statements*

We have audited the accompanying Combined Schedule of Investments of Real Estate Assets to be Acquired as of December 31, 2019, and the related notes and financial statement schedule III (collectively, the Schedule of Investments). In our opinion, the Schedule of Investments present fairly, in all material respects, the real estate assets to be acquired described in Note 1 as of December 31, 2019, in conformity with U.S. generally accepted accounting principles.

*Basis of Presentation*

The accompanying Schedule of Investments was prepared for the purpose of complying with the rules and regulations of the Securities and Exchange Commission for inclusion in the registration statement on Form 10 of Copper Property CTL Pass Through Trust as described in Note 1 and is not intended to be a complete presentation of total assets to be acquired by Copper Property CTL Pass Through Trust.

*Basis for Opinion*

This Schedule of Investments is the responsibility of J. C. Penney Company, Inc.'s management. Our responsibility is to express an opinion on the Schedule of Investments based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB), and are required to be independent with respect to J. C. Penney Company, Inc. in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Investments is free of material misstatement, whether due to error or fraud. Our audit included performing procedures to assess the risks of material misstatement of the Schedule of Investments, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the Schedule of Investments. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Schedule of Investments. We believe that our audit provides a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as auditor of the Schedule of Investments since 2020.

Chicago, IL  
December 29, 2020

**Combined Schedules of Investments of Real Estate Assets to be Acquired**  
(in thousands)

	(unaudited) September 30, 2020	December 31, 2019
<b>Real estate assets</b>		
Land, buildings and improvements, net	\$ 1,098,911	\$ 1,154,698
Operating lease assets	26,376	34,447
<b>Total real estate assets</b>	<u>\$ 1,125,287</u>	<u>\$ 1,189,145</u>
<b>Liabilities</b>		
Operating lease liabilities	\$ 31,482	\$ 38,414
Deferred developer credits	21,313	22,948
Other liabilities	912	1,074
<b>Total liabilities</b>	<u>\$ 53,707</u>	<u>\$ 62,436</u>

*See accompanying notes to the Combined Schedules of Investments of Real Estate Assets to be Acquired*

**Notes to the Combined Schedules of Investments of Real Estate Assets to be Acquired**

**1. Organization and Description of Business**

Copper Property CTL Pass Through Trust (the “Trust”) is a newly formed grantor trust, established as a New York common law trust on December 21, 2020 by entering into the Pass-Through Trust Agreement (the “Initial Trust Agreement”). The Trust was formed in connection with the reorganization of J. C. Penney Company, Inc. (and together with its subsidiaries as the context requires or indicates, “J. C. Penney”). On May 15, 2020, J. C. Penney and certain of its subsidiaries (together with J. C. Penney, the “Debtors”) commenced voluntary cases (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas. On December 12, 2020, the Debtors filed the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates (the “Plan of Reorganization”). The Bankruptcy Court entered an order confirming the Plan of Reorganization on December 16, 2020.

Pursuant to the Plan of Reorganization, the following transactions, among others, are expected to occur (collectively, the “PropCo Formation Transactions”):

- i. J. C. Penney and certain of its subsidiaries (collectively, the “JCP Sellers”) will transfer (the “Properties Transfer”) their fee or leasehold interest (as applicable) in 160 retail properties (the “Retail Properties”) and six warehouses (the “Warehouses” and, together with the Retail Properties, the “Properties”) to the Trust’s wholly-owned property holding company subsidiaries (the “PropCos”);
- ii. the Initial Trust Agreement will be amended and restated (such amended and restated agreement, the “Amended Trust Agreement”) to be between Copper BidCo LLC, an entity controlled by certain of the Debtors’ lenders (replacing J. C. Penney Corporation, Inc.), and GLAS Trust Company LLC, continuing as trustee;
- iii. J. C. Penney will assign to the Trust the master leases relating to the Properties (the “Master Leases”); and
- iv. a series of equity trust certificates designated as “Copper Property CTL Pass Through Certificates” (the “Trust Certificates”) will be issued to certain of the Debtors’ lenders pursuant to the Plan of Reorganization and Section 1145 of the Bankruptcy Code in final satisfaction of such lenders’ claims against the Debtors; a registration statement on Form 10 (the “Form 10”) is being filed by the Trust in order to voluntarily register the Trust Certificates under Section 12(g) of the Securities Exchange Act of 1934, as amended.

The Properties Transfer will occur immediately prior to the transactions described in clauses (ii) through (iv) above. The date on which the PropCo Formation Transactions occur is referred to as the “PropCo Closing Date.” Prior to such date, the Trust does not own, directly or indirectly, the Properties or any other assets, and it is not expected to own any such assets prior to the Properties Transfer.

After the PropCo Closing Date, the Trust’s future operations are expected to consist solely of (i) owning the Properties, (ii) leasing the Properties under the terms of the Master Leases to the tenants thereunder (“New JCP”), as the sole tenant, and (iii) subject to market conditions and the conditions set forth in the Amended Trust Agreement, selling the Properties to third-party purchasers as promptly as practicable after the PropCo Closing Date with the intent to complete the sale of all Properties within a short period of time, in each case through the PropCos. Together with the proceeds from sales of the Properties, the Master Leases will account for all of the Trust’s revenues.

On or about the PropCo Closing Date, the Trust intends to retain an affiliate of Hilco Real Estate LLC as its independent third-party manager, unrelated to J. C. Penney or New JCP, to perform asset management duties with respect to the Properties. After the PropCo Closing Date, J. C. Penney will have no ability to exercise any control over, or have any affiliation with, the Trust.



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## **Table of Contents**

The accompanying Combined Schedules of Investments of Real Estate Assets to be Acquired (“Combined Schedules of Investments”) reflects the Properties. The portfolio of Properties consists of approximately 31.8 million square feet (unaudited) of building space and is broadly diversified by location across 37 U.S. states and Puerto Rico.

### **2. Adoption of New Accounting Standards**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”)2016-02, *Leases (Topic 842)* (“ASC 842”), as amended, which requires lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets. J. C. Penney adopted the provisions of the new lease standard effective January 1, 2019, using the modified retrospective adoption method and the simplified transition option available in the new lease standard. This allows J. C. Penney to continue to apply the legacy guidance in the old standard (ASC Topic 840, *Leases* (“ASC 840”)) upon adoption. J. C. Penney also elected the package of practical expedients available under the transition provisions of the new lease standard, which include (a) not reassessing ASC 840 evaluations on whether expired or existing contracts contain leases, (b) not reassessing lease classification previously assessed under ASC 840, and (c) not revaluing initial direct costs for existing leases under ASC 840. J. C. Penney also elected the practical expedient to carry forward historical accounting for any land easements on existing contracts.

### **3. Summary of Significant Accounting Policies**

#### ***Basis of Presentation***

The accompanying Combined Schedules of Investments reflects the Retail Stores and the Warehouses directly attributable to J. C. Penney’s real estate holdings to be owned by the Trust pursuant to the Plan of Reorganization. The Combined Schedules of Investments does not represent the financial position of a single legal entity, but rather a combination of entities under common control that have been “carved out” of J. C. Penney’s consolidated financial statements. Intercompany balances related to entities that continue to be under common control after the PropCo Formation Transactions have been eliminated in combination. The Combined Schedules of Investments is prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) as established by FASB in the Accounting Standards Codification (“ASC”), including modifications issued under ASU. The Combined Schedules of Investments has been derived from the accounting records of J. C. Penney using the historical basis of assets of J. C. Penney. J. C. Penney believes the assumptions underlying the Combined Schedules of Investments are reasonable. However, the Combined Schedules of Investments included herein may not necessarily reflect the Trust’s financial position in the future or what the Trust’s financial position would have been had the Trust operated independently from J. C. Penney at the date presented.

#### ***Use of Estimates***

J. C. Penney has made a number of estimates, judgments and assumptions that affect the reported amounts of assets in the Combined Schedules of Investments. Estimates are required in order for J. C. Penney to prepare the Combined Schedules of Investments in conformity with GAAP. Significant estimates, judgments and assumptions were required in a number of areas, including, but not limited to, determining the useful lives of real estate properties, determination of discount rates in ground leases, reasonably certain lease terms for ground leases, and evaluating the impairment of long-lived assets. J. C. Penney has based these estimates, judgments and assumptions on historical experience and various other factors that J. C. Penney believes to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions and conditions.

The novel coronavirus (“COVID-19”) pandemic has created, and may continue to create, significant uncertainty in macroeconomic conditions, and the extent of its impact on the operational and financial performance will depend on certain developments, including the duration and spread of the outbreak and the

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## [Table of Contents](#)

impact on the Properties' initial sole tenant, New JCP. During the nine months ended September 30, 2020, certain estimates and assumptions required increased judgment as a result of the pandemic. As events continue to evolve and additional information becomes available, actual results could differ from those estimates and any such differences may be material to the Combined Schedules of Investments.

### ***Unaudited Interim Consolidated Financial Information***

The accompanying Combined Schedule of Investments as of September 30, 2020 (the "Interim Combined Schedule of Investments") and these notes are unaudited. The Interim Combined Schedule of Investments have been prepared in accordance with GAAP and is presented in accordance with the rules and regulations of the Securities and Exchange Commission. In J. C. Penney's opinion, the Interim Combined Schedule of Investments has been prepared on the same basis as the Combined Schedule of Investments as of December 31, 2019 and reflects all adjustments, which include only normal recurring adjustments necessary for the fair presentation of the Interim Combined Schedule of Investments as of September 30, 2020.

### ***Impairment of Long-Lived Assets***

J. C. Penney evaluated long-lived assets such as building and improvements or operating lease assets for impairment when events or changes in circumstances indicated that the carrying amount of those assets may not be recoverable. Factors considered important that could trigger an impairment review include, but are not limited to, significant underperformance relative to historical or projected future operating results and significant changes in the manner of use of the assets or J. C. Penney's overall business strategies. Assets or asset groups that triggered an impairment review have been tested for recoverability by comparing the estimated undiscounted cash flows expected to result from the use of the asset plus any net proceeds expected from disposition of the asset to the carrying value of the asset. When the asset or asset group has been determined to be not recoverable on an undiscounted cash flow basis, the amount of the impairment loss was measured by comparing the carrying value of the asset or asset group to its fair value. J. C. Penney estimated fair value based on either a projected discounted cash flow method using a discount rate that is considered commensurate with the risk inherent in J. C. Penney's current business model or appraised value, as appropriate. J. C. Penney also considered other factors estimating the fair value such as local market conditions, operating environment, and other trends.

During the twelve-month period ended December 31, 2019 and the nine-month period ended September 30, 2020, J. C. Penney recognized an approximate \$0 and \$1.9 million (unaudited) impairment, respectively, related to the Properties, in connection with circumstances relating to the Chapter 11 Cases. Such impairment is presented as a reduction to the carrying values in the Interim Combined Schedule of Investments.

### ***Land, Buildings and Improvements***

Land, buildings and improvements are stated at cost less accumulated depreciation. Additions and substantial improvements are capitalized and include expenditures that materially extend the useful lives of existing facilities. Maintenance and repairs that do not materially improve or extend the useful lives of the respective assets are expensed as incurred.

Depreciation expense is recorded over the estimated useful lives of the respective assets using the straight-line method. The range of lives is generally between 10 and 50 years for buildings and improvements.

### ***Leases***

At the lease commencement date, based on certain criteria, J. C. Penney determined lease classification as an operating or capital lease in accordance with ASC 840. Upon transition to ASC 842 (refer to Note 2), lease classification previously assessed under ASC 840 was carried forward as an operating or finance lease, and then a right-of-use asset and lease liability was recognized in the Combined Schedules of Investments for all leases.

## Table of Contents

The lease liability is measured as the present value of unpaid lease payments measured based on the reasonably certain lease term and a discount rate. The initial right-of-use asset is measured as the lease liability plus certain other costs and is reduced by any lease incentives provided by the ground lessor.

Lease payments include fixed and in-substance fixed payments, variable payments based on an index or rate and termination penalties. Lease payments do not include variable lease components other than those that depend on an index or rate or any payments not considered part of the lease (i.e. payment of the lessor's real estate taxes and insurance). As a policy election, we consider lease payments and all related other payments as one component of a lease.

The reasonably certain lease term includes thenon-cancelable lease term and any renewal option periods where J. C. Penney has economically compelling reasons for future exercise.

The discount rate used in the present value calculations is the rate implicit in the lease, when known, or J. C. Penney's estimated incremental borrowing rate. The incremental borrowing rate is estimated based on secured borrowings and credit risk relative to the time horizons of other publicly available data points that are consistent with the respective lease term.

The lease liability is amortized over the lease term at a constant periodic interest rate. Theright-of-use assets related to operating leases are amortized over the lease term on a basis that renders a straight-line amount of rent expense which encompasses the amortization and interest component of the lease. If a lease is modified or there is a change in lease term, J. C. Penney assesses for any change in lease classification and remeasures the lease liability with a corresponding increase or decrease to the right-of-use-asset.

J. C. Penney has entered into 23 ground leases with third party landlords classified as operating leases which comprise the right of use asset and liability balances within the Combined Schedules of Investments. No other leasing activity where J. C. Penney is a lessee exists. As of December 31, 2019, and September 30, 2020, the remaining weighted average lease terms based on the reasonably certain lease term were 38.89 years and 30.31 years (unaudited), respectively, and the weighted average discount rate was 11% and 12.98% (unaudited), respectively, with changes resulting from the remeasurement of certain leases.

ASC 842 requires the remeasurement of the lease term upon the occurrence of a significant event or a change in circumstances that is within the control of the lessee that directly affects whether the lessee is reasonably certain to exercise or not to exercise an option to extend or terminate a lease. Following the filing of the Chapter 11 Cases on May 15, 2020, J. C. Penney remeasured certain leases based on a change in their reasonably certain lease term, which impacted certain Properties containing ground leases. The weighted average discount rate used for remeasuring those leases was 22.3%. As a result of the remeasurements, J. C. Penney reduced its operating lease assets by \$6.9 million and its operating lease liabilities by \$6.9 million.

As of December 31, 2019, future lease payments were as follows (in thousands):

2020	\$ 4,091
2021	4,091
2022	3,956
2023	4,091
2024	4,265
Thereafter	173,197
Total lease payments	\$ 193,691
Less: amounts representing interest	155,277
Present value of lease liabilities	\$ 38,414

## Table of Contents

### Deferred Developer Credits

J. C. Penney occasionally receives consideration from third party mall developers in the form of an incentive to be used towards improvement of locations owned by J. C. Penney; such J. C. Penney improvements would typically enhance the overall leasing and retail operations of the mall or strip center owned by the third-party mall developer. The incentive payments are initially recorded as a deferred credit liability and then amortized to depreciation expense over the useful life of the improvements for which the credit was utilized. Amounts received have been utilized and no outstanding claw back rights exist for the third-party mall developers. As of December 31, 2019, and September 30, 2020, the balance for deferred developer credits was approximately \$22.9 million and \$21.3 million (unaudited), respectively.

### 4. Land, Buildings and Improvements

Land, buildings and improvements, net of accumulated depreciation consists of the following (in thousands):

	(unaudited) September 30, 2020	December 31, 2019
Land	\$ 112,663	\$ 112,674
Buildings and improvements	2,367,516	2,358,216
Gross land, buildings and improvements	\$ 2,480,179	\$ 2,470,890
Less: accumulated depreciation	(1,381,674)	(1,318,625)
Land, buildings and improvements, net	<b>\$ 1,098,505</b>	<b>\$ 1,152,265</b>
Construction in Progress	406	2,433
Total Land, buildings and improvements, net	<b><u>\$ 1,098,911</u></b>	<b><u>\$ 1,154,698</u></b>

### 5. Concentration of Credit Risk

The Combined Schedules of Investments will be exposed to concentrations of credit risk for leased assets as all assets are to be leased to the sole tenant, New JCP.

#### Significant Tenant

All of the Trust's in-place rental income will be generated from New JCP as the Trust's sole tenant.

The Properties have several tenants that constitute a significant asset concentration, as all are subsidiaries of New JCP and New JCP provides financial guarantees with respect to the Master Leases. Because New JCP is a recently formed, privately held entity that has not yet completed its first fiscal year, audited New JCP financial statements are not yet available. As such, because we believe the historical operations of J. C. Penney provide relevant historical information for the retail operations of New JCP, the audited financial statements of J. C. Penney that were included in J. C. Penney's Annual Report on Form 10-K for the fiscal year ended February 1, 2020 are incorporated by reference herein. In addition, the unaudited interim financial statements of J. C. Penney that were included in J. C. Penney's Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2020 are incorporated by reference herein.

In referring to J. C. Penney's financial statements, however, investors should be aware that J. C. Penney is not the tenant of the Properties and will not be providing a guaranty in respect of the Master Leases. Furthermore, although we believe J. C. Penney's financial statements provide helpful information about the historical retail operations of New JCP, investors should be aware that there will be meaningful differences, and those differences may be significant, between the financial statements of New JCP and J. C. Penney, including the following: (i) depreciation and amortization expense and property and equipment, net of New JCP is expected to be proportionately lower due to New JCP acquiring only a portion of J. C. Penney's assets (i.e., not the Properties); (ii) lease expense of New JCP is expected to be higher because J. C. Penney historically owned the

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## Table of Contents

Properties; (iii) interest expense, net of New JCP is expected to be lower, reflecting its \$520 million term loan and revolving credit facility with commitments of \$2 billion as of the closing of its acquisition from J. C. Penney as compared to J. C. Penney's long-term debt of approximately \$3.7 billion as of February 1, 2020; and (iv) New JCP will not have pension-related expenses or prepaid pension assets because it did not assume J. C. Penney's pension plan. At this time, it is not possible to quantify the change in the expected depreciation and amortization expense, property and equipment, net or lease expense primarily due to New JCP having not completed the associated purchase price allocation for the acquisition of its assets.

Please see "Cautionary Statement Regarding Forward-Looking Statements" in the Form 10 for important information regarding, among other things, the limitations and risks associated with forward-looking statements.

### **6. Subsequent Events**

Events subsequent to September 30, 2020 were evaluated and except for those events disclosed within Note 1 *Organization and Description of Business*, no other events were identified requiring further disclosure in the Combined Schedules of Investments.

Copper Property CTL Pass Through Trust

REAL ESTATE ASSETS TO BE ACQUIRED  
SCHEDULE III—REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2019  
(Dollars in Thousands)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)		Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Accumulated Depreciation	Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements		Land	Building & Improvements	Total			
THE MALL AT TURTLE CREEK	JONESBORO, AR	Retail Store	(d)	(a)	(a)	(a)	1	6,680	6,681	(2,387)	(a)	(c)
SHACKLEFORD CROSSING	LITTLE ROCK, AR	Retail Store	(d)	(a)	(a)	(a)	903	10,120	11,023	(3,031)	(a)	(c)
YUMA PALMS REGIONAL CENTER	YUMA, AZ	Retail Store	(d)	(a)	(a)	(a)	570	7,984	8,553	(3,518)	(a)	(c)
PALM VALLEY CORNERSTONE	GOODYEAR, AZ	Retail Store	—	(a)	(a)	(a)	3,137	10,241	13,378	(3,711)	(a)	(c)
SUPERSTITION SPRINGS MALL	MESA, AZ	Retail Store	—	(a)	(a)	(a)	—	11,650	11,650	(7,623)	(a)	(c)
ARROWHEAD TOWNE CENTER	GLENDALE, AZ	Retail Store	—	(a)	(a)	(a)	—	13,855	13,855	(7,498)	(a)	(c)
PARADISE VALLEY MALL	PHOENIX, AZ	Retail Store	(d)	(a)	(a)	(a)	438	11,801	12,238	(9,549)	(a)	(c)
IMPERIAL VALLEY MALL	EL CENTRO, CA	Retail Store	(d)	(a)	(a)	(a)	2	7,973	7,975	(3,476)	(a)	(c)
THE SHOPS AT MONTEBELLO	MONTEBELLO, CA	Retail Store	(d)	(a)	(a)	(a)	2	13,224	13,225	(9,525)	(a)	(c)
ANTELOPE VALLEY MALL	PALMDALE, CA	Retail Store	(d)	(a)	(a)	(a)	—	12,038	12,038	(7,941)	(a)	(c)
VALLEY PLAZA	BAKERSFIELD, CA	Retail Store	(d)	(a)	(a)	(a)	—	13,983	13,983	(9,501)	(a)	(c)
GLENDALE GALLERIA	GLENDALE, CA	Retail Store	(d)	(a)	(a)	(a)	990	15,238	16,228	(10,915)	(a)	(c)
HUNTINGTON PARK CBD	HUNTINGTON PARK, CA	Retail Store	—	(a)	(a)	(a)	2,324	5,818	8,142	(3,862)	(a)	(c)
WESTFIELD PLAZA BONITA	NATIONAL CITY, CA	Retail Store	(d)	(a)	(a)	(a)	233	16,557	16,790	(11,279)	(a)	(c)

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements	Land		Building & Improvements	Total	Accumulated Depreciation		
WESTFIELD PALM DESERT	PALM DESERT, CA	Retail Store	(d)	(a)	(a)	(a)	—	7,234	7,234	(5,144)	(a)	(c)
WESTFIELD CULVER CITY	CULVER CITY, CA	Retail Store	(d)	(a)	(a)	(a)	151	12,636	12,787	(8,276)	(a)	(c)
WESTFIELD GALLERIA AT ROSEVILLE	ROSEVILLE, CA	Retail Store	(d)	(a)	(a)	(a)	3	19,088	19,091	(8,166)	(a)	(c)
VICTORIA GARDENS	RANCHO CUCAMONGA, CA	Retail Store	(d)	(a)	(a)	(a)	1	13,735	13,736	(6,077)	(a)	(c)
THE ORCHARD AT SLATTEN RANCH	ANTIOCH, CA	Retail Store	—	(a)	(a)	(a)	5,961	19,543	25,504	(5,418)	(a)	(c)
PLAZA AT WEST COVINA	WEST COVINA, CA	Retail Store	(d)	(a)	(a)	(a)	652	9,416	10,067	(6,161)	(a)	(c)
WESTFIELD NORTH COUNTY	ESCONDIDO, CA	Retail Store	(d)	(a)	(a)	(a)	—	12,846	12,846	(8,719)	(a)	(c)
SOUTHBAY PAVILION AT CARSON	CARSON, CA	Retail Store	(d)	(a)	(a)	(a)	935	6,516	7,451	(4,667)	(a)	(c)
PACIFIC VIEW MALL	VENTURA, CA	Retail Store	(d)	(a)	(a)	(a)	—	11,906	11,906	(5,306)	(a)	(c)
GALLERIA AT TYLER	RIVERSIDE, CA	Retail Store	(d)	(a)	(a)	(a)	336	12,890	13,226	(8,080)	(a)	(c)
ARDEN FAIR MALL	SACRAMENTO, CA	Retail Store	(d)	(a)	(a)	(a)	360	17,893	18,253	(9,917)	(a)	(c)
NORTHRIDGE FASHION CENTER	NORTHRIDGE, CA	Retail Store	—	(a)	(a)	(a)	596	29,662	30,258	(18,511)	(a)	(c)
BREA MALL	BREA, CA	Retail Store	—	(a)	(a)	(a)	—	17,211	17,211	(9,424)	(a)	(c)
WESTFIELD SANTA ANITA	ARCADIA, CA	Retail Store	(d)	(a)	(a)	(a)	—	11,318	11,318	(8,871)	(a)	(c)
PROMENADE AT TEMECULA	TEMECULA, CA	Retail Store	(d)	(a)	(a)	(a)	—	10,271	10,271	(4,854)	(a)	(c)
SOLANO TOWN CENTER	FAIRFIELD, CA	Retail Store	(d)	(a)	(a)	(a)	165	13,503	13,668	(9,442)	(a)	(c)
FASHION VALLEY	SAN DIEGO, CA	Retail Store	—	(a)	(a)	(a)	—	24,791	24,791	(18,876)	(a)	(c)
WESTMINSTER MALL	WESTMINSTER, CA	Retail Store	—	(a)	(a)	(a)	—	18,492	18,492	(14,340)	(a)	(c)
THE SHOPS AT TANFORAN	SAN BRUNO, CA	Retail Store	—	(a)	(a)	(a)	1,167	14,335	15,502	(10,647)	(a)	(c)
THE OAKS	THOUSAND OAKS, CA	Retail Store	(d)	(a)	(a)	(a)	160	11,446	11,606	(8,244)	(a)	(c)
STONERIDGE S/C	PLEASANTON, CA	Retail Store	(d)	(a)	(a)	(a)	417	17,524	17,941	(12,717)	(a)	(c)
FIRST & MAIN TOWN CENTER	COLORADO SPRINGS, CO	Retail Store	(d)	(a)	(a)	(a)	—	8,427	8,427	(2,557)	(a)	(c)

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Gross Amount Carried at Close of Period (b)					Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements	Costs Capitalized Subsequent to Acquisition (a)	Land	Building & Improvements	Total	Accumulated Depreciation			
TOWN CENTER AT AURORA	AURORA, CO	Retail Store	(d)	(a)	(a)	(a)	179	9,872	10,051	(6,389)	(a)	(c)	
SOUTHLANDS S/C	AURORA, CO	Retail Store	(d)	(a)	(a)	(a)	3,150	11,103	14,254	(3,437)	(a)	(c)	
PARK MEADOWS WESTFARMS MALL	LONE TREE, CO	Retail Store	(d)	(a)	(a)	(a)	—	16,335	16,335	(7,229)	(a)	(c)	
THE SHOPPES AT BUCKLAND HILLS	FARMINGTON, CT	Retail Store	(d)	(a)	(a)	(a)	9	15,476	15,485	(10,063)	(a)	(c)	
DANBURY FAIR CHRISTIANA	DANBURY, CT	Retail Store	(d)	(a)	(a)	(a)	—	12,681	12,681	(7,272)	(a)	(c)	
THE LOOP WEST	DANBURY, CT	Retail Store	(d)	(a)	(a)	(a)	409	12,212	12,621	(7,825)	(a)	(c)	
PEMBROKE LAKES MALL	NEWARK, DE	Retail Store	(d)	(a)	(a)	(a)	366	13,977	14,342	(10,777)	(a)	(c)	
THE MALL AT WELLINGTON GREEN	KISSIMMEE, FL	Retail Store	—	(a)	(a)	(a)	2,547	11,585	14,132	(3,389)	(a)	(c)	
WESTFIELD BROWARD	PEMBROKE PINES, FL	Retail Store	—	(a)	(a)	(a)	—	16,002	16,002	(9,882)	(a)	(c)	
WESTFIELD BRANDON	WELLINGTON, FL	Retail Store	—	(a)	(a)	(a)	8	13,403	13,411	(5,740)	(a)	(c)	
PIER PARK	PLANTATION, FL	Retail Store	—	(a)	(a)	(a)	275	14,667	14,942	(9,811)	(a)	(c)	
DADELAND MALL	BRANDON, FL	Retail Store	—	(a)	(a)	(a)	—	10,668	10,668	(6,260)	(a)	(c)	
WESTFIELD COUNTRYSIDE	PANAMA CITY BEACH, FL	Retail Store	—	(a)	(a)	(a)	1,722	10,732	12,454	(2,774)	(a)	(c)	
MIAMI INTERNATIONAL MALL	MIAMI, FL	Retail Store	—	(a)	(a)	(a)	—	12,640	12,640	(6,702)	(a)	(c)	
SOUTH POINT S/C	CLEARWATER, FL	Retail Store	(d)	(a)	(a)	(a)	435	9,152	9,587	(6,886)	(a)	(c)	
NEWNAN CROSSING	MIAMI, FL	Retail Store	—	(a)	(a)	(a)	901	14,008	14,909	(8,279)	(a)	(c)	
CORAL RIDGE MALL	MCDONOUGH, GA	Retail Store	(d)	(a)	(a)	(a)	2,423	9,805	12,227	(2,893)	(a)	(c)	
BOISE TOWNE SQUARE	NEWNAN, GA	Retail Store	(d)	(a)	(a)	(a)	1,534	8,676	10,210	(2,876)	(a)	(c)	
MOKENA MARKETPLACE	CORALVILLE, IA	Retail Store	(d)	(a)	(a)	(a)	13	6,163	6,175	(2,598)	(a)	(c)	
NORTH RIVERSIDE PARK MALL	BOISE, ID	Retail Store	(d)	(a)	(a)	(a)	—	9,426	9,426	(6,674)	(a)	(c)	
OAKRIDGE COURT	MOKENA, IL	Retail Store	—	(a)	(a)	(a)	2,573	13,616	16,189	(3,821)	(a)	(c)	
ORLAND SQUARE	NORTH RIVERSIDE, IL	Retail Store	—	(a)	(a)	(a)	1,523	12,952	14,475	(8,300)	(a)	(c)	
	ALGONQUIN, IL	Retail Store	(d)	(a)	(a)	(a)	1,681	12,571	14,252	(3,561)	(a)	(c)	
	ORLAND PARK, IL	Retail Store	(d)	(a)	(a)	(a)	312	20,626	20,938	(14,911)	(a)	(c)	



[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements			Land	Building & Improvements	Total		
HAWTHORN S/C	VERNON HILLS, IL	Retail Store	(d)	(a)	(a)	(a)	2,183	23,355	25,537	(11,827)	(a)	(c)
HAMILTON TOWN CENTER	NOBLESVILLE, IN	Retail Store	(d)	(a)	(a)	(a)	1,894	10,541	12,435	(3,095)	(a)	(c)
OAK PARK MALL	OVERLAND PARK, KS	Retail Store	(d)	(a)	(a)	(a)	—	20,246	20,246	(16,136)	(a)	(c)
CORBIN PARK	OVERLAND PARK, KS	Retail Store	(d)	(a)	(a)	(a)	1,240	14,102	15,342	(3,525)	(a)	(c)
ASHLAND TOWN CENTER	ASHLAND, KY	Retail Store	(d)	(a)	(a)	(a)	—	9,264	9,264	(2,625)	(a)	(c)
FLORENCE MALL	FLORENCE, KY	Retail Store	(d)	(a)	(a)	(a)	484	11,812	12,295	(8,645)	(a)	(c)
MALL OF LOUISIANA	BATON ROUGE, LA	Retail Store	(d)	(a)	(a)	(a)	—	12,804	12,804	(6,537)	(a)	(c)
STIRLING LAFAYETTE S/C	LAFAYETTE, LA	Retail Store	(d)	(a)	(a)	(a)	1,914	11,938	13,853	(3,277)	(a)	(c)
NORTHSHORE MALL	PEABODY, MA	Retail Store	(d)	(a)	(a)	(a)	554	20,092	20,646	(10,383)	(a)	(c)
WESTFIELD ANNAPOLIS	ANNAPOLIS, MD	Retail Store	(d)	(a)	(a)	(a)	1	14,184	14,184	(7,553)	(a)	(c)
WHITE MARSH MALL	BALTIMORE, MD	Retail Store	(d)	(a)	(a)	(a)	516	13,744	14,260	(9,999)	(a)	(c)
THE MALL IN COLUMBIA	COLUMBIA, MD	Retail Store	—	(a)	(a)	(a)	904	21,532	22,436	(12,232)	(a)	(c)
ST CHARLES TOWNE CENTER	WALDORF, MD	Retail Store	(d)	(a)	(a)	(a)	20	11,389	11,409	(7,457)	(a)	(c)
GRAND TRAVERSE MALL	TRAVERSE CITY, MI	Retail Store	(d)	(a)	(a)	(a)	5	4,974	4,979	(3,057)	(a)	(c)
RIVERTOWN CROSSINGS	GRANDVILLE, MI	Retail Store	(d)	(a)	(a)	(a)	118	8,332	8,450	(3,741)	(a)	(c)
WATERSIDE MARKETPLACE	CHESTERFIELD TOWNSHP, MI	Retail Store	(d)	(a)	(a)	(a)	2,201	11,989	14,189	(3,520)	(a)	(c)
LAKESIDE MALL	STERLING HEIGHTS, MI	Retail Store	(d)	(a)	(a)	(a)	98	19,964	20,063	(15,898)	(a)	(c)
OAKLAND MALL	TROY, MI	Retail Store	(d)	(a)	(a)	(a)	1,034	21,043	22,078	(15,047)	(a)	(c)
TWELVE OAKS MALL	NOVI, MI	Retail Store	(d)	(a)	(a)	(a)	272	13,942	14,214	(10,676)	(a)	(c)
TAMARACK VILLAGE	WOODBURY, MN	Retail Store	(d)	(a)	(a)	(a)	1,664	8,154	9,818	(3,412)	(a)	(c)
ROSEDALE S/C	ROSEVILLE, MN	Retail Store	(d)	(a)	(a)	(a)	422	14,884	15,306	(10,803)	(a)	(c)
MID RIVERS MALL	ST PETERS, MO	Retail Store	(d)	(a)	(a)	(a)	—	14,574	14,574	(8,374)	(a)	(c)
THE PLAZA AT SHOAL CREEK	KANSAS CITY, MO	Retail Store	(d)	(a)	(a)	(a)	2,593	12,227	14,820	(3,625)	(a)	(c)

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)		Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)				Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements		Land	Building & Improvements	Total	Accumulated Depreciation		
SOUTHAVEN TOWNE CENTER	SOUTHAVEN, MS	Retail Store	(d)	(a)	(a)	(a)	—	7,542	7,542	(2,830)	(a)	(c)
THE STREETS AT SOUTHPOINT	DURHAM, NC	Retail Store	—	(a)	(a)	(a)	—	7,487	7,487	(3,580)	(a)	(c)
THE MALL AT ROCKINGHAM PARK	SALEM, NH	Retail Store	(d)	(a)	(a)	(a)	7	8,863	8,870	(5,989)	(a)	(c)
PHEASANT LANE MALL	NASHUA, NH	Retail Store	—	(a)	(a)	(a)	179	9,347	9,526	(5,704)	(a)	(c)
WOODBIDGE CENTER	WOODBIDGE, NJ	Retail Store	(d)	(a)	(a)	(a)	1,568	17,608	19,177	(13,019)	(a)	(c)
ROCKAWAY TOWNSQUARE	ROCKAWAY, NJ	Retail Store	(d)	(a)	(a)	(a)	2	21,649	21,651	(16,485)	(a)	(c)
NEWPORT CENTRE	JERSEY CITY, NJ	Retail Store	(d)	(a)	(a)	(a)	1	19,136	19,137	(9,219)	(a)	(c)
FREEHOLD RACEWAY MALL	FREEHOLD, NJ	Retail Store	(d)	(a)	(a)	(a)	33	17,692	17,725	(9,853)	(a)	(c)
CHERRY HILL MALL	CHERRY HILL, NJ	Retail Store	(d)	(a)	(a)	(a)	1,290	15,630	16,920	(10,938)	(a)	(c)
CORONADO CENTER	ALBUQUERQUE, NM	Retail Store	—	(a)	(a)	(a)	1,279	10,503	11,783	(7,433)	(a)	(c)
COTTONWOOD MALL	ALBUQUERQUE, NM	Retail Store	(d)	(a)	(a)	(a)	—	10,389	10,389	(5,921)	(a)	(c)
GALLERIA AT SUNSET	HENDERSON, NV	Retail Store	(d)	(a)	(a)	(a)	—	13,110	13,110	(7,029)	(a)	(c)
MEADOWS MALL	LAS VEGAS, NV	Retail Store	(d)	(a)	(a)	(a)	481	17,892	18,373	(12,998)	(a)	(c)
MEADOWOOD MALL	RENO, NV	Retail Store	(d)	(a)	(a)	(a)	482	11,359	11,841	(8,823)	(a)	(c)
THE MALL AT BAY PLAZA	BRONX, NY	Retail Store	—	(a)	(a)	(a)	—	36,955	36,955	(18,846)	(a)	(c)
QUEENS CENTER GATEWAY SHOPPING CENTER I & II	ELMHURST, NY	Retail Store	—	(a)	(a)	(a)	8,000	42,234	50,234	(19,678)	(a)	(c)
STATEN ISLAND MALL	STATEN ISLAND, NY	Retail Store	—	(a)	(a)	(a)	—	25,735	25,735	(14,181)	(a)	(c)
THE SHOPS AT FALLEN TIMBERS	MAUMEE, OH	Retail Store	(d)	(a)	(a)	(a)	500	10,014	10,514	(3,092)	(a)	(c)
POLARIS FASHION PLACE	COLUMBUS, OH	Retail Store	(d)	(a)	(a)	(a)	—	10,928	10,928	(4,729)	(a)	(c)
STONE CREEK TOWNE CENTER	COLERAIN TOWNSHIP, OH	Retail Store	(d)	(a)	(a)	(a)	1,618	9,920	11,538	(3,069)	(a)	(c)

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Accumulated Depreciation	Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements			Land	Building & Improvements	Total			
THE MALL AT TUTTLE CROSSING	DUBLIN, OH	Retail Store	(d)	(a)	(a)	(a)	—	11,081	11,081	(5,665)	(a)	(c)	
SOUTHPARK CENTER	STRONGSVILLE, OH	Retail Store	(d)	(a)	(a)	(a)	—	11,745	11,745	(5,776)	(a)	(c)	
SHOPS AT MOORE CENTER AT OWASSO	MOORE, OK	Retail Store	(d)	(a)	(a)	(a)	5	7,724	7,729	(2,433)	(a)	(c)	
PENN SQUARE MALL	OWASSO, OK	Retail Store	(d)	(a)	(a)	(a)	—	11,712	11,712	(2,922)	(a)	(c)	
CLACKAMAS TOWN CENTER	OKLAHOMA CITY, OK	Retail Store	(d)	(a)	(a)	(a)	—	12,813	12,813	(7,254)	(a)	(c)	
WESTMORELAND MALL	PORTLAND (HAPPY VALLEY), OR	Retail Store	(d)	(a)	(a)	(a)	651	14,813	15,464	(10,333)	(a)	(c)	
THE MALL AT ROBINSON T/C	GREENSBURG, PA	Retail Store	(d)	(a)	(a)	(a)	—	12,241	12,241	(6,472)	(a)	(c)	
HIGH POINTE COMMONS	PITTSBURGH, PA	Retail Store	(d)	(a)	(a)	(a)	18	11,401	11,418	(5,030)	(a)	(c)	
ROSS PARK MALL	PITTSBURGH, PA	Retail Store	(d)	(a)	(a)	(a)	2,023	9,929	11,952	(3,258)	(a)	(c)	
MAYAGUEZ MALL	PITTSBURGH, PA	Retail Store	(d)	(a)	(a)	(a)	26	14,875	14,901	(9,835)	(a)	(c)	
PLAZA CENTRO	MAYAGUEZ, PR	Retail Store	—	(a)	(a)	(a)	—	9,012	9,012	(5,339)	(a)	(c)	
STONES RIVER MALL	CAGUAS, PR	Retail Store	—	(a)	(a)	(a)	—	2,173	2,173	(1,184)	(a)	(c)	
COOL SPRINGS GALLERIA	MURFREESBORO, TN	Retail Store	(d)	(a)	(a)	(a)	8	7,027	7,034	(2,506)	(a)	(c)	
WOLFCHASE GALLERIA	FRANKLIN, TN	Retail Store	(d)	(a)	(a)	(a)	—	8,404	8,404	(5,422)	(a)	(c)	
EL MERCADO PLAZA	MEMPHIS, TN	Retail Store	(d)	(a)	(a)	(a)	—	11,802	11,802	(6,029)	(a)	(c)	
THE SHOPS AT STONE PARK	EL PASO, TX	Retail Store	(d)	(a)	(a)	(a)	—	9,913	9,913	(2,995)	(a)	(c)	
WEST GRAND PROMENADE	HOUSTON, TX	Retail Store	—	(a)	(a)	(a)	1,938	10,752	12,689	(2,875)	(a)	(c)	
SUNRISE MALL	KATY, TX	Retail Store	(d)	(a)	(a)	(a)	1,115	9,960	11,075	(3,518)	(a)	(c)	
MIDLAND PARK MALL	BROWNSVILLE, TX	Retail Store	(d)	(a)	(a)	(a)	—	6,011	6,011	(2,736)	(a)	(c)	
ALAMO RANCH MARKETPLACE	MIDLAND, TX	Retail Store	(d)	(a)	(a)	(a)	—	5,933	5,933	(4,583)	(a)	(c)	
FAIRMONT CENTER	SAN ANTONIO, TX	Retail Store	(d)	(a)	(a)	(a)	1,600	11,474	13,074	(3,229)	(a)	(c)	
MALL DEL NORTE	PASADENA, TX	Retail Store	(d)	(a)	(a)	(a)	—	9,660	9,660	(3,214)	(a)	(c)	
DEERBROOK MALL	LAREDO, TX	Retail Store	(d)	(a)	(a)	(a)	—	11,433	11,433	(7,094)	(a)	(c)	
	HUMBLE, TX	Retail Store	(d)	(a)	(a)	(a)	—	10,368	10,368	(5,235)	(a)	(c)	

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements			Land	Building & Improvements	Total		
ALLIANCE TOWN CENTER	FORT WORTH, TX	Retail Store	—	(a)	(a)	(a)	—	9,716	9,716	(3,200)	(a)	(c)
SOUTHPARK MEADOWS S/C	AUSTIN, TX	Retail Store	(d)	(a)	(a)	(a)	—	8,238	8,238	(2,894)	(a)	(c)
TEAS CROSSING BAYBROOK MALL	CONROE, TX	Retail Store	(d)	(a)	(a)	(a)	2,451	10,303	12,753	(2,921)	(a)	(c)
THE PARKS AT ARLINGTON	FRIENDSWOOD, TX	Retail Store	(d)	(a)	(a)	(a)	—	8,751	8,751	(3,363)	(a)	(c)
ARLINGTON	ARLINGTON, TX	Retail Store	(d)	(a)	(a)	(a)	—	17,444	17,444	(9,346)	(a)	(c)
KILLEEN MALL	KILLEEN, TX	Retail Store	(d)	(a)	(a)	(a)	—	4,415	4,415	(3,182)	(a)	(c)
NEW BRAUNFELS T/C AT CREEKSIDE	NEW BRAUNFELS, TX	Retail Store	(d)	(a)	(a)	(a)	938	10,543	11,482	(2,758)	(a)	(c)
UNIVERSITY OAKS S/C	ROUND ROCK, TX	Retail Store	(d)	(a)	(a)	(a)	2,421	10,681	13,102	(3,066)	(a)	(c)
VALLE VISTA MALL	HARLINGEN, TX	Retail Store	(d)	(a)	(a)	(a)	—	5,855	5,855	(4,291)	(a)	(c)
POST OAK MALL	COLLEGE STATION, TX	Retail Store	(d)	(a)	(a)	(a)	—	4,923	4,923	(3,361)	(a)	(c)
VILLAGE AT FAIRVIEW	FAIRVIEW, TX	Retail Store	(d)	(a)	(a)	(a)	118	10,559	10,677	(2,820)	(a)	(c)
WAXAHACHIE TOWNE CENTER CROSSING	WAXAHACHIE, TX	Retail Store	(d)	(a)	(a)	(a)	1,385	8,509	9,894	(2,608)	(a)	(c)
SHERMAN TOWN CENTER	SHERMAN, TX	Retail Store	(d)	(a)	(a)	(a)	1,166	8,939	10,105	(2,684)	(a)	(c)
FIRST COLONY MALL	SUGARLAND, TX	Retail Store	(d)	(a)	(a)	(a)	—	12,774	12,774	(6,283)	(a)	(c)
MEMORIAL CITY S/C	HOUSTON, TX	Retail Store	(d)	(a)	(a)	(a)	1,991	12,541	14,532	(4,251)	(a)	(c)
STONEBRIAR CENTRE	FRISCO, TX	Retail Store	(d)	(a)	(a)	(a)	13	14,685	14,699	(6,381)	(a)	(c)
GOLDEN TRIANGLE MALL	DENTON, TX	Retail Store	(d)	(a)	(a)	(a)	—	8,414	8,414	(5,798)	(a)	(c)
BARTON CREEK SQUARE	AUSTIN, TX	Retail Store	(d)	(a)	(a)	(a)	250	13,057	13,306	(9,061)	(a)	(c)
THE WOODLANDS MALL	THE WOODLANDS, TX	Retail Store	(d)	(a)	(a)	(a)	1,125	11,780	12,905	(5,543)	(a)	(c)
ROBERTSON'S CREEK	FLOWER MOUND, TX	Retail Store	—	(a)	(a)	(a)	2,169	4,727	6,896	(1,667)	(a)	(c)
LAKELINE MALL	CEDAR PARK, TX	Retail Store	(d)	(a)	(a)	(a)	—	10,694	10,694	(5,318)	(a)	(c)
THE DISTRICT	SOUTH JORDAN, UT	Retail Store	(d)	(a)	(a)	(a)	1,283	10,869	12,152	(3,399)	(a)	(c)
PENINSULA TOWN CENTER	HAMPTON, VA	Retail Store	(d)	(a)	(a)	(a)	703	9,244	9,948	(2,877)	(a)	(c)
SOUTHPARK MALL	COLONIAL HEIGHTS, VA	Retail Store	(d)	(a)	(a)	(a)	—	10,507	10,507	(7,070)	(a)	(c)
SPRINGFIELD TOWN CENTER	SPRINGFIELD, VA	Retail Store	(d)	(a)	(a)	(a)	146	16,473	16,620	(9,804)	(a)	(c)

[Table of Contents](#)

Property	Location	Property Type	Encumbrances	Initial Cost to Company (a)			Costs Capitalized Subsequent to Acquisition (a)	Gross Amount Carried at Close of Period (b)			Accumulated Depreciation	Date Acquired	Life upon which Depreciation is Computed
				Land	Building & Improvements			Land	Building & Improvements	Total			
DULLES TOWN CENTRE	STERLING, VA	Retail Store	(d)	(a)	(a)	(a)	—	8,879	8,879	(4,268)	(a)	(c)	
FAIR OAKS MALL	FAIRFAX, VA	Retail Store	(d)	(a)	(a)	(a)	925	20,138	21,063	(15,314)	(a)	(c)	
COLUMBIA CENTER	KENNEWICK, WA	Retail Store	(d)	(a)	(a)	(a)	1,418	10,802	12,220	(6,481)	(a)	(c)	
BELLIS FAIR	BELLINGHAM, WA	Retail Store	(d)	(a)	(a)	(a)	—	5,154	5,154	(3,215)	(a)	(c)	
ALDERWOOD MALL	LYNNWOOD, WA	Retail Store	(d)	(a)	(a)	(a)	428	17,376	17,804	(11,997)	(a)	(c)	
WESTFIELD SOUTHCENTER	TUKWILA, WA	Retail Store	(d)	(a)	(a)	(a)	—	19,837	19,837	(14,064)	(a)	(c)	
FOX RIVER MALL	APPLETON, WI	Retail Store	—	(a)	(a)	(a)	2	6,160	6,162	(4,366)	(a)	(c)	
1634 SALISBURY ROAD	STATESVILLE, NC	Warehouse	(d)	(a)	(a)	(a)	28	16,989	17,016	(13,664)	(a)	(c)	
5555 SCARBOROUGH BLVD.	COLUMBUS, OH	Warehouse	(d)	(a)	(a)	(a)	2,797	68,877	71,674	(42,340)	(a)	(c)	
10500 LACKMAN ROAD	LENEXA, KS	Warehouse	(d)	(a)	(a)	(a)	2,643	85,828	88,471	(63,326)	(a)	(c)	
11111 STEAD BLVD.	RENO, NV	Warehouse	(d)	(a)	(a)	(a)	1,084	60,156	61,241	(43,645)	(a)	(c)	
1701 INTERMODAL PARKWAY ALLIANCE AIRPORT	HASLET, TX	Warehouse	(d)	(a)	(a)	(a)	5,200	66,600	71,800	(27,971)	(a)	(c)	
5500 SOUTH EXPRESSWAY	ATLANTA, GA	Warehouse	(d)	(a)	(a)	(a)	1,486	25,790	27,276	(21,308)	(a)	(c)	
							<u>112,674</u>	<u>2,360,649</u>	<u>2,473,323</u>	<u>(1,318,625)</u>			

- (a) We have prepared Schedule III – Real Estate and Accumulated Depreciation (“Schedule III”) omitting certain of the required information articulated in Securities and Exchange Commission Rule 12-28 in Regulation S-X. Rule 12-28 requires property specific information for the initial cost capitalized, costs capitalized subsequent to acquisition, and the date of construction and/or acquisition; these disclosures have been omitted from Schedule III. We are unable to provide all of the disclosures as many of the Properties were constructed prior to when J. C. Penney’s current fixed asset accounting software was implemented, and thus we do not have the requisite historical records readily available.
- (b) The aggregate cost of land, buildings and improvements for federal income tax purposes is approximately \$819 million (unaudited).
- (c) Depreciation is computed based on the following estimated useful lives: Buildings and Improvements 10—50 years

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**Table of Contents**

- (d) Identified assets were pledged by J. C. Penney, which owned and operated the real property, to secure obligations under its credit facilities. None of the subsidiaries of J. C. Penney that pledged the above referenced real properties are being contributed to the Trust in connection with the Plan of Reorganization. However, in connection therewith, these real properties will be released from the aforementioned pledges in connection with their transfer to the Trust.

## Reconciliation of Real Estate

(in thousands)	2019
Balance at the beginning of the year	\$2,442,856
Additions	31,455
Impairments	—
Dispositions and write-offs	(987)
Balance at the end of the year	<u>\$2,473,323</u>

## Reconciliation of Accumulated Depreciation

(in thousands)	2019
Balance at the beginning of the year	\$(1,234,570)
Depreciation expense	(84,408)
Dispositions and write-offs	353
Balance at the end of the year	<u>\$(1,318,625)</u>

## Table of Contents

(b) The following exhibits are required by Item 601 of Regulation S-K and are being filed as part of this registration statement.

<u>Number</u>	<u>Description</u>
2.1+	<a href="#"><u>Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates, Case No. 20-20182 (DRJ), dated December 12, 2020.</u></a>
3.1*	<a href="#"><u>Amended and Restated Pass-Through Trust Agreement, dated as of January 30, 2021, between Copper BidCo LLC, as beneficiary, and GLAS Trust Company LLC, as trustee.</u></a>
4.1	<a href="#"><u>Form of Registration Rights and Resale Cooperation Agreement between the Trust and the Certificateholders named therein.</u></a>
10.1**	<a href="#"><u>Retail Master Lease, dated as of December 7, 2020, by and among J. C. Penney Corporation, Inc., J. C. Penney Properties, LLC and J. C. Penney Puerto Rico, Inc., as Landlord, and Penney Tenant I LLC, as Tenant.</u></a>
10.2**	<a href="#"><u>Distribution Center Master Lease, dated as of December 7, 2020, by and between J. C. Penney Properties, LLC, as Landlord, and Penney Tenant II LLC, as Tenant.</u></a>
10.3**	<a href="#"><u>Transition Services Agreement, dated as of December 7, 2020, by and between Penney Borrower LLC and J. C. Penney Corporation, Inc.</u></a>
10.4	<a href="#"><u>Management Agreement, dated as of January 30, 2021, by and between GLAS Trust Company LLC, as trustee, and Hilco Real Estate LLC.</u></a>
21.1	<a href="#"><u>List of subsidiaries.</u></a>
23.1	<a href="#"><u>Consent of KPMG LLP, independent registered public accounting firm of J. C. Penney Company, Inc.</u></a>
99.1+	<a href="#"><u>Amended Order Approving the Disclosure Statement for, and Confirming, the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and Its Debtor Affiliates, Case No. 20-20182 (DRJ), entered December 16, 2020.</u></a>

\* Certain schedules and similar attachments have been omitted. The Trust agrees to furnish a supplemental copy of any omitted schedule or attachment to the SEC upon request.

\*\* To be filed by amendment.

+ Previously filed.

**SIGNATURES**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

Copper Property CTL Pass Through Trust

By: /s/ Larry Finger

Name: Larry Finger

Title: Principal Financial Officer

Dated: February 5, 2021



**AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT**

Dated as of January 30, 2021

between

COPPER BIDCO LLC,

and

GLAS TRUST COMPANY LLC,

as Trustee

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**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I DEFINITIONS	2
Section 1.01    Definitions	2
Section 1.02    Other Definitions	13
Section 1.03    Form of Documents	14
Section 1.04    Directions of Certificateholders	14
ARTICLE II DECLARATION OF TRUST	16
Section 2.01    Declaration of Trust	16
Section 2.02    Tax Treatment of Transfer of Trust Assets	16
Section 2.03    Nature of Trust	17
Section 2.04    Trust Activities	17
Section 2.05    Other Agreements	17
ARTICLE III ISSUANCE AND TERMS OF THE CERTIFICATES	18
Section 3.01    The Certificates	18
Section 3.02    Authentication of Certificates	18
Section 3.03    Terms and Conditions	18
Section 3.04    Temporary Certificates	19
Section 3.05    Global and Definitive Certificates	19
Section 3.06    Mutilated, Destroyed, Lost or Stolen Certificates	21
Section 3.07    Persons Deemed Owners	21
Section 3.08    Cancellation	21
Section 3.09    Limitation of Liability for Payments	22
Section 3.10    CUSIP Numbers	22
Section 3.11    Tax Forms	22
ARTICLE IV TRANSFER OF THE CERTIFICATES	22
Section 4.01    Legends	22
Section 4.02    Book-Entry Provisions for Global Certificates	25
Section 4.03    Special Transfer Provisions	25
Section 4.04    Transfer and Exchange	26
Section 4.05    Limitation on Transferability	27
ARTICLE V ACCOUNTS; PRIORITY OF PAYMENTS AND DISTRIBUTION; STATEMENTS	32
Section 5.01    Establishment of Accounts	32
Section 5.02    Management of Accounts	33
Section 5.03    Interim Expenses, Transfers and Withdrawals	35
Section 5.04    Calculations	36
Section 5.05    Payment Date Distributions	37
Section 5.06    Final Distribution	40

ARTICLE VI COVENANTS	40
Section 6.01 Business Activities	40
Section 6.02 Registration Rights and Cooperation Agreement	41
Section 6.03 Existence	41
Section 6.04 Maintenance of Office or Agency	41
Section 6.05 Payment of Taxes	42
Section 6.06 Statements to Certificateholders; Reports	42
Section 6.07 DTC Letter of Representations	44
Section 6.08 Further Instruments and Acts	44
Section 6.09 Covenants of the Trustee	44
Section 6.10 Compliance with Laws	47
Section 6.11 Insurance	47
ARTICLE VII THE TRUSTEE	47
Section 7.01 Certain Duties and Responsibilities; Delivery of Documents	47
Section 7.02 Certain Rights of Trustee	49
Section 7.03 Not Responsible for Recitals or Issuance of Certificates	50
Section 7.04 Representations and Warranties of the Trustee	51
Section 7.05 Limitations on Trustee	52
Section 7.06 Resignation and Removal; Appointment of Successor	52
Section 7.07 Acceptance of Appointment by Successor	54
Section 7.08 Merger, Conversion, Consolidation or Succession to Business	55
Section 7.09 Maintenance of Agencies	55
Section 7.10 Certain Estimates as to the Trust Assets	56
Section 7.11 Filing Requirements	56
Section 7.12 Money Held in Trust	57
Section 7.13 Compensation and Reimbursement	57
Section 7.14 Corporate Trustee Required; Eligibility	58
ARTICLE VIII CERTIFICATEHOLDERS	59
Section 8.01 Identification and Addresses of Certificateholders	59
Section 8.02 Certificateholders May Not Bring Suit Except Under Certain Conditions	59
Section 8.03 Acknowledgment With Respect to the Manager	59
ARTICLE IX SUPPLEMENTAL AGREEMENTS	60
Section 9.01 Supplemental Agreements Without Consent of Certificateholders	60
Section 9.02 Supplemental Agreements with Consent of Certificateholders	60
Section 9.03 Documents Affecting Immunity or Indemnity	62
ARTICLE X MISCELLANEOUS PROVISIONS	62
Section 10.01 Duration	62
Section 10.02 Termination of the Trust	62
Section 10.03 Governing Law	62

---

Section 10.04	Counterparts	63
Section 10.05	Notices	63
Section 10.06	Intention of Parties to Establish a Grantor Trust	64
Section 10.07	Submission to Jurisdiction	64
Section 10.08	Normal Commercial Relations	65
Section 10.09	Entire Agreement; Successor and Assigns	65
Section 10.10	No Recourse against Others	65
Section 10.11	Limitation on Rights of Certificateholders	66
Section 10.12	Certificates Nonassessable and Fully Paid	66
Section 10.13	Patriot Act	66
Section 10.14	Force Majeure	66

#### EXHIBITS

Exhibit A	-	Form of Certificate
Exhibit B-1	-	Form of Monthly / Quarterly Report
Exhibit B-2	-	Form of Monthly / Quarterly Report (Severed Leases—Retail Properties)
Exhibit B-3	-	Form of Monthly / Quarterly Report (Severed Leases—DC Properties)
Exhibit C	-	DTC Letter of Representations
Exhibit D	-	Form of PSA
Exhibit E	-	Form of Registration Rights and Resale Cooperation Agreement
Exhibit F	-	Form of Excepted Holder Certification
Exhibit G	-	Form of Management Agreement

#### SCHEDULES

Schedule I	-	Retail Properties
Schedule II	-	DC Properties
Schedule III	-	Tenants and Sub-Tenants

## AMENDED AND RESTATED PASS THROUGH TRUST AGREEMENT

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

### WITNESSETH:

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

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

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

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

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

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

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

WHEREAS, all of the conditions and requirements necessary to make this Trust Agreement, when duly executed and delivered, a valid, binding and legal instrument in accordance with its terms and for the purposes herein expressed, have been done, performed and fulfilled, and the execution and delivery of this Trust Agreement in the form and with the terms hereof have been in all respects duly authorized by the parties hereto;

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

## ARTICLE I DEFINITIONS

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

“Account”: Means each of:

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

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

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

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

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

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

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

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

“Benefit Plan Investor”: Means: (a) any employee benefit plan (as defined in Section 3(3) of ERISA), that is subject to the fiduciary provisions of Title I of ERISA; (b) any plan to which Section 4975 of the Code applies; and (c) any entity whose underlying assets include plan assets by reason of an employee benefit plan’s or a plan’s investment in the entity or otherwise.

“BidCo”: Means Copper Bidco LLC.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Permitted Indebtedness”: Means any one or more debt facilities, indentures, or other arrangements with banks, other financial institutions providing for loans, notes, bonds, debentures, letters of credit or other indebtedness for borrowed money, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time: (w) incurred by the Trust or one or more of its subsidiaries (including any guarantee); (x) in a private loan transaction, a registered offering of securities under the Securities Act of 1933 (as amended) or in a private offering of securities exempt from registration under the Securities Act of 1933 (as amended) or any combination of the foregoing; (y) on an unsecured basis or secured by all or a portion of the Trust Assets; and (z) involving arrangers, bookrunners, underwriters or similar agents, initial lenders, noteholders, certificateholders or other creditors (or participants of any of the foregoing), in each case, none of whom (and none of whose Affiliates) are, directly or indirectly, Certificateholders or Affiliates of Certificateholders; provided that any Qualified Marketmakers for such Permitted Indebtedness may also be an arranger, bookrunner, underwriter or similar agent to the extent they only hold Certificates in their capacity as Qualified Marketmaker for the Certificates. For the avoidance of doubt, Permitted Indebtedness will not include any Permitted Intercompany Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



“VWAP”: Means, for any Trading Day, the price for the Stock determined by the daily volume weighted average price per share of the Stock for such Trading Day on the trading market on which the Stock is then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange or NASDAQ Stock Market, or if such Stock is not listed or quoted on the New York Stock Exchange or NASDAQ Stock Market, as reported by the principal U.S. national securities exchange (including, for such purpose, the Over The Counter Bulletin Board or Pink Sheets) on which such Stock is then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the price per share of Stock using a volume weighted average price method selected by an independent nationally recognized investment bank or other qualified financial institution selected by the Trustee with the approval of the Majority Certificateholders.

Section 1.02 Other Definitions.

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

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

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

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

Section 1.04 Directions of Certificateholders.

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

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

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

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

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

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

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

## **ARTICLE II DECLARATION OF TRUST**

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

### Section 2.02 Tax Treatment of Transfer of Trust Assets

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

(b) If, on the Conversion Trigger Date, the Trust (directly or through its subsidiaries) owns any Properties after the Manager has (in accordance with the Performance Standard set forth in the Management Agreement) tried to sell the Properties, then the Manager, with the advice of legal and tax advisors to the Trust, will: (i) promptly notify the Certificateholders; and (ii) in accordance with the Management Agreement, develop a plan, which shall be subject to approval in writing by the Majority Certificateholders, including at

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

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

Section 2.04 Trust Activities. The Trust shall conduct such activities, directly or indirectly, required pursuant to this Trust Agreement (including but not limited to such activities in Article V) or that are reasonably related, complementary or ancillary thereto and reasonable extensions thereof.

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

**ARTICLE III**  
**ISSUANCE AND TERMS OF THE CERTIFICATES**

Section 3.01 The Certificates.

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

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

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

Section 3.02 Authentication of Certificates.

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

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

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

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

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

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

Section 3.05 Global and Definitive Certificates.

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

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

- (i) the provisions of this Section 3.05 shall be in full force and effect;
- (ii) the Trust, or the Trustee on its behalf, the Paying Agent, the Registrar and the Trustee may deal with the Clearing Agency for all purposes (including the making of distributions on the Certificates);
- (iii) to the extent that the provisions of this Section 3.05 conflict with any other provisions of this Trust Agreement (other than any provisions of this Trust Agreement expressly amending this Section 3.05), the provisions of this Section 3.05 shall control;

(iv) the rights of Certificate Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Certificate Owners and the Clearing Agency Participants; and until Definitive Certificates are issued pursuant to Subsection (d) below, the Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit distributions, if any, on the Certificates to such Clearing Agency Participants;

(v) such Certificates may be transferred in whole, but not in part, and in the manner provided in Section 4.04, by the Clearing Agency holding such Certificates to a nominee of such Clearing Agency, or by such Clearing Agency to a successor Clearing Agency that has been selected or approved by the Majority Certificateholders or to a nominee of such successor Clearing Agency; and

(vi) whenever this Trust Agreement requires or permits actions to be taken based upon instructions or directions of Certificateholders holding Certificates evidencing a specified percentage of the Fractional Undivided Interests in the Trust, the Clearing Agency shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Clearing Agency Participants owning or representing, respectively, such required percentage of the beneficial interest in Certificates and has delivered such instructions to the Trustee.

(c) Whenever notice or other communication to the Certificateholders is required under this Trust Agreement, unless and until Definitive Certificates shall have been issued pursuant to Subsection (d) below, the Trustee shall give all such notices and communications specified herein to be given to Certificateholders to the Clearing Agency and upload such notices and communications to the Investor Website.

(d) Except as provided below, Certificateholders shall not be entitled to receive Definitive Certificates. Global Certificates shall be exchangeable for Definitive Certificates only in the following circumstances:

(i) DTC notifies the Trust that it is unwilling or unable to continue as depository for such Global Certificates or DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934 (as amended), at a time when DTC is required to be so registered in order to act as depository, and in each case a successor depository is not appointed by the Trust within ninety (90) days of such notice; or

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

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



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

Section 3.06 Mutilated, Destroyed, Lost or Stolen Certificates.

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

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

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

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

Section 3.07 Persons Deemed Owners. Prior to due presentment of a Certificate for registration of transfer, the Trustee, the Registrar and any Paying Agent shall deem and treat the Person in whose name any Certificate is registered (as of the day of determination) on the Register as the owner of such Certificate and the Certificateholder for the purpose of receiving distributions pursuant to Section 5.05 and for all other purposes whatsoever, and none of the Trustee, the Registrar or any Paying Agent shall be affected by any notice to the contrary. All payments or distributions made to any such Person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable on any such Certificate.

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

Section 3.09 Limitation of Liability for Payments.

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

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

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

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

**ARTICLE IV  
TRANSFER OF THE CERTIFICATES**

Section 4.01 Legends.

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

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

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

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

THE INTERESTS IN THE TRUST REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE TRUST'S MAINTENANCE OF ITS STATUS AS A PARTNERSHIP FOR U.S. FEDERAL INCOME TAX PURPOSES BY BEING ABLE TO SATISFY THE "QUALIFYING INCOME" REQUIREMENTS OF SECTIONS 7704(c)(1) AND (2) OF THE CODE IN THE EVENT THAT THE TRUST IS RECHARACTERIZED AS A "BUSINESS ENTITY" (RATHER THAN A GRANTOR TRUST) FOR U.S. FEDERAL INCOME TAX PURPOSES. NO PERSON MAY (I) OWN FRACTIONAL UNDIVIDED INTERESTS AGGREGATING 4.9% OR MORE OF THE TRUST INTERESTS UNLESS SUCH PERSON IS AN EXCEPTED HOLDER OR (II) OWN ANY TRUST INTERESTS THAT WOULD CAUSE THE TRUST, TOGETHER WITH ANY AND ALL OF SECTION 4.05 SUBSIDIARIES, TO OWN IN THE AGGREGATE: (1) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT IS A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, STOCK OF SUCH TENANT POSSESSING TEN PERCENT (10%) OR MORE OF THE TOTAL COMBINED VOTING POWER OF ALL CLASSES OF STOCK ENTITLED TO VOTE OR TEN PERCENT (10%) OR MORE OF THE TOTAL VALUE OF SHARES OF ALL CLASSES OF STOCK OF SUCH TENANT, WITHIN THE MEANING OF SECTION 856(d)(2)(B)(i) OF THE CODE; OR (2) IN THE CASE OF ANY TENANT LISTED ON SCHEDULE III OF THE TRUST AGREEMENT (AS OF THE DATE OWNERSHIP OF SUCH TRUST INTEREST WAS OBTAINED) THAT IS NOT A CORPORATION FOR U.S. FEDERAL INCOME TAX PURPOSES, AN INTEREST OF TEN PERCENT (10%) OR MORE IN THE ASSETS OR NET PROFITS OF SUCH TENANT WITHIN THE MEANING OF SECTION 856(d)(2)(B)(ii) OF THE CODE. ANY PERSON WHO ATTEMPTS TO OWN A TRUST INTEREST THAT WOULD RESULT IN A VIOLATION OF EITHER (I) OR (II) ABOVE MUST NOTIFY THE TRUSTEE IN WRITING AS PROMPTLY AS PRACTICABLE. ANY TRANSFER IN VIOLATION OF EITHER (I) OR (II) ABOVE SHALL BE VOID *AB INITIO*.

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

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

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

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

Section 4.02 Book-Entry Provisions for Global Certificates

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

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

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

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

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

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

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

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

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

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

To permit registrations of transfers and exchanges in accordance with the terms, conditions and restrictions hereof, the Trustee shall execute and authenticate Certificates at the Registrar's request. No service charge shall be made to a Certificateholder for any registration of transfer or exchange of Certificates, but the Trustee and the Registrar shall require payment of a

sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates. All Certificates surrendered for registration of transfer or exchange shall be canceled and subsequently destroyed by the Trustee in accordance with the Trustee's customary procedures. Notwithstanding anything contained herein or elsewhere to the contrary, neither the Registrar nor the Trustee shall have any duty or obligation with respect to any transfer, exchange or other disposition of an economic interest in a Certificate (other than a transfer of a Certificate itself) or any personal liability to any Person in connection with the same.

Section 4.05 Limitation on Transferability.

Notwithstanding anything in this Trust Agreement to the contrary:

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

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

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

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

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

(f) *Exception.* The Trustee may except a Person from the restrictions described in Sections 4.05(a), 4.05(b) and 4.05(c) if the Trustee determines that such Person's Ownership of a Trust Interest that would otherwise make such Person a Prohibited Owner would not result in the Trust failing to have at least ninety-five percent (95%) of its gross income for the tax year of the Section 4.05 Transfer or Section 4.05 Non-Transfer Event characterized as "qualifying income" (within the meaning, and for purposes of, Section 7704(d) of the Code) (such failure a "**Qualifying Income Threshold Violation**"), and the Trustee obtains such representations and undertakings from such Person as are necessary to ascertain this fact, and such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this Section 4.05) will result in a Trust Interest that would otherwise make such a Person a Prohibited Owner or, otherwise, that would cause a Qualifying Income Threshold Violation, as applicable, being designated as a Designated Trust Interest in accordance with the provisions of Section 4.05(c). In exercising its discretion under this Section 4.05(f), the Trustee may, but is not required to, obtain a ruling from the Internal Revenue Service or an opinion of counsel, in either case in form and



substance satisfactory to the Trustee, as it may deem necessary or desirable in order to ensure that the Trust would be treated as a partnership for U.S. federal income tax purposes under Sections 7704(c)(1) and (2) of the Code if the Trust were recharacterized as a "business entity" (rather than a grantor trust) for U.S. federal income tax purposes, and, in addition, may obtain such representations and undertakings from an Owner that it may deem necessary or desirable under the circumstances.

(g) *Designated Trust Interests.*

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

(ii) *Distribution Rights; Allocations of Trust Income, Etc.* The Charitable Trustee, as holder of a Designated Trust Interest, shall be entitled to receive all distributions with respect to such Trust Interest, and shall be allocated all Trust income, gain, loss, deductions and credits in respect of such Trust Interest, and shall hold such distributions in trust for the benefit of the Charitable Beneficiary. Unless and to the extent not permitted to do so under applicable law and subject to any fiduciary duties that that the Charitable Trustee may have, the Charitable Trustee shall remit such distributions that it receives to the Charitable Beneficiary(ies) as promptly as reasonably possible. The Prohibited Owner with respect to a Designated Trust Interest shall repay to the Charitable Trust the amount of any distributions received by the Prohibited Owner that are attributable to any Trust Interest designated as a Designated Trust Interest as of the record date which was on or after the date that such Trust Interest became a Designated Trust Interest. In addition, the Trustee and/or the Charitable Trustee shall also have the right, in its and/or their sole discretion, to withhold any amounts that may otherwise be payable or distributable to the Prohibited Owner pursuant to any other provision of this Trust Agreement and apply withheld amounts against any of the outstanding obligations of the Prohibited Owner under this Section 4.05(g)(ii) or any other provisions of this Section 4.05.

(iii) *Voting Rights.* The Charitable Trustee shall be entitled to vote all Designated Trust Interests to the extent of voting rights otherwise exercisable in respect of such Trust Interests that have been so designated. Any vote by a Prohibited Owner as a holder of such a Trust Interest prior to the discovery by the Trustee that the Trust Interest is a Designated Trust Interest shall, subject to applicable law, be rescinded and be void *ab initio* with respect to such Designated Trust Interest and be recast by the Charitable

Trustee; provided, however, if the Trustee has already taken any action that is either irreversible or that the Trustee reasonably determines could not be reversed, modified or rescinded without materially and adversely affecting the interests of the Certificateholders, then the Charitable Trustee shall not have the authority to rescind and recast such vote. The Prohibited Owner shall be deemed to have given, as of the close of business on the Business Day prior to the date of the purported Section 4.05 Transfer or Section 4.05 Non-Transfer Event that results in the transfer to the Charitable Trust of Trust Interests under Section 4.05(c), an irrevocable proxy to the Charitable Trustee to vote the Designated Trust Interest in accordance with this Section 4.05(g)(iii).

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

(v) *Compensation to Prohibited Owner of a Trust Interest that Becomes a Designated Trust Interest* Any Prohibited Owner shall be entitled (following discovery of the Designated Trust Interest and subsequent designations of the Permitted Transferee in accordance with Section 4.05(g)(iv) or following the acceptance of the offer to purchase such Trust Interest in accordance with Section 4.05(g)(vi)) to receive from the Charitable Trustee following the sale or other disposition of such Designated Trust Interest the lesser of: (A) in the case of (I) a purported Section 4.05 Transfer in which the Prohibited Owner gave value for the Trust Interest and which Section 4.05 Transfer resulted in the transfer of the Trust Interest to the Charitable Trust, the amount that such Prohibited Owner paid for such Trust Interest; or (II) a Section 4.05 Non-Transfer Event or Section 4.05 Transfer in which the Prohibited Owner did not give value for such Trust Interest (e.g., if the Trust Interest was received by gift or devise) and which Section 4.05 Non-Transfer Event or Section 4.05 Transfer, as the case may be, resulted in the transfer of the Trust Interest to the Charitable Trust, the Market Price of such Trust Interest on the date of such Section 4.05 Non-Transfer Event or Section 4.05 Transfer; and (B) the amount received by the Charitable Trustee from the sale or other disposition of such Designated Trust Interest. Any amounts received by the Charitable Trustee in respect of such Designated Trust Interest and in excess of such amounts to be paid to the Prohibited Owner pursuant to this Section 4.05(g)(v) shall be distributed to the Charitable Beneficiary. Each Charitable Beneficiary and Prohibited Owner waives any and all claims that it may have against the Charitable Trustee and the Trustee arising out

of the disposition of the Designated Trust Interest, except for claims arising out of the gross negligence, bad faith or willful misconduct of, or any failure to make payments in accordance with this Section 4.05(g)(v) by, such Charitable Trustee or the Trustee.

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

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

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

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

**ARTICLE V**  
**ACCOUNTS; PRIORITY OF PAYMENTS AND DISTRIBUTION; STATEMENTS**

Section 5.01 Establishment of Accounts.

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

- (i) a collections account for receipt of Collections (the 'Collections Account–Rental Proceeds'),
- (ii) a collections account for receipt of Sales Proceeds (the 'Collections Account–Sales Proceeds'),
- (iii) a distributions account for distributions of Collections (the 'Distributions Account–Rental Proceeds'),
- (iv) a distributions account for distributions of Sales Proceeds (the 'Distributions Account–Sales Proceeds'),
- (v) a distributions account for distributions of proceeds of Permitted Indebtedness (the 'Distributions Account—Indebtedness Proceeds')
- (vi) the Trustee's Reserve Account to pay for certain bona fide administrative expenses of the Trustee in respect of its role as such,
- (vii) the Manager's Reserve Account to pay for bona fide expenses of the Trust, its subsidiaries and/or relating to the Properties,
- (viii) a reserve account in which to maintain the Post-Closing Reserves (the 'Post-Closing Reserve Account'), and
- (ix) a payment account to pay for amounts due and payable in respect of Permitted Indebtedness (the 'Indebtedness Payment Account'),

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

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

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

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

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

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

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

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

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

(f) *Trustee’s Reserve Account.* The Trustee shall withdraw, or direct the Agreed Bank to withdraw, such amounts from the Trustee’s Reserve Account, and apply such amounts for payment of administrative expenses of the Trustee relating to its role as such (including any indemnification obligations of the Trust under the Management Agreement, and reasonable and necessary expenses of the Trustee in connection with the performance of its duties under this Trust Agreement and the Management Agreement, including the reasonable fees and expenses of professionals retained by the Trustee and/or the Manager) as they become due and payable. In addition, the Trustee shall withdraw, or direct the Agreed Bank to withdraw, amounts from the Trustee’s Reserve Account to pay the reasonable and documented out-of-

pocket fees and expenses of one counsel to the Certificateholders, including any fees and expenses of legal counsel and/or any other professional advisors to the Certificateholders incurred in connection with the filing or amendment of any registration statement, prospectus or free writing prospectus under the registration rights and resale cooperation agreement for the Certificates or any underwritten offering of Certificates. The Trustee shall maintain a Balance equal to \$10.0 million in the Trustee's Reserve Account for the period commencing on the date the last Property is sold, whether in an Agreed Sale or a Strategic Disposition Transaction, and continuing until the later of: (i) twelve (12) months after such date; and (ii) the date upon which any bona fide claim that was made by any Person against the Manager, Manager Parties or the Trustee has been resolved or otherwise adjudicated; provided that the Trustee receives written notice of any such claim before the last day of the seventh (7<sup>th</sup>) month following the closing date of such last Property sale. On the Business Day after such period has expired, the Trustee shall transfer any remaining Balance in the Trustee's Reserve Account in excess of that portion of the then-current Projected Winddown Amount allocable to the Trustee's Reserve Account to the Collections Account—Rental Proceeds for distribution in accordance with Section 5.05(b).

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

(h) *Post-Closing Reserve Account.*

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

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

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

#### Section 5.03 Interim Expenses, Transfers and Withdrawals

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

(a) in no priority *inter se*, transfer from the Collections Account—Rental Proceeds such funds (to the extent of funds on deposit therein) from time to time (but in no event on less than two (2) Business Days' prior written notice to the Trustee by the Manager (unless such two (2) Business Days' notice requirement is waived by the Trustee)): (i) to the Manager's Reserve Account, only to the extent that such funds are to be applied to pay documented expenses of the Trust, its subsidiaries, relating to the Properties (including the management thereof) and/or the Manager relating to its role as such (including reimbursement of expenses of the Manager pursuant to the Management Agreement) (but subject to the proviso in Section 5.02(g)) that become due and payable before the related Distribution Date and for the payment of which there are insufficient funds in the Manager's Reserve Account; (ii) to the Trustee's Reserve Account, only to the extent that such funds are to be applied to pay documented administrative expenses of the Trustee relating to its role as such that become due and payable before such Distribution Date and for the payment of which there are insufficient funds in the Trustee's Reserve Account; provided that the aggregate Balance of the Manager's Reserve Account and the Trustee's Reserve Account shall not exceed the Reserve Amount without prior approval of the Majority Certificateholders; and (iii) to the Indebtedness Payment Account, only to the extent that such funds are to be applied to pay documented due and payable amounts in respect of Permitted Indebtedness before such Distribution Date and for the payment of which there are insufficient funds in the Indebtedness Payment Account;

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

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

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

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

Section 5.04 Calculations.

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

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

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

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

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



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

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

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

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

#### Section 5.05 Distribution Date Distributions.

(a) *Deposits, Transfer and Withdrawals.* On each Distribution Date, before making the distributions described in clauses (b) and (c) below, the Trustee shall direct the Agreed Bank to, in accordance with the Distribution Date Schedule: (i) *first*, transfer from the Post-Closing Reserve Account to the Collections Account—Sales Proceeds the amount pursuant to Section 5.02(h)(ii) (reflecting any remaining Post-Closing Reserves in respect of Post-Closing Liabilities that have otherwise been extinguished or settled); (ii) *second*, transfer from the Collections Account—Rental Proceeds to the Distribution Account—Rental Proceeds the Collections for the related Collection Period; and (iii) *third*, transfer from the Collections Account—Sales Proceeds to the Distribution Account—Sales Proceeds the Sales Proceeds for the related Collection Period.

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

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

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

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

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

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

(vi) in no order of priority *inter se*: (A) to the Manager's Reserve Account an amount such that the Balance on deposit therein equals: (1) so long as the Trust directly or indirectly owns any Properties, \$10.0 million; or (2) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, (subject to Section 6.09(a)) that portion of the Projected Winddown Amount attributable to expenses of the Trust, its subsidiaries, the Properties and the management thereof; and (B) to the Trustee's Reserve Account an amount such that the Balance on deposit therein equals: (1) so long as the Trust directly or indirectly owns any Properties, \$15.0 million; or (2) if the last Property has been sold in an Agreed Sale or Strategic Disposition Transaction, that portion of the Projected Winddown Amount attributable to administrative expenses of the Trustee relating to its role as such or such greater amount as required by the last two sentences of Section 5.02(f); provided that no such amounts shall be transferred to the Manager's Reserve Account or the Trustee's Reserve Account to the extent that the aggregate balance therein would exceed the Reserve Amount; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VI COVENANTS

Section 6.01 Business Activities. The Trustee, on behalf of the Trust, shall not engage in any business or activity other than: (w) facilitating Agreed Sales of the Properties and Strategic Disposition Transactions; (x) incurring Permitted Indebtedness in the ordinary course of business of the Trust (or its subsidiaries) and in an aggregate principal amount of up to \$5,000,000, or as otherwise approved by the Majority Certificateholders; (y) complying with the requirements of this Trust Agreement and the Management Agreement; and (z) entering into all

contracts and engaging in all related activities incidental, complementary or ancillary thereto. Except to the extent otherwise set forth in this Trust Agreement, the Trustee shall have all powers necessary to conduct the following business and activities, whether directly or through the Manager or another agent:

(a) exercise its reasonable business judgment to direct and control the sale of the Trust Assets in accordance with this Trust Agreement and with applicable law as necessary to maximize distributions to Certificateholders;

(b) retain professionals to assist in performing duties under this Trust Agreement;

(c) maintain the books and records and accounts of the Trust;

(d) incur and pay necessary expenses in connection with the performance of duties under this Trust Agreement and the Management Agreement, including the reasonable fees and expenses of professionals retained by the Trustee and/or the Manager on behalf of the Trust;

(e) (i) administer the Trust's tax obligations, including filing tax returns and paying tax obligations; (ii) monitor the U.S. federal income tax treatment of all or any portion of Collections and evaluate the potential consequences of such treatment for the Trust's U.S. federal income tax classification; and (iii) take any lawful action (including, without limitation, causing the Trust to engage in a Permitted Intercompany Transaction) to avoid or mitigate tax consequences that might have an adverse effect on the U.S. federal income tax classification of the Trust or reduce the amount of distributions to Certificateholders;

(f) comply with and enforce the terms of the Retail Master Lease and the DC Master Lease; and

(g) perform other duties and functions that are consistent with the implementation of this Trust Agreement and the Management Agreement.

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

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

Section 6.04 Maintenance of Office or Agency. The Trust shall maintain each office or agency required hereunder where Certificates may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Trust in respect of the Certificates and this Trust Agreement may be served. The Trust shall give prompt written notice to the Certificateholders of the location, and any change in the location, of any such office or agency. If at any time the Trust shall fail to maintain any such required office or agency or shall fail to

furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and in accordance with Section 7.09, the Trust hereby designates the Corporate Trust Office of the Trustee as one such office or agency.

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

Section 6.06 Statements to Certificateholders: Reports.

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

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

(c) SEC Reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6.09 Covenants of the Trustee.

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

(b) *Sales Cooperation with Manager; Limitations on Sales*. The Trustee shall, unless contrary to the express provisions of this Trust Agreement: (i) cooperate with the Manager with respect to the marketing and sale of any Trust Asset; (ii) cause the Trust to enter into any PSA pursuant to which one or more Retail Properties and/or DC Properties are to be sold; (iii) cooperate with the Manager to undertake, and undertake, all actions reasonably directed by the Manager to consummate any Agreed Sale pursuant to which one or more Retail Properties and/or DC Properties are to be sold, including, without limitation, causing the Trust to enter into Severed Leases; (iv) cooperate with the Manager to undertake, and undertake, all actions reasonably directed by the Manager to consummate any Strategic Disposition Transaction; and (v) cause the Trust to enter into such other documents and take such other actions reasonably directed by the Manager in connection therewith. The Trustee shall not sell any one or more Properties (directly or indirectly, including as part of a merger, acquisition, amalgamation, consolidation or similar transaction involving the Trust or one or more of its subsidiaries): (w) unless such sale constitutes: (A) an Agreed Sale; or (B) a Strategic Disposition Transaction that is approved by at least three (3) Certificateholders who are not Affiliates of one another and who constitute: (1) the Majority Certificateholders, if the consideration is equal to or more than the



Threshold Purchase Price; or (2) Supermajority Certificateholders, if the consideration is less than the Threshold Purchase Price; (x) for consideration other than cash, unless approved by the Majority Certificateholders; (y) at a purchase price that is less than the Threshold Purchase Price, unless approved by the Supermajority Certificateholders; and (z) after the Targeted Disposal Period, unless approved by the Majority Certificateholders. Any non-cash consideration paid to the Trust or the Certificateholders in connection with a Strategic Disposition Transaction shall consist of Stock, which shall be valued, for purposes of clauses (w) and (y) above, using the average VWAP for the twenty (20) Trading Days immediately preceding the date on which the merger agreement, purchase or sale agreement or similar document is entered into.

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

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

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

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

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

(h) *Permitted Indebtedness Cooperation with Manager.* The Trustee shall: (i) cooperate with the Manager with respect to the negotiation, execution, consummation and incurrence of any Permitted Indebtedness and any agreements related thereto (including any engagement letters for any structuring agent, arranger, underwriter, initial purchaser or similar agent); (ii) cooperate with the Manager and/or any structuring agent, arranger, underwriter, initial purchaser or similar agent of any Permitted Indebtedness or order to obtain a rating of such Permitted Indebtedness; (iii) cooperate with the Manager and/or any such structuring agent, arranger, underwriter, initial purchaser or similar agent in preparing any offering memorandum, private placement memorandum, confidential information memorandum, investor presentations, lender presentations on similar materials, including by providing any information available to the Trustee regarding the Trust and/or the Trust Assets and reasonably requested by the Manager or

such structuring agent, arranger, underwriter, initial purchaser or similar agent; and (iv) enter into such documents and take such other actions reasonably directed by the Manager in connection with the foregoing. No payments under such Permitted Indebtedness shall be made except in accordance with Section 5.05(b), and any and all proceeds of such Permitted Indebtedness shall be paid into the Distributions Account—Indebtedness Proceeds.

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

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

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

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

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

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

## **ARTICLE VII THE TRUSTEE**

### Section 7.01 Certain Duties and Responsibilities: Delivery of Documents

(a) (i) The Trustee undertakes to perform only such duties in respect of the Trust as are specifically set forth in this Trust Agreement or the Management Agreement; and (ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement. Notwithstanding anything else to the contrary in this Trust Agreement, whenever reference is made in this Trust Agreement to any discretionary action by, any consent, designation, determination, specification, requirement or approval of or satisfaction with, or other direction given or action to be undertaken by the Trustee, such provision shall refer to the Trustee exercising each of the foregoing at the direction of the Manager (pursuant to the Management Agreement) or the Certificateholders holding the requisite percentage of Trust Interests in respect of such action; provided that the foregoing shall not apply to the following: (i) whether any item or sum of money has been delivered to or received by the Trustee, any calculations related thereto (including any Distribution Date Schedules); (ii) the appointment of any sub-agent or attorney-in-fact by the Trustee; (iii) any matter pertaining to compliance by the Trustee with its internal policies, any law applicable to it, including without limitation, the PATRIOT Act or any matter relating to the reimbursement of fees or expenses of or indemnification of the Trustee and the Manager; (iv) the maintenance of the Register; and (v) any matter with respect to any fees payable to the Trustee for its own account or distributions to the accounts of Certificateholders; provided, further, that in each case, the Trustee may in its sole discretion elect to seek instructions of the Manager or the Majority Certificateholders for any discretionary act for which direction is not already provided for and the Trustee shall be fully justified in failing or refusing

to take any such action if it shall not have received written (including in electronic form) instruction, advice or concurrence from the Manager or Certificateholders holding the requisite percentage of Trust Interests in respect of such action. The Trustee, to the extent not prohibited in this Trust Agreement or the Management Agreement, or in the absence of actual knowledge of bad faith, gross negligence, or willful misconduct on the part of the Manager, shall consent, designate, specify, approve or take any such other action as directed or requested to be undertaken by the Trustee upon the written instruction of the Manager (pursuant to the Management Agreement). The Trustee shall have no liability for following the written instruction of the Manager or the Certificateholders holding the requisite percentage of Trust Interests, unless doing so would amount to gross negligence, bad faith or willful misconduct by the Trustee.

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

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

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

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

(d) The Trustee is hereby authorized and directed:

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

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

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

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

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

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

Section 7.02 Certain Rights of Trustee.

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

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

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

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

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

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

(g) The Trustee may execute any of the trusts or powers under this Trust Agreement or perform any duties under this Trust Agreement either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it under this Trust Agreement.

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

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

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

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

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

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

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

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

Section 7.03 Not Responsible for Recitals or Issuance of Certificates.

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

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

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

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

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

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

(d) the execution and delivery by the Trustee of this Trust Agreement, the Certificates and the other Trust Transaction Documentation to which it is or is to become a party and the performance of its obligations thereunder will not require the authorization, consent, or approval of, the giving of notice to, the filing or registration with, or the taking of any other action in respect of, any governmental authority or agency of the United States or the state of the United States where it is located regulating the banking and corporate trust activities of the Trustee; and

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

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

Section 7.06 Resignation and Removal: Appointment of Successor.

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

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

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

(d) Any Person into which the Trustee may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Trustee shall be a party, or any Person which succeeds to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Trust Agreement without the execution, delivery or filing of any paper or instrument or further act to be done on the part of the parties hereto, except as may be required by applicable law.

(e) The Agreed Bank, the Auditor, any Financial Advisor, the Real Estate Brokers, the Property Manager, the Leasing Agents, accountants, IT support and legal counsel shall be removed by the Trustee at any time and for any reason by Direction of the Majority Certificateholders delivered to the Trustee and to the Manager, provided that the Trustee shall, within thirty (30) days after receipt of such Direction, appoint a replacement Auditor, Financial Advisor, Real Estate Brokers, Property Manager, Leasing Agent, accountants, IT support and/or



legal counsel, as applicable, specified by the Majority Certificateholders in such Direction or, if no such replacement is specified in such Direction, use its reasonable best efforts to identify, together with the Manager, a suitable replacement and (in the case of the Agreed Bank, the Auditor, the Financial Advisor, the Leasing Agent and the Property Manager) propose such replacement to the Certificateholders for approval. The Trustee shall not agree to or approve payment of any additional consideration or reimbursement of expenses to an Affiliate of the Manager (including for any Services to be performed by such Affiliate pursuant to the Management Agreement), unless the Majority Certificateholders have approved such consideration and expenses to be paid to such Affiliate. The Trustee shall not terminate the Management Agreement without the approval of the Majority Certificateholders if such termination would trigger an obligation of the Trust to pay a termination fee to the Manager.

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

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

or

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

(g) If a Responsible Officer of the Trustee shall obtain actual knowledge of an Avoidable Tax in respect of the Trust which has been or is likely to be asserted, the Trustee shall promptly notify the Certificateholders and the Manager and shall, within thirty (30) days of such notification, either relocate the administration of the Trust to another jurisdiction as described in the definition of "Avoidable Tax" or resign as Trustee of the Trust. Provided that there is a corporation in a jurisdiction where there are no Avoidable Taxes that is willing to act as Trustee and is eligible under Section 7.14, the existing Trustee shall promptly resign and appoint a temporary successor Trustee of the Trust in a jurisdiction where there are no Avoidable Taxes; provided that if no such successor shall be appointed, the Majority Certificateholders shall appoint a temporary successor Trustee. If, within one hundred eighty (180) days after such temporary appointment, the Majority Certificateholders have not appointed an alternative Trustee, such temporary successor Trustee shall become the permanent successor Trustee. As used herein, an "Avoidable Tax" in respect of the Trust means a state or local tax: (i) upon: (A) the Trust; (B) the Trust Assets of the Trust; (C) Certificateholders of the Trust; or (D) the Trustee for which the Trustee is entitled to seek reimbursement from the Trust Assets of the Trust; and (ii) which would be avoided if the Trust were administered in a different jurisdiction in the United States or if the Trustee were located in another state, or jurisdiction within a state, within the United States. If no successor Trustee shall have been so appointed as provided above and accepted appointment in the manner hereinafter provided, the resigning Trustee or any Certificateholder who has been a bona fide Certificateholder for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

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

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

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

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

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

Section 7.09 Maintenance of Agencies

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

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

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

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

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

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

Section 7.11 Filing Requirements. Unless otherwise required by applicable law, the Trustee shall file, or cause to be filed, tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations with the beneficial owners of the Trust Interests treated as the grantors of the Trust for U.S. federal income tax purposes in respect of their beneficial interests in the Certificates. In addition, the Trustee shall file, or cause to be filed, in a timely manner such other tax returns as are required by applicable law to be filed by the Trust (including, if any, with respect to the Property Owners) and pay, or cause to be paid, any taxes shown as due thereon. The Trustee may withhold from amounts distributable or allocable to any Person any and all amounts, determined in the Trustee's sole, reasonable discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement. Any amounts withheld and paid to a taxing authority on behalf of or with respect to a Certificateholder shall be treated as having been distributed to such Certificateholder for all purpose of this Trust Agreement. The tax returns filed by the Trustee

shall report all Trust earnings for the taxable year being reported. The Trustee shall use commercially reasonable efforts to deliver to the Certificateholders (i) no later than forty-five (45) days after the end of each taxable year, a draft statement setting forth estimates of income, deductions, gain, or loss of the Trust for such taxable year and (ii) no later than ninety (90) days after the end of each taxable year, a final statement setting forth income, deductions, gain, or loss of the Trust for such taxable year, and the beneficial owners of the Trust Interests shall file income tax returns consistent with such statements. The “taxable year” of the Trust shall be the “calendar year” as those terms are defined in Section 441 of the Code.

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

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

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

(b) indemnify, defend and hold harmless the Trustee (solely in its individual capacity ) and any of the officers, directors and employees of the Trustee (the “Indemnified Persons”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes (other than any tax attributable to the Trustee’s compensation for serving as such) and penalties of any kind and nature whatsoever (collectively, “Expenses”), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons in connection with the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby, including any Expenses of: (i) defending itself against any claim or liability in connection with the exercise or performance of any of the Trustee’s powers or duties hereunder; or (ii) contesting the imposition of any such tax, except in each case for any such loss, liability, tax, cost or expense incurred by reason of the Trustee’s breach of its representations and warranties set forth in Section 7.04; provided, however, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses or reimburse any reimbursements which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person as determined by a final non-appealable judgment of a court of competent jurisdiction.

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

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

Section 7.14 Corporate Trustee Required; Eligibility.

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

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

**ARTICLE VIII  
CERTIFICATEHOLDERS**

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

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

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

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

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

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

Section 8.03 Acknowledgment With Respect to the Manager. By accepting a Certificate, each Certificateholder agrees that: (i) the Manager's sole relationship with the Trust is a contractual relationship governed by the Management Agreement as an independent contractor; (ii) no Certificateholder shall be a third-party beneficiary of the Management Agreement; (iii) neither the Manager nor any of its Affiliates has any duties, obligations or responsibilities towards Certificateholders or, except for obligations expressly set forth in the Management Agreement to the Trust, and in no event shall the Manager or any Manager Parties (as defined in the Management Agreement) be a fiduciary or have any fiduciary or similar duties to any Certificateholder or the Trust; (iv) with respect to any claims or proceedings brought by a Certificateholder or the Trust against the Manager, the Manager shall be afforded all of the rights, protections (including limitations on liability), exculpations, immunities and indemnities afforded to the Manager pursuant to the terms of the Management Agreement (as attached hereto in Exhibit G and as may be amended from time to time), *mutatis mutandis*, as if such rights, protections, exculpations, immunities and indemnities were set forth herein; and (v) neither the Manager nor any of the Manager Parties shall have any liability or obligation to any Certificateholder or holder of Trust Interests for any acts or omissions under the Management Agreement or otherwise. For purposes of this Section 8.03, references to Certificateholders shall be deemed to include holders of Trust Interests. The acknowledgements and agreements under this Section 8.03 are for the benefit of the Manager and the Manager Parties and shall survive the resignation, removal or termination of the Manager pursuant to the Management Agreement and shall survive the termination or expiration of the Management Agreement and/or this Trust Agreement and/or the termination or dissolution of the Trust.

**ARTICLE IX**  
**SUPPLEMENTAL AGREEMENTS**

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

(a) to evidence the succession of another Person to BidCo and the assumption by any such successor of the covenants of BidCo contained in this Trust Agreement or of BidCo's obligations hereunder; or

(b) to cure any manifest error; or

(c) to make or modify any other ministerial provision in regard to matters or questions as BidCo may deem necessary and that will not adversely affect the interests of the any Certificateholders; or

(d) to comply with any requirement of the Commission or of any other applicable regulatory body; or

(e) to add to or change any of the provisions to such extent as shall be necessary to facilitate or provide for the issuance of Certificates in global form in addition to or in place of Certificates in certificated form; or

(f) to the extent required to maintain compliance with applicable laws or regulations, to provide for the delivery of agreements supplemental hereto or the Certificates in or by means of any computerized, electronic or other medium, including without limitation by computer diskette; or to correct or supplement the description of any property constituting property of the Trust; or

(g) to the extent required to maintain compliance with applicable laws or regulations, to comply with any requirements of DTC; or

(h) to make any changes to or to modify any administrative provisions (including, without limitation, for example the announcement date for distributions, the record date for distributions or the date of the month on which such distribution should occur) to such extent as shall be necessary to facilitate or provide for the listing of the Certificates on a principal U.S. national securities exchange.

Section 9.02 Supplemental Agreements with Consent of Certificateholders.

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



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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE X MISCELLANEOUS PROVISIONS**

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

Section 10.02 Termination of the Trust. The Trustee and the Trust shall be discharged or terminated, as the case may be, no later than ninety (90) days after the later of (x) the final tax returns required to be filed by the Trust have been duly filed and (y) the final reports required to be filed by the Trust pursuant to Section 6.06(c) have been duly filed, in each case, after: (a) all Trust Assets have been sold pursuant to Agreed Sales and/or Strategic Disposition Transactions; and (b) all distributions required to be made by the Trustee to the Certificateholders have been made (including any reserve previously required to be maintained pursuant to Section 5.02(f)) and the Balance of each Account is \$0; but in no event shall the Trust be terminated later than five (5) years from the date hereof unless the Trustee (in consultation with the Manager) and the Majority Certificateholders determine that a fixed period extension is necessary to facilitate or complete the recovery on, and liquidation of, the Trust Assets. The Trust may not be terminated at any time by the Certificateholders. In connection with the termination of the Trust, notwithstanding other provisions hereof, any remaining Trust Assets that are of inconsequential value or otherwise insufficient to support the cost of a distribution may be transferred by the Trustee to a non-profit charitable organization qualifying under section 501(c)(3) of the IRC.

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

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

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

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

With a copy to:  
Milbank LLP  
55 Hudson Yards  
New York, NY 10001  
Attention: Dennis Dunne  
Eric Reimer  
Kevin O’Shea  
Casey Fleck

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

Trustee:

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

With a copy to:

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

Section 10.06 Intention of Parties to Establish a Grantor Trust

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

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

Section 10.07 Submission to Jurisdiction. Each of the parties hereto, to the extent it may do so under applicable law, for purposes hereof and of all other Trust Transaction Documentation: (a) irrevocably submits itself to the non-exclusive jurisdiction of the courts of the State of New York sitting in the City of New York and to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Trust Agreement, the subject matter hereof or any of the transactions contemplated hereby brought by any party or parties hereto or thereto, or their successors or permitted assigns; (b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or

that this Trust Agreement or the subject matter hereof or any of the transactions contemplated hereby may not be enforced in or by such courts; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 10.05, or at such other address of which the other parties shall have been notified pursuant thereto; and (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction. THE PARTIES PARTY HERETO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT, ANY CERTIFICATE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS TRUST AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

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

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

Section 10.11 Limitation on Rights of Certificateholders.

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

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

Section 10.12 Certificates Nonassessable and Fully Paid.

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

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

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

*[Remainder of Page Intentionally Blank; Signature Pages Follow]*

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

COPPER BIDCO LLC

By its sole member, GLAS AMERICAS LLC

By: /s/ Yana Kislenko

Name: Yana Kislenko

Title: Vice President

By: /s/ Yana Kislenko

Name: Yana Kislenko

Title: Vice President



**REGISTRATION RIGHTS AND RESALE COOPERATION AGREEMENT**

This Registration Rights and Resale Cooperation Agreement (including all exhibits hereto and as may be amended, supplemented or amended and restated from time to time in accordance with the terms hereof, this “*Agreement*”) is made and entered into as of January 30, 2021, by and between Copper Property CTL Pass Through Trust (the “*Trust*”) and Copper Bidco LLC (“*Bidco*”) on behalf of the Certificateholders from time to time (as defined below).

WHEREAS, the Amended and Restated Pass Through Trust Agreement, dated as of January 30, 2021, by and between GLAS Trust Company LLC, as trustee (the “*Trustee*”), and Bidco (the “*Trust Agreement*”) provides that the Trust will enter into a registration rights and resale cooperation agreement with the Trustee and Bidco for the benefit of Certificateholders and any Affiliates or Related Funds thereof that receive Trust Certificates;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Trust and each of the Certificateholders agree as follows:

1.

(a) **Definitions.** Capitalized terms used and not otherwise defined herein that are defined in the Trust Agreement have the meanings given such terms in the Trust Agreement. As used in this Agreement, the following terms shall have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made (including any Related Funds of such Person). For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“*Automatic Shelf Registration Statement*” means an “automatic shelf registration statement” as defined in Rule 405 promulgated under the Securities Act, as such definition may be amended from time to time.

“*beneficially own*” (and related terms such as “beneficial ownership” and “beneficial owner”) shall have the meaning given to such term in Rule 13d-3 under the Exchange Act, and any Person’s beneficial ownership of securities shall be calculated in accordance with the provisions of such Rule.

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

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“*Certificateholder*” or “*Certificateholders*” means any holder of Trust Certificates.

“*Commission*” means the Securities and Exchange Commission.

“*Counsel to the Majority Participating Certificateholders*” means with respect to any (i) Demand Registration, the counsel selected by the Demanding Certificateholder, (ii) Underwritten Takedown, the counsel selected by the Majority Participating Eligible Certificateholders and (iii) any cooperation in third party sales pursuant to Section 1.3, the counsel selected by the Majority Participating Eligible Certificateholders.

“*Demanding Certificateholder*” means, with respect to any Demand Registration, the Eligible Certificateholder initially requesting such Demand Registration.

“*Disallowed Transferee*” means any of (i) the Debtors, (ii) Simon Property Group, Brookfield Asset Management, Penney Intermediate Holdings LLC or any tenant of a Retail Property or DC Property, (iii) the Trustee, the Manager, the Financial Advisor, any Real Estate Broker or any other advisor engaged by or on behalf of the Trust at any time during the term of this Trust Agreement (including without limitation, any Leasing Agents or Property Managers) or (iv) any Affiliate of or any successors in interest to the foregoing Persons.

“*Effective Date*” means the date that a Registration Statement filed pursuant to this Agreement is first declared effective by the Commission.

“*Eligible Certificateholder*” means any Certificateholder that, together with its Affiliates, holds at least 9% of the Registrable Certificates.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“*Form S-3*” means Form S-3 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-3.

“*Form S-4*” means Form S-4 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-4.

“*Form S-8*” means Form S-8 under the Securities Act, or any other form hereafter adopted by the Commission having substantially the same usage as Form S-8.

“*Form S-11*” means Form S-11 under the Securities Act, or any other form hereafter adopted by the Commission for the general registration of securities under the Securities Act.

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

“*Majority Participating Eligible Certificateholders*” means, with respect to any Underwritten Offering, Eligible Certificateholders representing a majority of the Registrable Certificates to be included in such Underwritten Offering held by all Eligible Certificateholders that have made the request requiring the Trust to conduct such Underwritten Offering.

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“*Manager*” has the meaning given thereto in the Trust Agreement.

“*Person*” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“*Proceeding*” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“*Prospectus*” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Certificates covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“*Registrable Certificates*” means, collectively, (a) as of the date of this Agreement, all Trust Certificates issued, and any additional Trust Certificates issued or issuable after the date of this Agreement and (b) any additional Trust Certificates paid, issued or distributed in respect of any such securities by way of a stock dividend, stock split or distribution, or in connection with a combination of securities, and any security into which such Trust Certificates shall have been converted or exchanged in connection with a recapitalization, reorganization, reclassification, merger, consolidation, exchange, distribution or otherwise; *provided, however*, that as to any Registrable Certificates, such securities shall cease to constitute Registrable Certificates upon the date on which such securities are disposed of pursuant to an effective Registration Statement.

“*Registration Statement*” means any one or more registration statements of the Trust filed under the Securities Act that covers the resale of any of the Registrable Certificates pursuant to the provisions of this Agreement (including, without limitation, any Shelf Registration Statement), amendments and supplements to such registration statements, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such Registration Statements.

“*Related Fund*” means, with respect to any Certificateholder and its Affiliates (i) any investment funds or other entities who are advised by the same investment advisor, (ii) any investment funds or other entities who are managed by the same manager, (iii) their respective accounts, funds and investment vehicles advised or managed by such Certificateholder or its Affiliates.

“*Rule 144*” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

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“*Rule 144A*” means Rule 144A promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 158*” means Rule 158 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 415*” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Rule 424*” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Selling Certificateholder Questionnaire*” means a questionnaire reasonably adopted by the Trust from time to time.

“*Shelf Registration Statement*” means a Registration Statement filed with the Commission in accordance with the Securities Act for the offer and sale of Registrable Certificates by Certificateholders on a continuous or delayed basis pursuant to Rule 415.

“*Trading Day*” means a day during which trading in the Trust Certificates occurs in the Trading Market, or if the Trust Certificates are not listed on a Trading Market, a Business Day.

“*Trading Market*” means whichever of the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market, or one of the markets operated by OTC Markets Group on which the Trust Certificates are listed or quoted for trading on the date in question.

“*Trust*” has the meaning set forth in the Preamble and includes the Trust’s successors under the Trust Agreement.

“*Trust Certificates*” means the pass-through certificates of the Trust to be issued pursuant to the Trust Agreement.

“*Underwritten Offering*” means an offering of Registrable Certificates under a Registration Statement in which the Registrable Certificates are sold to an Underwriter for reoffering to the public.

(b) Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Advice”	Section 17(c)
“Agreement”	Recitals
“Cooperation Grace Period”	Section 14(a)(B)
“Demand Registration”	Section 2(a)
“Demand Registration Request”	Section 2(a)
“FINRA”	Section 7
“Indemnified Party”	Section 8(c)
“Indemnifying Party”	Section 8(c)
“Initial Shelf Expiration Date”	Section 2(e)
“Initial Shelf Registration Statement”	Section 2(a)
“Losses”	Section 8(a)
“Registration Grace Period”	Section 5(a)(B)
“Transfer”	Section 10
“Trust Agreement”	Recitals
“Underwriters”	Section 4(a)
“Underwritten Takedown”	Section 2(i)

2. Demand Registration: Initial Shelf Registration.

(a) At any time and from time to time beginning one hundred twenty (120) days after the date of this Agreement, any Eligible Certificateholder or group of Eligible Certificateholders may request in writing (“***Demand Registration Request***”) that the Trust effect the registration of all or part of such Eligible Certificateholder’s or Eligible Certificateholders’ Registrable Certificates with the Commission under and in accordance with the provisions of the Securities Act (a “***Demand Registration***”). Upon the occurrence of the first such Demand Registration Request, the Trust shall, with the cooperation of the Manager, prepare a Shelf Registration Statement (as may be amended from time to time, the “***Initial Shelf Registration Statement***”), on or prior to the 60th day following a Demand Registration Request, and shall use its reasonable best efforts to cause such Registration Statement to be declared effective, as promptly as practicable after receipt of such request. The Trust shall include in the Initial Shelf Registration Statement the Registrable Certificates of each Certificateholder holding at least 0.5% of the outstanding Registrable Certificates who shall request inclusion therein of some or all of their Registrable Certificates by written notice to the Trust so long as such Certificateholders otherwise timely comply with the requirements of this Agreement with respect to the inclusion of such Registrable Certificates in the Initial Shelf Registration Statement; *provided, however*, that the Trust will not be required to file a Registration Statement pursuant to this Section 2(a):

(A) unless (i) the number of Registrable Certificates requested to be registered on such Registration Statement equals at least (x) 15% of all Registrable Certificates at such time (if no Initial Shelf Registration Statement has been filed and declared effective) or (y) 10% of all Registrable Certificates at such time (if an Initial Shelf Registration Statement has been filed and declared effective) and (ii) the Registrable Certificates requested to be sold by the Certificateholders pursuant to such Registration Statement have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$50 million;

(B) if the Registrable Certificates requested to be registered are already covered by an existing and effective Registration Statement and such Registration Statement may be utilized for the offer and sale of the Registrable Certificates requested to be registered;

(C) if a registration statement filed by the Trust shall have previously been declared effective by the Commission within: (i) the one hundred twenty (120) days preceding the date such Demand Registration Request is made, in the case of the first such Demand Registration Request and (ii) the ninety (90) days preceding the date such Demand Registration Request is made, in the case of all subsequent Demand Registration Requests; and

(D) if the number of Demand Registration Requests previously made pursuant to this Section 2(a) shall exceed ten (10).

(b) A Demand Registration Request shall specify (i) the then-current name and address of such Eligible Certificateholder or Eligible Certificateholders, (ii) the aggregate number of Registrable Certificates requested to be registered, (iii) the total number of Registrable Certificates then beneficially owned by such Eligible Certificateholder or Eligible Certificateholders, and (iv) the intended means of distribution. If at the time the Demand Registration Request is made the Trust appears, based on public information available to such Eligible Certificateholder or Eligible Certificateholders, eligible to use Form S-3 for the offer and sale of the Registrable Certificates, the Eligible Certificateholder or Eligible Certificateholders making such request may request that the registration be in the form of a Shelf Registration Statement (for the avoidance of doubt, the Trust shall not be under the obligation to file a Shelf Registration on Form S-3 if, upon the reasonable opinion of its counsel, it is not eligible to make such a filing).

(c) The Trust may satisfy its obligations under Section 2(a) hereof by amending (to the extent permitted by applicable law) any registration statement previously filed by the Trust under the Securities Act, so that such amended registration statement will permit the disposition (in accordance with the intended methods of disposition specified as aforesaid) of all of the Registrable Certificates for which a Demand Registration Request has been properly made under Section 2(a)(A) hereof. If the Trust so amends a previously filed registration statement, it will be deemed to have effected a registration for purposes of Section 2(a) hereof; *provided, however*, that the Effective Date of the amended registration statement, as amended pursuant to this Section 2(c), shall be the "the first day of effectiveness" of such Registration Statement for purposes of determining the period during which the Registration Statement is required to be maintained effective in accordance with Section 2(e) hereof.

(d) Within seven (7) days after receiving a Demand Registration Request, the Trust shall give written notice of such request to all other Certificateholders of Registrable Certificates and shall, subject to the provisions of Section 4(c) in the case of an Underwritten Offering, include in such registration all such Registrable Certificates held by Certificateholders holding at least 0.5% of the outstanding Registrable Certificates with respect to which the Trust has received written requests for inclusion therein within twenty (20) days after the giving of such notice, *provided* that such Registrable Certificates are not already covered by an existing and effective Registration Statement that may be utilized for the offer and sale of the Registrable Certificates requested to be registered in the manner so requested.

(e) The Trust will use its reasonable best efforts to cause the Initial Shelf Registration Statement to be declared effective by the Commission as promptly as practicable, and shall use its reasonable best efforts to keep a Registration Statement that has become effective as contemplated by this Section 2 continuously effective, and not subject to any stop order, injunction or other similar order or requirement of the Commission:

(A) in the case of a Registration Statement other than a Shelf Registration Statement, until all Registrable Certificates registered thereunder have been sold pursuant to such Registration Statement, but in no event later than two hundred seventy (270) days from the Effective Date of such Registration Statement; and

(B) in the case of a Shelf Registration Statement, until the earlier of: (x) three (3) years following the Effective Date of such Shelf Registration Statement; and (y) the date that all Registrable Certificates covered by such Shelf Registration Statement shall cease to be Registrable Certificates (such earlier date, the "***Initial Shelf Expiration Date***");

*provided, however*, that in the event of any stop order, injunction or other similar order or requirement of the Commission relating to any Shelf Registration Statement, if any Registrable Certificates covered by such Shelf Registration Statement remain unsold, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which such stop order, injunction or similar order or requirement is in effect; *provided further, however*, that if any Shelf Registration Statement was initially declared effective on FormS-3 and, prior to the date determined pursuant to Section 2(e)(B), the Trust becomes ineligible to use FormS-3, the period during which such Shelf Registration Statement shall be required to remain effective will be extended by the number of days during which the Trust did not have an effective Registration Statement covering unsold Registrable Certificates initially registered on such Shelf Registration Statement.

(f) The Initial Shelf Registration Statement shall be on Form S-11; *provided, however*, that, if the Trust becomes eligible to register the Registrable Certificates for resale by the Certificateholders on Form S-3 (including without limitation a Form S-3 filed as an Automatic Shelf Registration Statement), the Trust shall be entitled to amend the Initial Shelf Registration Statement to a Shelf Registration Statement on Form S-3 or file a Shelf Registration Statement on Form S-3 in substitution of the Initial Shelf Registration Statement as initially filed.

(g) If the Initial Shelf Registration Statement is on Form S-11, then for so long as any Registrable Certificates covered by the Initial Shelf Registration Statement remain unsold, the Trust will, with the cooperation of the Manager, file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law, any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Trust with the Commission, or any other information necessary so that (i) the Initial Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (ii) the Trust complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided, however*, that these obligations remain subject to the Trust's rights under Section 6 of this Agreement.

(h) The Eligible Certificateholder or Eligible Certificateholders making a Demand Registration Request may, at any time prior to the Effective Date of the Registration Statement relating to such registration, revoke their request for the Trust to effect the registration of all or part of such Eligible Certificateholder's or Eligible Certificateholders' Registrable Certificates by providing a written notice to the Trust. If, pursuant to the preceding sentence, either (i) the entire Demand Registration Request is revoked or (ii) all Eligible Certificateholders have revoked their Demand Registration Request, then, at the option of the Eligible Certificateholder or Eligible Certificateholders who revoke such request, either (x) such Eligible Certificateholder or Eligible Certificateholders shall reimburse the Trust for all reasonable and documented out-of-pocket expenses incurred by each of the Trust and the Manager in the preparation, filing and processing of the Registration Statement, which out-of-pocket expenses, for the avoidance of doubt, shall not include overhead expenses and which requested registration shall not count as one of the permitted Demand Registration Requests hereunder or (y) the requested registration that has been revoked will be deemed to have been effected for purposes of Section 3.

(i) Upon the demand of one or more Eligible Certificateholders, the Trust shall, with the cooperation of the Manager, facilitate a "takedown" of Registrable Certificates in the form of an Underwritten Offering (each, an "***Underwritten Takedown***"), in the manner and subject to the conditions described in Section 4 of this Agreement, *provided* that (i) the number of securities included in such "takedown" shall equal at least 25% of all Registrable Certificates at such time and (ii) the Registrable Certificates requested to be sold by the Certificateholders in such "takedown" shall have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$75 million.

3. Subsequent Shelf Registration Statements. After the Initial Shelf Expiration Date and for so long as any Registrable Certificates remain outstanding, if there is not an effective Registration Statement which includes the Registrable Certificates that are currently outstanding, following a Demand Registration Request the Trust shall, with the cooperation of the Manager,



(i) if the Trust is eligible to register the Registrable Certificates on Form S-3, promptly file a Shelf Registration Statement on Form S-3 and use reasonable best efforts to cause such Registration Statement to be declared effective or (ii) promptly file a Shelf Registration Statement on Form S-11 and use reasonable best efforts to cause such Registration Statement to be declared effective and for so long as any Registrable Certificates covered by such Shelf Registration on Form S-11 remain unsold, the Trust will, with the cooperation of the Manager, file any supplements to the Prospectus or post-effective amendments required to be filed by applicable law in order to incorporate into such Prospectus any Current Reports on Form 8-K necessary or required to be filed by applicable law, any Quarterly Reports on Form 10-Q or any Annual Reports on Form 10-K filed by the Trust with the Commission, or any other information necessary so that (x) such Shelf Registration Statement shall not include any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading, and (y) the Trust complies with its obligations under Item 512(a)(1) of Regulation S-K; *provided, however*, that these obligations remain subject to the Trust's rights under Section 6 of this Agreement.

4. Procedures for Underwritten Offerings. The following procedures shall govern Underwritten Offerings pursuant to Section 2(h), whether in the case of an Underwritten Takedown or otherwise.

(a) (i) The Majority Participating Eligible Certificateholders shall select, engage and negotiate the terms of engagement (including any underwriting discounts and similar commissions or fees) of one or more investment banking firm(s) of national standing to be the underwriters and/or bookrunning managers (including the lead underwriter and/or bookrunning manager)(collectively, the "*Underwriters*") for any Underwritten Offering pursuant to a Demand Registration Request or an Underwritten Takedown with the consent of the Trust, which consent shall not be unreasonably withheld, conditioned or delayed and (ii) the Trust shall engage the Underwriters selected by the Majority Participating Eligible Certificateholders pursuant to the foregoing clause (i).

(b) All Certificateholders proposing to distribute their securities through an Underwritten Offering, as a condition for inclusion of their Registrable Certificates therein, shall agree to concurrently enter into (i) an underwriting agreement with the Underwriters and (ii) if proposed in good faith by the Underwriters, a lockup agreement for a customary period not to exceed one hundred eighty (180) days in the case of the initial Underwritten Offering (so long as there has not been a proposed Transfer that Eligible Certificateholders have elected to participate in pursuant to Section 13(f), in which case the lock up period shall be ninety (90) days) or ninety (90) days in the case of any other Underwritten Offering; *provided, however*, that the underwriting agreement and each lockup agreement are in customary form and reasonably acceptable to the Majority Participating Eligible Certificateholders and, in the case of each lockup agreement, substantially identical for all of the Certificateholders participating in such Underwritten Offering; *provided further, however*, that no Certificateholder of Registrable Certificates included in any Underwritten Offering shall be required to make any representations or warranties to the Trust or the Underwriters (other than representations and warranties regarding (x) such Certificateholder's ownership of its Registrable Certificates to be sold or transferred, (y) such Certificateholder's power and authority to effect such transfer and (z) such matters pertaining to compliance with securities laws as may be reasonably requested) and *provided further*, that any indemnity obligation shall be several and not joint for each Certificateholder.

(c) If the Underwriters for an Underwritten Offering pursuant to a Demand Registration or an Underwritten Takedown advises the Majority Participating Eligible Certificateholders that the total amount of Registrable Certificates or other Trust Certificates permitted to be registered is such as to materially adversely affect the success of such Underwritten Offering, the number of Registrable Certificates or other Trust Certificates to be registered on such Registration Statement will be reduced as follows: *first*, the Trust shall reduce or eliminate the securities of the Trust to be included by any Person other than the Demanding Certificateholder; *second*, the Trust shall reduce the number of Registrable Certificates to be included by Eligible Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Eligible Certificateholders to be included in the Underwritten Offering; and *third*, the Trust shall reduce the number of Registrable Certificates to be included by all other Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Certificateholders to be included in the Underwritten Offering.

(d) Within three (3) Business Days after receiving a request for an Underwritten Offering constituting a “takedown” from a Shelf Registration Statement, the Trust shall give written notice of such request to all other Certificateholders, and subject to the provisions of Section 4(c) hereof, include in such Underwritten Offering all such Registrable Certificates held by Certificateholders holding at least 0.5% of the outstanding Registrable Certificates with respect to which the Trust has received written requests for inclusion therein within five (5) days after the giving of such notice; *provided, however*, that such Registrable Certificates are covered by an existing and effective Shelf Registration Statement that may be utilized for the offering and sale of the Registrable Certificates requested to be registered.

(e) The Trust will not be required to undertake an Underwritten Offering pursuant to Section 2(h):

(A) If the Trust has undertaken an Underwritten Offering within (i) the one hundred eighty (180) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of the first such request, (ii) the one hundred twenty (120) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of the second such request and (iii) the ninety (90) days preceding the date of the request to the Trust for such Underwritten Offering, in the case of any subsequent such request; and

(B) if the number of Underwritten Offerings previously made pursuant to Section 2(h) in the immediately preceding 12-month period shall exceed three (3); *provided* that an Underwritten Offering shall not be considered made for purposes of this clause (B) unless the offering has resulted in the disposition by the Certificateholders of at least 75% of the amount of Registrable Certificates requested to be included.

(f) at any time prior to the execution of an underwriting agreement in connection with an Underwritten Offering, the Majority Participating Eligible Certificateholders can terminate any Underwritten Offering with written notice to the lead Underwriter provided however that any termination shall not remove any obligation of such revoking Certificateholders to reimburse the Trust, the Manager and Underwriters for all reasonable and documented out-of-pocket expenses incurred by each of the Trust, the Manager and the Underwriters in the preparation, filing and processing of the Registration Statement and incurred in connection with the underwritten offering.

5. Grace Periods - Registration.

(a) Notwithstanding anything to the contrary herein—

(A) the Trust shall be entitled to postpone the filing or effectiveness of, or, at any time after a Registration Statement has been declared effective by the Commission, suspend the use of, a Registration Statement (including the Prospectus included therein) if in the good faith judgment of the Trustee, such registration, offering or use would reasonably be expected to materially affect in an adverse manner or materially interfere with any material transaction under consideration by the Trust or would require the disclosure of information that has not been, and is not otherwise required to be, disclosed to the public and the premature disclosure of which would materially affect the Trust in an adverse manner, in the reasonable judgment of the Trustee; *provided however*, that in the event such Registration Statement relates to a Demand Registration Request or an Underwritten Offering pursuant to Section 2(h), then the Certificateholders initiating such Demand Registration Request or such Underwritten Offering shall be entitled to withdraw the Demand Registration Request or request for the Underwritten Offering and, if such request is withdrawn, it shall not count against the limits imposed pursuant to Section 2(a)(D) and the Trust shall pay all registration expenses in connection with such registration; and

(B) at any time after a Registration Statement has been declared effective by the Commission and there is no duty to disclose under applicable law, the Trust may delay the disclosure of material non-public information concerning the Trust if the disclosure of such information at the time would, in the good faith judgment of the Trustee, adversely affect the Trust (the period of a postponement or suspension as described in clause (A) and/or a delay described in this clause (B), a “**Registration Grace Period**”).

(b) The Trust shall promptly (i) notify the Certificateholders of Registrable Certificates proposed to be included in any Underwritten Offering in writing of the existence of the event or material non-public information giving rise to a Registration Grace Period *provided* that the Trust shall not, and shall direct the Manager to not, disclose the content of such material non-public information to any Certificateholder, without the express consent of such Certificateholder or the need to file a post-effective amendment, as applicable, and the date on which such Registration Grace Period will begin, (ii) use reasonable best efforts to terminate a Registration Grace Period as promptly as practicable and (iii) notify the Certificateholders in writing of the date on which the Registration Grace Period ends.

(c) The duration of any one Registration Grace Period shall not exceed thirty (30) days, and the aggregate of all Registration Grace Periods in total during any 365-day period shall not exceed forty-five (45) days. For purposes of determining the length of a Registration Grace Period, the Registration Grace Period shall be deemed to begin on and include the date the Certificateholders receive the notice referred to in clause (i) of Section 5(b) and shall end on and include the later of the date the Certificateholders receive the notice referred to in clause (iii) of Section 5(b) and the date referred to in such notice. In the event the Trust declares a Registration Grace Period, the period during which the Trust is required to maintain the effectiveness of an Initial Shelf Registration Statement or a Registration Statement filed pursuant to a Demand Registration Request shall be extended by the number of days during which such Registration Grace Period is in effect.

6. Registration Procedures. If and when the Trust is required to effect any registration under the Securities Act as provided in Sections 2(a), 4(a), or 5 of this Agreement, the Trust shall, with the cooperation of the Manager:

(a) prepare and file with the Commission the requisite Registration Statement to effect such registration and thereafter use its reasonable best efforts to cause such Registration Statement to become and remain effective, subject to the limitations contained herein;

(b) prepare and file with the Commission such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and to comply with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Certificates covered by such Registration Statement until such time as all of such Registrable Certificates have been disposed of in accordance with the method of disposition set forth in such Registration Statement, subject to the limitations contained herein;

(c) (i) before filing a Registration Statement or Prospectus or any amendments or supplements thereto, at the Trust's expense, furnish to the Certificateholders whose securities are covered by the Registration Statement copies of all such documents, other than documents that are incorporated by reference into such Registration Statement or Prospectus, proposed to be filed and such other documents reasonably requested by such Certificateholders (which may be furnished by email), and afford legal counsel or any accountant or other agent retained by any such Certificateholders a reasonable opportunity to review and comment on such documents; and (ii) in connection with the preparation and filing of each such Registration Statement pursuant to this Agreement, (A) upon reasonable advance notice to the Trust, give each of the foregoing such reasonable access to all financial and other records, corporate documents and properties of the Trust as shall be necessary, in the reasonable opinion of Counsel to the Majority Participating Certificateholders and such Underwriters, to verify the accuracy of the information in the Registration Statement and to conduct a reasonable due diligence investigation for purposes of the Securities Act and Exchange Act, and (B) upon reasonable advance notice to the Trust and during normal business hours, provide such reasonable opportunities to discuss the business of the Trust with its officers and employees, representatives of the Manager and the independent public accountants who have certified its financial statements as shall be necessary, in the reasonable opinion of Counsel to the Majority Participating Certificateholders and such Underwriters, to conduct a reasonable due diligence investigation for purposes of the Securities Act and the Exchange Act;

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(d) (i) notify each selling Certificateholder of Registrable Certificates, promptly after the Trust receives notice thereof, of the time when such Registration Statement has been declared effective or a supplement to any Prospectus forming a part of such Registration Statement has been filed and (ii) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus;

(e) with respect to any offering of Registrable Certificates, furnish to each selling Certificateholder of Registrable Certificates, and the managing Underwriters for such Underwritten Offering, if any, without charge, such number of copies of the applicable Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus, final Prospectus, and any other Prospectus (including any Prospectus filed under Rule 424, Rule 430A or Rule 430B promulgated under the Securities Act and any "issuer free writing prospectus" as such term is defined under Rule 433 promulgated under the Securities Act)), all exhibits and other documents filed therewith and such other documents as such seller or such managing Underwriters may reasonably request including in order to facilitate the disposition of the Registrable Certificates owned by such seller, and upon request, a copy of any and all transmittal letters or other correspondence to or received from, the Commission or any other governmental authority relating to such offer;

(f) cause all Registrable Certificates included in such Registration Statement to be registered with or approved by such other federal or state governmental agencies or authorities as necessary upon the opinion of legal counsel to the Trust or Counsel to the Majority Participating Certificateholders of Registrable Certificates included in such Registration Statement to enable such Certificateholder or Certificateholders thereof to consummate the disposition of such Registrable Certificates in accordance with their intended method of distribution thereof;

(g) with respect to any Underwritten Offering, obtain and, if obtained, furnish to each Certificateholder that is named as an Underwriter in such Underwritten Offering and each other Underwriter thereof, a signed

(A) opinion of outside legal counsel for the Trust (including a customary 10b-5 statement), dated the date of the closing under the underwriting agreement and addressed to the Underwriters, reasonably satisfactory (based on the customary form and substance of opinions of issuers' counsel customarily given in such an offering) in form and substance to such Underwriters, if any, and

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(B) “comfort” letter, dated the date of the underwriting agreement and another dated the date of the closing under the underwriting agreement and addressed to the Underwriters and signed by the independent public accountants who have certified the Trust’s financial statements included or incorporated by reference in such registration statement, reasonably satisfactory (based on the customary form and substance of “cold comfort” letters of issuers’ independent public accountant customarily given in such an offering) in form and substance to such Certificateholder and such Underwriters, if any,

in each case, covering substantially the same matters with respect to such Registration Statement (and the Prospectus included therein) and, in the case of the accountants’ comfort letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer’s counsel and in accountants’ comfort letters delivered to Underwriters in such types of offerings of securities;

(h) notify each Certificateholder of Registrable Certificates included in such Registration Statement at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the Prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and for which the Trust chooses to suspend the use of the Registration Statement and Prospectus in accordance with the terms of this Agreement, and, at the written request of any such Certificateholder, promptly prepare and furnish to it a reasonable number of copies of a supplement to or an amendment of such Prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such Prospectus, as supplemented or amended, shall not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) notify the Certificateholders of Registrable Certificates included in such Registration Statement promptly of any request by the Commission for the amending or supplementing of such Registration Statement or Prospectus or for additional information;

(j) advise the Certificateholders of Registrable Certificates included in such Registration Statement promptly after the Trust receives notice or obtains knowledge of any order suspending the effectiveness of a registration statement relating to the Registrable Certificates at the earliest practicable moment and promptly use its reasonable best efforts to obtain the withdrawal;

(k) otherwise comply with all applicable rules and regulations of the Commission and any other governmental agency or authority having jurisdiction over the offering of Registrable Certificates, and make available to its Certificateholders (as defined in the Trust Agreement), as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first (1st) full calendar month after the Effective Date of such Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 and which requirement will be deemed satisfied if the Trust timely files complete and accurate information on Quarterly Report on Form 10-Q and Annual Report on Form 10-K and Current Reports on Form 8-K under the Exchange Act and otherwise complies with Rule 158;

(l) provide and cause to be maintained a transfer agent and registrar for the Registrable Certificates included in a Registration Statement pursuant to this Agreement and provide a CUSIP number for all such Registrable Certificates no later than the Effective Date thereof;

(m) enter into such agreements (including an underwriting agreement in customary form) and take such other actions as the Certificateholders beneficially owning a majority of the Registrable Certificates included in a Registration Statement or the Underwriters, if any, shall reasonably request in order to expedite or facilitate the disposition of such Registrable Certificates, including customary indemnification; and provide reasonable cooperation, including causing (x) representatives of the Manager and (y) at least one (1) executive officer and a senior financial officer of the Trust to attend and participate in "road shows", investor presentations and other informational meetings organized by the Underwriters, if any, as reasonably requested and necessary to expedite or facilitate the sale of the Registrable Certificates, subject to availability and at the Trust's expense. Notwithstanding the foregoing, the Trust shall have no obligation to participate in more than three (3) "road shows" in any twelve (12)-month period and such participation shall not unreasonably interfere with the business operations of the Trust;

(n) if requested by the managing Underwriter(s) or the Majority Participating Eligible Certificateholders being sold in connection with an Underwritten Offering, promptly incorporate in a prospectus supplement or post-effective amendment such information relating to the plan of distribution for such Registrable Certificates provided to the Trust in writing by the managing Underwriters and Eligible Certificateholders representing a majority of the Registrable Certificates being sold and that is required to be included therein relating to the plan of distribution with respect to such Registrable Certificates, including without limitation, information with respect to the number of Registrable Certificates being sold to such Underwriters, the purchase price being paid therefor by such Underwriters and with respect to any other terms of the Underwritten Offering of the Registrable Certificates to be sold in such offering, and make any required filings with respect to such information relating to the plan of distribution as soon as practicable after notified of the information;

(o) cooperate with the Certificateholders of Registrable Certificates included in a Registration Statement and the managing Underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Registrable Certificates to be sold, and enable such Registrable Certificates to be in such share amounts and registered in such names as the managing Underwriters, or, if none, the Majority Participating Eligible Certificateholders, may reasonably request at least three (3) Business Days prior to any sale of Registrable Certificates to the Underwriters;

(p) cause all Registrable Certificates included in a Registration Statement to be listed on a national securities exchange on which similar securities issued by the Trust are then listed, if at all;

(q) in connection with any sale or transfer of Registrable Certificates (whether or not pursuant to a Registration Statement) that will result in the securities being delivered no longer constituting Registrable Certificates, cooperate with the Certificateholders to enable such Registrable Certificates to be in such denominations and registered in such names as the Certificateholders may request at least five (5) Business Days prior to any sale of the Registrable Certificates; and

(r) otherwise use its reasonable best efforts to take all other steps necessary to effect the registration of such Registrable Certificates contemplated hereby.

In addition, at least fifteen (15) Trading Days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Trust will notify each Certificateholder of the information the Trust requires from that Certificateholder, including any update to or confirmation of the information contained in the Selling Certificateholder Questionnaire, if any, which shall be completed and delivered to the Trust promptly upon request and, in any event, within five (5) Trading Days prior to the applicable anticipated filing date. Each Certificateholder further agrees that it shall not be entitled to be named as a selling security-Certificateholder in the Registration Statement or use the Prospectus for offers and resales of Registrable Certificates at any time, unless such Certificateholder has returned to the Trust a completed and signed Selling Certificateholder Questionnaire and a response to any requests for further information as described in the previous sentence and, if an Underwritten Offering, entered into an underwriting agreement with the Underwriters in accordance with Section 4(a). If a Certificateholder of Registrable Certificates returns a Selling Certificateholder Questionnaire or a request for further information, in either case, after its respective deadline, the Trust shall be permitted to exclude such Certificateholder from being a selling security Certificateholder in the Registration Statement or any pre-effective or post-effective amendment thereto. Each Certificateholder acknowledges and agrees that the information in the Selling Certificateholder Questionnaire or request for further information as described in this Section 6 will be used by the Trust in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement.

7. Registration and Cooperation Expenses. All fees and expenses incident to the Trust's performance of or compliance with its obligations under this Agreement (excluding any underwriting discounts, fees or selling commissions or broker or similar commissions or fees (which shall be borne by participating Certificateholders on a pro rata basis), or transfer taxes of any Certificateholder but including, for avoidance of doubt, any fees or expenses in connection with the preparation of a customary offering document or definitive documents in connection with the Trust's cooperation in third party sales pursuant to Section 13 hereof) shall be borne by the Trust whether or not any Registrable Certificates are sold pursuant to a Registration Statement or in connection with a proposed sale pursuant to Section 13. The fees and expenses



referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees and expenses (including, without limitation, fees and expenses with respect to (A) filings required to be made with any Trading Market on which the Trust Certificates are then listed for trading, if any, (B) compliance with applicable state securities or Blue Sky laws (including, without limitation, fees and disbursements of counsel for the Trust, any Underwriters or Certificateholders in connection with Blue Sky qualifications or exemptions of the Registrable Certificates and determination of the eligibility of the Registrable Certificates for investment under the laws of such jurisdictions as requested by the Certificateholders) and (C) if not previously paid by the Trust in connection with an issuer filing, any filing that may be required to be made by any broker through which a Certificateholder intends to make sales of Registrable Certificates with the Financial Industry Regulatory Authority (“*FINRA*”) pursuant to FINRA Rule 5110, so long as the broker is receiving no more than a customary brokerage commission in connection with such sale), (ii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing and distributing any Registration Statement, any Prospectus, any free writing prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement (including, without limitation, expenses of printing certificates for Registrable Certificates and of printing prospectuses if the printing of prospectuses is reasonably requested by the Eligible Certificateholders representing a majority of the Registrable Certificates included in the Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) reasonable fees and disbursements of counsel for the Trust, (v) the reasonable fees and expenses incurred in connection with any road show for Underwritten Offerings, (vi) Securities Act liability insurance, if the Trust so desires such insurance, (vii) all rating agency fees, if any, and any fees associated with making the Registrable Certificates eligible for trading through The Depository Trust Company, and (viii) fees and expenses of all other Persons retained by the Trust, including the Manager (and including reasonable fees and disbursements of legal counsel to the Manager), in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Trust will pay the reasonable fees and disbursements of the Counsel to the Majority Participating Eligible Certificateholders, in connection with the filing or amendment of any Registration Statement, Prospectus or free writing prospectus hereunder or any Underwritten Offering.

#### 8. Indemnification.

(a) Indemnification by the Trust. The Trust shall, notwithstanding any termination of this Agreement, indemnify, defend and hold harmless each Certificateholder, the officers, directors, agents, partners, members, investment manager, managers, Certificateholders, Affiliates and employees of each of them, each Person who controls any such Certificateholder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, partners, members, investment manager, managers, Certificateholders, agents and employees of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and investigation and reasonable attorneys’ fees) and expenses (collectively, “*Losses*”), to which any of them may become subject, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus or (ii) any omission or alleged omission to

state a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that (A) such untrue statements, alleged untrue statements, omissions or alleged omissions are based upon information regarding such Certificateholder furnished in writing to the Trust by such Certificateholder expressly for use therein, or to the extent that such information relates to such Certificateholder or such Certificateholder's proposed method of distribution of Registrable Certificates and was provided by such Certificateholder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto, or (B) in the case of an occurrence of an event of the type specified in [Section 6\(h\)](#), related to the use by a Certificateholder of an outdated or defective Prospectus after the Trust has notified such Certificateholder in writing that the Prospectus is outdated or defective and prior to the receipt by such Certificateholder of the Advice contemplated and defined in [Section 17\(c\)](#) below, but only if and to the extent that following the receipt of the Advice, the misstatement or omission giving rise to such Loss would have been corrected. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in [Section 8\(c\)](#)), shall survive the transfer of the Registrable Certificates by the Certificateholders, and shall be in addition to any liability which the Trust may otherwise have.

(b) **Indemnification by Certificateholders.** Each Certificateholder shall, severally and not jointly, indemnify and hold harmless the Trust, its respective directors, officers, agents and employees, each Person who controls the Trust (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, or any form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statements or omissions are based upon information regarding such Certificateholder furnished in writing to the Trust by such Certificateholder expressly for use therein or (ii) to the extent, but only to the extent, that such information relates to such Certificateholder or such Certificateholder's proposed method of distribution of Registrable Certificates and was provided by such Certificateholder expressly for use in a Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in [Section 6\(h\)](#), to the extent, but only to the extent, related to the use by such Certificateholder of an outdated or defective Prospectus after the Trust has notified such Certificateholder in writing that the Prospectus is outdated or defective and prior to the receipt by such Certificateholder of the Advice contemplated in [Section 17\(c\)](#), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Certificateholder hereunder be greater in amount than the dollar amount of the net proceeds received by such Certificateholder upon the sale of the Registrable Certificates giving rise to such indemnification obligation. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Indemnified Party (as defined in [Section 8\(c\)](#)), shall survive the transfer of the Registrable Certificates by the Certificateholders, and shall be in addition to any liability which the Certificateholder may otherwise have.

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(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an “*Indemnified Party*”), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the “*Indemnifying Party*”) in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of legal counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with the defense thereof; *provided*, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate legal counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such legal counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ legal counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by legal counsel that in the reasonable judgment of such legal counsel a conflict of interest exists if the same legal counsel were to represent such Indemnified Party and the Indemnifying Party; *provided*, that the Indemnifying Party shall not be liable for the reasonable and documented fees and expenses of more than one separate firm of attorneys at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable and documented fees and expenses of the Indemnified Party (including reasonable and documented fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section 8(c)) shall be paid to the Indemnified Party, as incurred, with reasonable promptness after receipt of written notice thereof to the Indemnifying Party; *provided*, that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally judicially determined to not be entitled to indemnification hereunder. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action shall not relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 10, except to the extent that the Indemnifying Party is materially and adversely prejudiced in its ability to defend such action.

(d) Contribution. If a claim for indemnification under Section 8(a) or (b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault, if any, of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the relative fault considerations referred to in the immediately preceding paragraph (it being understood that, as between Certificateholder Indemnifying Parties with no or the same level of relative fault, contribution pro rata based on holdings of Registrable Certificates will be presumed to be just and equitable). Notwithstanding the provisions of this Section 8(d), no Certificateholder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Certificateholder from the sale of the Registrable Certificates subject to the Proceeding exceeds the amount of any Losses that such Certificateholder has otherwise been required to pay under this Section 8 or otherwise by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

9. Section 4(a)(7), Rule 144 and Rule 144A: Other Exemptions. With a view to making available to the Certificateholders of Registrable Certificates the benefits of Rule 144 and Rule 144A and other rules and regulations of the Commission that may at any time permit a Certificateholder of Registrable Certificates to sell Registrable Certificates without registration, until such time as when no Registrable Certificates remain outstanding, the Trust covenants that it will (i) if it is subject to the reporting requirement of Section 13 or 15(d) of the Exchange Act, file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted thereunder, or (ii) if it is not subject to the reporting requirement of Section 13 or 15(d) of the Exchange Act, make available information necessary to comply with Section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A, if available with respect to resales of the Registrable Certificates under the Securities Act, at all times, all to the extent required, and to take such further action as any Certificateholder may reasonably request, from time to time to enable such Certificateholder to sell Registrable Certificates without registration under the Securities Act within the limitation of the exemptions provided by (x) Section 4(a)(7) of the Securities Act and Rule 144 and Rule 144A (if available with respect to resales of the Registrable Certificates), as such rules may be amended from time to time, or (y) any other rules or regulations now existing or hereafter adopted by the Commission. Upon the reasonable request of any Certificateholder of Registrable Certificates, the Trust will deliver to such Certificateholder a written statement as to whether it has complied with such information requirements, and, if not, the specific reasons for non-compliance.

10. Transfer of Registration Rights. Any Certificateholder may freely assign its rights hereunder on a pro rata basis in connection with any sale, transfer, assignment, or other conveyance (any of the foregoing, a “**Transfer**”) of Registrable Certificates to any transferee or assignee; *provided*, that all of the following additional conditions are satisfied: (a) such Transfer is effected in accordance with applicable securities laws; (b) such transferee or assignee agrees in writing to become subject to the terms of this Agreement; (c) the Trust is given written notice by such Certificateholder of such Transfer, stating the name and address of the transferee or assignee and identifying the Registrable Certificates with respect to which such rights are being transferred or assigned and provide the amount of any other Trust Certificates of the Trust beneficially owned by such transferee or assignee; and (d) such transferee or assignee shall have previously submitted the certification required pursuant to Section 4.05(a) of the Trust Agreement and in connection therewith the Trust shall have determined in good faith that such transferee is not a Disallowed Transferee; *provided further*, that (i) any rights assigned hereunder shall apply only in respect of the Registrable Certificates that are transferred and not in respect of any other securities that the transferee or assignee may hold and (ii) any Registrable Certificates that are transferred may cease to constitute Registrable Certificates following such Transfer in accordance with Section 2(e)(B).

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

12. Cooperation in OTC Quotation. Until and unless the Trust Certificates are listed on a national securities exchange, the Trust shall use its reasonable best efforts to cause the Trust Certificates to be quoted on the OTCQB market as promptly as practicable and shall thereafter use its reasonable best efforts to maintain such quotation. Upon the written request of one or more Eligible Certificateholders, the Trust shall use commercially reasonable best efforts to cause the Trust Certificates to be quoted on the OTCQX market and shall thereafter use commercially reasonable best efforts to maintain such quotation.

13. Cooperation in Third Party Sales

(a) At any time and from time to time on or following the date that is thirty (30) days following the date hereof, each Eligible Certificateholder may, by a notice sent to the Trust pursuant to Section 16(g) (a “**Cooperation Request Notice**”), inform the Trust regarding a proposed Transfer by such Eligible Certificateholder and requesting the assistance described in this Section 13. Each Cooperation Request Notice shall specify the amount of Certificates proposed to be transferred; *provided, however*, that the Trust will not be required to provide the

assistance described in this Section 13 unless (i) the number of Trust Certificates requested to be transferred equals at least (x) 9% of all Trust Certificates at such time and (ii) the Trust Certificates requested to be transferred have an anticipated aggregate gross offering price (before deducting underwriting discounts and commission) of at least \$50 million. The Trust agrees, following receipt of a Cooperation Request Notice, subject to applicable law, and further subject to the demonstration to the Trust's reasonable satisfaction that such Eligible Certificateholder seeks to Transfer Certificates evidencing Fractional Undivided Interests aggregating not less than 9% in interest in the Trust, to provide such Eligible Certificateholder, the potential transferee and their respective legal counsel, financial advisors, auditors, brokers and other authorized representatives (i) reasonable access upon reasonable notice and request and during normal business hours to (A) the books and records, financial and operating data and such other information of the Trust as may reasonably be requested in connection with such Transfer in order to allow the Eligible Certificateholder, the potential transferee and their respective representatives (each as engaged for the purposes of the relevant transaction) to conduct a reasonable and customary due diligence review; and (B) appropriate representatives of the Trust, including the executive officer and a senior financial officer and the Manager for the purpose of such potential transferee participating in due diligence sessions, business update presentations and other similar undertakings with such third party potential transferee, including participating in any roadshow or other investor presentation sales force presentation or other customary marketing effort, necessary to expedite or facilitate the sale of such Trust Certificates, so long as such access does not interfere unreasonably with the business or operations of the Trust, the Manager or their subsidiaries, and (ii) such other cooperation as is reasonably necessary or advisable to such Eligible Certificateholder in either (A) the preparation of a customary offering document with respect to the Trust and (B) the preparation of any definitive documents including, if proposed in good faith by any underwriter assisting such Eligible Certificateholder in connection with a proposed Transfer, a lockup agreement for each participating Eligible Certificate for a customary period not to exceed one hundred eighty (180) days in the case of the initial Transfer (so long as there has not been an Underwritten Offering pursuant to Section 4(b), in which case the lock up period shall be ninety (90) days) or ninety (90) days in the case of any other Transfer pursuant to this Section 13, *provided* that such definitive documents are in customary form and reasonably acceptable to the Majority Participating Eligible Certificateholders (if any) and, in the case of each lockup agreement, substantially identical for all of the Certificateholders participating in such Transfer pursuant to Section 13(f), in each case to facilitate the proposed Transfer and *provided further*, that any indemnity obligation shall be several and not joint for each Eligible Certificateholder. As a condition to receiving any information pursuant to this Section 13, any such potential Transferee shall execute an appropriate confidentiality agreement on terms satisfactory to the Trust, which terms shall include an obligation for the Trust to cleanse any material non-public information that may be provided to such potential Transferee. For the avoidance of doubt, such material non-public information shall consist solely of the information to which existing Certificateholders are otherwise entitled under the Trust Agreement. For the further avoidance of doubt, the rights of the Eligible Certificateholders set forth in this Section 13 are personal to them. Notwithstanding anything to the contrary contained herein, this Agreement shall not require the Trust (i) to take any action which would unreasonably disrupt the conduct of its business in the ordinary course or (ii) to extend any such cooperation or any confidential information to any potential transferee that is a Disallowed Transferee.

(b) A Cooperation Request Notice shall specify (i) the then-current name and address of such Eligible Certificateholder or Eligible Certificateholders, (ii) the aggregate number of Registrable Certificates requested to be included in a proposed Transfer, (iii) the total number of Registrable Certificates then beneficially owned by such Eligible Certificateholder or Eligible Certificateholders, and (iv) the intended means of Transfer.

(c) Notwithstanding the receipt of a Cooperation Request Notice, the Trust shall have no obligation to provide the cooperation with third party sales described in the foregoing Section 13(a) if the Trust shall have provided such cooperation to one or more Eligible Certificateholders on two (2) occasions in the ninety (90) day period or six (6) occasions in the three hundred sixty (360) day period preceding the receipt of such Cooperation Request Notice.

(d) The Eligible Certificateholder delivering the Cooperating Request Notice, or the Majority Participating Eligible Certificateholders if additional Eligible Certificateholders request the Trust's cooperation pursuant to Section 13(e) below, shall select, engage and negotiate the terms of engagement (including any underwriting discounts and similar commissions or fees) of one or more Underwriters, if any, that may be engaged to assist the Trust in complying with its obligations under this Section 13 with the consent of the Trust, which consent shall not be unreasonably withheld, conditioned or delayed.

(e) Except as otherwise provided in Section 7 hereof, each Eligible Certificateholder shall pay any material expenses incurred by the Trust in connection with its cooperation pursuant to the foregoing Section 13(a).

(f) Within seven (7) days after receiving a Cooperation Request Notice, unless otherwise directed by the Eligible Certificateholder or Eligible Certificateholders who delivered the Cooperation Request Notice to utilize a longer period, the Trust shall give written notice of such request to all other Certificateholders of Registrable Certificates holding at least 0.5% of the outstanding Registrable Certificates and shall include in such cooperation assistance all such Registrable Certificates held by such holders with respect to which the Trust has received written requests for inclusion therein within fifteen (15) days after the giving of such notice.

(g) If the investment bank, if any, facilitating the Transfer contemplated by the Cooperation Request Notice provided pursuant to Section 13(a) advises the Certificateholders that the total amount of Registrable Certificates permitted to be included in such cooperation assistance is such as to materially adversely affect the success of the proposed Transfer, the number of Registrable Certificates to be included in the transaction effectuating such Transfer will be reduced as follows: *first*, the Trust shall reduce or eliminate the securities of the Trust to be included by any Person other than the Eligible Certificateholder or Eligible Certificateholders that delivered the initial Cooperation Request Notice; *second*, the Trust shall reduce the number of Registrable Certificates to be included by Eligible Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Eligible Certificateholders to be included in the transaction effectuating such Transfer; and *third*, the Trust shall reduce the number of Registrable Certificates to be included by all other Certificateholders on a pro rata basis based on the total number of Registrable Certificates requested by such Certificateholders to be included in the transaction effectuating such Transfer.

(h) The Eligible Certificateholder or Eligible Certificateholders delivering a Cooperation Request Notice may, at any time prior to the settlement of the bona fide sale transaction contemplated in such notice, revoke their request for the Trust's cooperation. If, pursuant to the preceding sentence, either (i) the Cooperation Request Notice in respect of the entire number of Certificates requested to be transferred is revoked or (ii) all Eligible Certificateholders have revoked their Cooperation Request Notice, then the Eligible Certificateholder or Eligible Certificateholders who revoke such request shall reimburse the Trust for all reasonable and documented out-of-pocket expenses incurred by each of the Trust and the Manager in providing the cooperation described in Sections 13(a)(i) and (ii).

(i) Trust will pay the reasonable fees and disbursements of Counsel to the Majority Participating Eligible Certificateholders in connection with the preparation, filing or amendment of a customary offering document or definitive documents in connection with any third-party sale pursuant to this Section 13.

14. Grace Periods—Cooperation.

(a) Notwithstanding anything to the contrary herein—

(A) the Trust shall be entitled to refrain from providing the cooperation assistance requested by an Eligible Certificateholder or Eligible Certificateholders pursuant to Section 13 if in the good faith judgment of the Trustee, such cooperation would reasonably be expected to materially affect in an adverse manner or materially interfere with any material transaction under consideration by the Trust or would require the disclosure of information that has not been, and is not otherwise required to be, disclosed to the public and the premature disclosure of which would materially affect the Trust in an adverse manner, in the reasonable judgment of the Trustee; and

(B) so long as there is no duty to disclose under applicable law, the Trust may delay the disclosure of material non-public information concerning the Trust if the disclosure of such information at the time would, in the good faith judgment of the Trustee, adversely affect the Trust (the period of a postponement or suspension as described in clause (A) and/or a delay described in this clause (B), a "**Cooperation Grace Period**").

(b) The Trust shall promptly (i) notify the Eligible Certificateholder or Eligible Certificateholder proposing to transfer Registrable Certificates in writing of the existence of the event or material non-public information giving rise to a Cooperation Grace Period *provided* that the Trust shall not, and shall direct the Manager to not, disclose the content of such material non-public information to any Certificateholder, without the express consent of such Certificateholder), and the date on which such Cooperation Grace Period will begin, (ii) use reasonable best efforts to terminate a Cooperation Grace Period as promptly as practicable and (iii) notify the Eligible Certificateholder in writing of the date on which the Cooperation Grace Period ends.



(c) The duration of any one Cooperation Grace Period shall not exceed thirty (30) days, and the aggregate of all Cooperation Grace Periods in total during any 365-day period shall not exceed forty-five (45) days. For purposes of determining the length of a Cooperation Grace Period, the Cooperation Grace Period shall be deemed to begin on and include the date the Certificateholders receive the notice referred to in clause (i) of Section 14(b) and shall end on and include the later of the date the Certificateholders receive the notice referred to in clause (iii) of Section 14(b) and the date referred to in such notice.

15. Cooperation in Blue Sky Registration. Trust shall, with the cooperation of the Manager, (i) register or qualify all Trust Certificates under such other securities or Blue Sky laws of such states or other jurisdictions of the United States of America as any Eligible Certificateholder (where an exemption is not available) covered by such offering document shall reasonably request in writing, (ii) keep such registration or qualification in effect for so long as such Trust Certificates remain outstanding and (iii) take any other action that may be necessary or reasonably advisable to enable such Eligible Certificateholder to consummate the disposition in such jurisdictions of the securities to be sold by such Eligible Certificateholder, except that the Trust shall not for any such purpose be required to qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this Section 14 be obligated to be so qualified, to subject itself to taxation in such jurisdiction where it would not otherwise be subject to taxation or to consent to general service of process in any such jurisdiction where it is not then so subject

16. Further Assurances. The Trust shall execute all such further instruments and documents and take all such further action as any other party hereto may reasonably require in order to effectuate the terms and purposes of this Agreement.

17. Miscellaneous.

(a) Remedies. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(b) Compliance. Each Certificateholder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Certificates pursuant to any Registration Statement and shall sell the Registrable Certificates only in accordance with a method of distribution described in each Registration Statement.

(c) Discontinued Disposition. By its acquisition of Registrable Certificates, each Certificateholder agrees that, upon receipt of a notice from the Trust of the occurrence of a Grace Period or any event of the kind described in Section 6(h), such Certificateholder will forthwith discontinue disposition of such Registrable Certificates under a Registration Statement until it is advised in writing (the "*Advice*") by the Trust that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Trust may provide appropriate stop orders to enforce the provisions of this paragraph.

(d) Preservation of Rights. The Trust shall not grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder unless any such more favorable rights are concurrently added to the rights granted hereunder.

(e) No Inconsistent Agreements. The Trust shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Certificateholders in this Agreement.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, or waived unless the same shall be in writing and signed by the Trust and Certificateholders holding at least a majority of the then outstanding Registrable Certificates; *provided, however*, that any party may give a waiver as to itself; *provided further, however*, that no amendment, modification, supplement, or waiver that (i) disproportionately and adversely affects, alters, or changes the interests of any Certificateholder or its Affiliates under this Agreement shall be effective against such Certificateholder without the prior written consent of such Certificateholder and (ii) alters or changes the definition of "Eligible Certificateholder", the definition of "Majority Participating Eligible Certificateholders", or the threshold number of Certificateholders required to participate in any action or provide any direction pursuant to Sections 4(a), 4(b), 4(f), 6(n), 6(g), 13(a) or 13(d) of this Agreement may be effected without the prior written consent of any Certificateholder adversely affected by such change; *provided further, however*, that the definition of "Certificateholders" in Section 1 may not be amended, modified or supplemented, or waived unless in writing and signed by all the signatories to this Agreement; and *provided further*, that the waiver of any provision with respect to any Registration Statement or offering may be given by Certificateholders holding at least a majority of the then outstanding Registrable Certificates entitled to participate in such offering or, if such offering shall have been commenced, having elected to participate in such offering. No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

(g) Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be sent by certified or regular mail, by private national courier service (return receipt requested, postage prepaid), by personal delivery, by electronic mail or by facsimile transmission. Such notice or communication shall be deemed given (i) if mailed, two (2) days after the date of mailing, (ii) if sent by national courier service, one

Business Day after being sent, (iii) if delivered personally, when so delivered, (iv) if sent by electronic mail, on the Business Day such electronic mail is transmitted, or (v) if sent by facsimile transmission, on the Business Day such facsimile is transmitted, in each case as follows:

(A) If to the Trust:

GLAS Trust Company LLC, as trustee  
3 Second Street, Suite 206  
Jersey City, NJ 07311  
Fax: 212-202-6246  
Email: [ClientServices.Americas@glas.agency](mailto:ClientServices.Americas@glas.agency)

with a copy (which shall not constitute notice) to:

Milbank LLP  
2029 Century Park East, 33<sup>rd</sup> Floor  
Los Angeles, CA 90067-3019  
Attn: Casey Fleck  
Jonathon Jackson  
E-mail: [cfleck@milbank.com](mailto:cfleck@milbank.com)  
[jjackson@milbank.com](mailto:jjackson@milbank.com)

(B) If to the Manager:

Hilco JCP LLC  
5 Revere Drive, Suite 410  
Northbrook, Illinois 60062  
Attn: Neil Aaronson  
Larry Finger  
E-mail: [naaronson@hilcoglobal.com](mailto:naaronson@hilcoglobal.com)  
[lfinger@hilcoglobal.com](mailto:lfinger@hilcoglobal.com)

(C) If to the Certificateholders (or to any of them), at their addresses as they appear in the records of the Trust or the records of the transfer agent or registrar, if any, for the Trust Certificates.

If any time period for giving notice or taking action hereunder expires on a day which is a Saturday, Sunday or legal holiday in the State of New York or the jurisdiction in which the Trust's principal office is located, the time period shall automatically be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any trustee in bankruptcy). In addition, and whether or not any express assignment shall have been made, the provisions of this Agreement which are for the benefit of the

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Certificateholders of Registrable Certificates (or any portion thereof) as such shall be for the benefit of and enforceable by any subsequent Certificateholder of any Registrable Certificates (or of such portion thereof); *provided*, that such subsequent Certificateholder of Registrable Certificates shall be required to execute a joinder to this Agreement in form and substance reasonably satisfactory to the Trust attached as Exhibit A hereto, agreeing to be bound by its terms. No assignment or delegation of this Agreement by the Trust, or any of the Trust's rights, interests or obligations hereunder, shall be effective against any Certificateholder without the prior written consent of such Certificateholder.

(i) Execution and Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

(j) Delivery by Facsimile. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(k) Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of New York. Each of the parties to this Agreement consents and agrees that any action to enforce this Agreement or any dispute, whether such dispute arises in law or equity, arising out of or relating to this Agreement, shall be brought exclusively in the United States District Court for the Southern District of New York or any New York State Court sitting in New York City. The parties hereto consent and agree to submit to the exclusive jurisdiction of such courts. Each of the parties to this Agreement waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party and such party's property is immune from any legal process issued by such courts or (ii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereby agree that mailing of process or other papers in connection with any such action or proceeding to an address provided in writing by the recipient of such mailing, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service in the manner herein provided.

(l) Waiver of Jury Trial. Each of the parties to this Agreement hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 17(l) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(m) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(n) Selling Certificateholders Become Party to this Agreement. By asserting or participating in the benefits of registration of Registrable Certificates pursuant to this Agreement, each Certificateholder agrees that it will be deemed a party to this Agreement and be bound by each of its terms.

(o) Descriptive Headings; Interpretation; No Strict Construction. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and, if applicable, hereof. The words “include”, “includes” or “including” in this Agreement shall be deemed to be followed by “without limitation”. The use of the words “or,” “either” or “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All references to laws, rules, regulations and forms in this Agreement shall be deemed to be references to such laws, rules, regulations and forms, as amended from time to time or, to the extent replaced, the comparable successor thereto in effect at the time. All references to agencies, self-regulatory organizations or governmental entities in this Agreement shall be deemed to be references to the comparable successors thereto from time to time.

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(p) Entire Agreement. This Agreement and any certificates, documents, instruments and writings that are delivered pursuant hereto, constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(q) Termination. The obligations of the Trust and of any Certificateholder, other than those obligations contained in Section 8 and this Section 17, shall terminate with respect to the Trust and such Certificateholder as soon as such Certificateholder no longer beneficially owns any Registrable Certificates.

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

**COPPER PROPERTY CTL PASS THROUGH TRUST**

by GLAS Trust Company LLC, solely in its capacity as trustee

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

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

**COPPER BIDCO LLC,**  
on behalf of the Certificateholders

By its sole member, GLAS AMERICAS LLC

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



FORM OF JOINDER AGREEMENT

[•], 202[•]

COPPER PROPERTY CTL PASS-THOUGH TRUST  
c/o GLAS Trust Company LLC, as trustee  
3 Second Street, Suite 206  
Jersey City, NJ 07311

Reference is hereby made to that certain registration rights and resale cooperation agreement (the "*Agreement*"), dated January 30, 2021, by and between Copper Property CTL Pass Through Trust, a New York common law trust (the "*Trust*") and Copper Bidco LLC, a Delaware limited liability company ("*Bidco*") on behalf of the Certificateholders from time to time. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Joinder. Each of the undersigned hereby acknowledges that it has received a copy of the Agreement and acknowledges and agrees with the Trust that by its execution and delivery hereof it shall (i) join and become a party to the Agreement; (ii) be bound by all covenants, agreements, representations, warranties and acknowledgements applicable to such party as set forth in and in accordance with the terms of the Agreement; and (iii) perform all obligations and duties as required of it in accordance with the Agreement.

2. Counterparts. This Agreement may be signed in one or more counterparts (which may be delivered in original form or facsimile or "pdf" file thereof), each of which shall constitute an original when so executed and all of which together shall constitute one and the same agreement. Delivery of an executed joinder agreement by one party to any other party may be made by facsimile, electronic mail (including any electronic signature complying with the New York Electronic Signatures and Records Act (N.Y. State Tech. §§ 301-309), as amended from time to time, or other applicable law) or other transmission method, and the parties hereto agree that any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

3. Amendments. No amendment or waiver of any provision of this Joinder Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties thereto.

4. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

5. APPLICABLE LAW. THIS JOINDER AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS JOINDER AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the undersigned has caused this joinder agreement to be duly executed and delivered as of the date set forth above.

**[JOINING PARTY]**

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

Acknowledged and accepted as of the date first above written:

**COPPER PROPERTY CTL PASS THROUGH TRUST**

by GLAS Trust Company LLC, solely in its capacity as trustee

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

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement"), dated this 30<sup>th</sup> day of January, 2021 (the "Effective Date"), is made and entered into by and between Copper Property CTL Pass Through Trust (the "Trust"), a New York common law trust, with offices at c/o GLAS Trust Company, LLC (the "Trustee"), 3 Second Street, Suite 206 Jersey City, NJ 07311, and Hilco JCP LLC (an affiliate of Hilco Real Estate LLC), a limited liability company ("Manager") with offices at 5 Revere Drive, Suite 206 Northbrook, Illinois, 60062. Each of the Trust and Manager may be referred to herein as a "Party" and collectively as the "Parties."

**Recitals**

WHEREAS, the Trust was established and exists solely for the purpose of, collecting, holding, administering, distributing, and liquidating the Trust Assets for the benefit of the Certificateholders in accordance with the terms of the Trust Agreement and is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to Section 671 of the Code, et seq.

WHEREAS, the Trust owns one hundred percent (100%) of the equity interests of (a) CTL Propco LLC, a Delaware limited liability company, and CTL Propco LP, a Delaware limited partnership (collectively, the "Retail Owners"), and (b) CTL Propco II LLC, a Delaware limited liability company, and CTL Propco II LP, a Delaware limited partnership (collectively, the "DC Owners" and, together with the Retail Owners, collectively, the "Owners")

WHEREAS, the Retail Owners own those certain one hundred sixty (160) retail properties (the "Retail Properties") more particularly described in the Retail Master Lease (as hereinafter defined), and lease such Retail Properties to Penney Tenant I LLC ("Retail Tenant") pursuant to that certain Retail Master Lease, dated as of December 7, 2020, between Retail Owners (as successor by assignment to J. C. Penney Corporation, Inc., a Delaware corporation, J. C Penney Properties, LLC, a Delaware limited liability company, and JCPenney Puerto Rico, Inc., a Puerto Rico corporation), as landlord, and Retail Tenant, as tenant (as amended, the "Retail Master Lease")

WHEREAS, the DC Owners own those certain (6) distribution centers (the "DC Properties" and, together with the Retail Properties, collectively, the "Properties") more particularly described in the DC Master Lease (as hereinafter defined), and lease such DC Properties to Penney Tenant II LLC ("DC Tenant") and, together with Retail Tenant, individually and/or collectively, "Tenant") pursuant to that certain DC Master Lease, dated as of December 7, 2020, between DC Owners (as successor by assignment to J. C. Penney Corporation, Inc., a Delaware corporation and J. C Penney Properties, LLC, a Delaware limited liability company), as landlord, and DC Tenant, as tenant (as amended, the "DC Master Lease" and, together with the Retail Master Lease, individually and/or collectively, the "Master Lease").

WHEREAS, the Trust wishes to engage Manager to provide the Services (as defined below) related to the Properties, and Manager wishes to provide such Services, in each case, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, Manager and the Trust hereby agree as follows:

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**Agreement**

**1. DEFINITIONS**

In this Agreement, capitalized terms shall have the meanings set forth herein and listed in Schedule 2 or, if not set forth herein, in the Trust Agreement.

**2. SERVICES**

2.1 Scope of Services. During the Term of this Agreement, the Manager shall perform those certain services set forth on Schedule 1 attached hereto or otherwise set forth in this Agreement and such other services related to the management of the business and affairs of the Trust as may be mutually agreed among the Parties in writing from time to time (the “Services”). In furtherance of the foregoing and subject to the limitations set forth in this Agreement (specifically including Section 2.5 hereof), during the Term of this Agreement:

- a. Manager will provide a management team along with appropriate support personnel, to provide the management services to be provided by the Manager to the Trust hereunder (the “Personnel”), including individuals who shall serve as the principal executive officer (the “Executive Officer”) and principal financial officer (the “Financial Officer”) and together with the Executive Officer, the “Officers”) of the Trust solely in connection with SEC reporting requirements and for no other purpose, to provide the management services hereunder. The Personnel shall devote such of their time to the management of the Trust as is reasonably necessary and appropriate. Manager shall not be obligated to dedicate any of its personnel, including, without limitation, the Personnel and Officers, exclusively to the Trust, but will agree to dedicate such personnel to the extent required to perform the Services in accordance with the Performance Standard.
- b. In connection with Manager’s provision of the Services, the Trustee hereby appoints Manager as the manager and representative for the Services during the Term, except to the extent that the Manager elects, in its discretion and subject to the terms of this Agreement (including, without limitation, Section 11), to cause the duties of the Manager as set forth herein to be provided by third parties and/or its Affiliates. The scope of the Services shall not be changed without prior written consent of the Manager and the Trust. For the avoidance of doubt, the scope of Services shall not be considered changed or amended for any act or service not specifically enumerated on Schedule 1 but which has been requested by the Trustee.
- c. Manager shall have discretion and authority pursuant to this Agreement to perform the Services in accordance with the Performance Standard and in such manner as Manager reasonably considers appropriate to comply with such Performance Standard, subject to the terms and restrictions contained in this Agreement, as amended from time to time. In furtherance of the foregoing, the Trustee hereby designates and appoints the Officers or their designees, and each of them, as an agent and attorney-in-fact of the Trust, with full power and authority and without further approval of the Trustee, for purposes of accomplishing on the Trust’s behalf any of the matters expressly contemplated herein. Further, the Officers, or either of them or their designees, may execute, in the name and on behalf of the Trust all such documents and take all such other actions which such Person reasonably considers necessary or advisable to carry out the duties of Manager hereunder.

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- d. The Manager may retain, subject to Section 11 hereof, such persons and firms as the Manager reasonably deems necessary or advisable in connection with the performance of the Services.
  - e. Manager shall act on behalf of the Trust in arranging for the sale or other disposition of the Properties, disbursing and collecting the Trust's funds, paying the debts and fulfilling the obligations of the Trust (but only to the extent the Trust has working capital to pay and fulfil same on deposit in the Manager's Reserve Account) and supervising the performance of professionals engaged by or on behalf of the Trust other than attorneys and third-party advisors engaged by or on behalf of the Trust related to any corporate and governance matters of the Trust in each case upon the terms and subject to the conditions in the Trust Agreement.
  - f. The Manager shall: (i) reasonably cooperate with the Trustee and the Certificateholders (to the extent applicable) with respect to the negotiation, execution, consummation and incurrence of any Permitted Indebtedness or any sale of the Trust Certificates (including pursuant to the Registration Rights and Resale Cooperation Agreement) and any agreements related thereto (including any engagement letters for any structuring agent, arranger, underwriter, initial purchaser or similar agent); (ii) reasonably cooperate with the Trustee and/or any structuring agent, arranger, underwriter, initial purchaser or similar agent of any Permitted Indebtedness or order to obtain a rating of such Permitted Indebtedness; (iii) reasonably cooperate with the Trustee and/or any such structuring agent, arranger, underwriter, initial purchaser or similar agent in preparing any offering memorandum, private placement memorandum, confidential information memorandum, investor presentations, lender presentations or similar materials; (iv) reasonably cooperate with Trustee to cause Trust to enter into such documents and take such other actions reasonably necessary in connection with the foregoing.
  - g. Manager shall prepare an initial budget for the Trust and the Trust Assets on or prior to the date hereof, to be approved by BidCo, and subsequent annual budgets (the initial budget and subsequent annual budgets, together, the "Annual Budgets")
  - h. Manager shall carry out the Services hereunder in accordance with the Annual Budgets, subject to Section 4.2(c).
  - i. Manager shall perform the Services in accordance with the Performance Standard.

2.2 Place of Performance. Manager and the Officers shall provide the Services, as applicable, at Manager's offices or such other locations as designated by Manager in its sole and absolute discretion, and shall only be required to perform the Services at the Properties to the extent necessary and required to fulfill the Services. Notwithstanding anything herein, the Trustee acknowledges and agrees that, if and to the extent there are any third-party property managers and contractors at the Properties (collectively, the "Property Level Contractors") and, as part of Manager's obligation to perform the Services, Manager is required to oversee the day-to-day operations of the Property Level Contractors, the Trustee acknowledges and agrees that (i) the Manager Parties (as defined below) shall in no way be deemed to be, or shall be, the employer of the Property Level Contractors or their employees or the Trust or its employees, (ii) the Manager Parties shall in no way be deemed to be, nor shall they be, employees or agents of the Property Level Contractors or the Trust or its employees and (iii) the Manager Parties shall not in any way be responsible for providing any direction operation or financial oversight or supervision at any physical location of the Properties.

2.3 Trustee's Cooperation. In order to properly perform the Services and fulfill its obligations hereunder, each of Manager and the Officers will rely on the timely cooperation of the Trustee (to the extent the Trustee is able to perform such tasks without direction from Certificateholders or has obtained the approval or direction of the requisite Certificateholders) and other professional advisors, including, without limitation, making available to each of Manager and the Officers relevant data, information and records and performing any tasks or responsibilities reasonably requested of the Trustee (to the extent the Trustee is able to perform such tasks without direction from Certificateholders or has obtained the approval or direction of the requisite Certificateholders) by either of Manager or the Officers in connection with the Services. The Trustee will provide Manager, the Personnel, the Approved Subcontractors and the Officers with full access to all books, records and (to the extent advisable for the proper performance of the Services), as well as to all accountants and attorneys retained by either of Manager or the Officers with respect to the Services. The Trustee acknowledges and agrees that neither Manager nor any of the Officers shall have any responsibility or liability for any delays, additional costs or other deficiencies caused by the Trustee's failure to comply with this Section 2.3. Further, to the extent permitted by applicable law, each of Manager and Officers (i) shall assume the accuracy and completeness of all information submitted by or on behalf of the Trustee (including any of its officers, employees, or representatives) to Manager or any of the Officers for analysis and which will form the basis of Manager's or such Officers' conclusions, as applicable, without any obligation of either of Manager or any of the Officers to verify the accuracy or completeness of such information and (ii) shall not be liable or responsible for any Services provided to the extent based on inaccurate or incomplete information provided or accepted by or on behalf of the Trust.

2.4 Payment of Accounts. The Trustee shall cause bank accounts to be established as contemplated by the Trust Agreement (any such account, a "Company Account"). Manager shall direct that any and all amounts due and owing pursuant to the Master Leases or otherwise collected in connection with the Properties (including in connection with a sale of any Property) be paid directly to the designated Company Account identified by the Trustee or as contemplated by Section 5.02 of the Trust Agreement. The Trustee acknowledges and agrees that, other than the expenses set forth in Section 4.2(a) below, any and all amounts due and owing hereunder, including, without limitation, in Sections 4.1, 4.2(b) and 4.3 shall be paid out of the Manager's Reserve Account, it being acknowledged and agreed by the Trustee that Manager shall not be obligated to pay for any matters hereunder or otherwise in connection with the Services other than as contemplated by Section 4.2(a) nor shall Manager be required to continue performing the Services hereunder to the extent the Trustee, on behalf of the Trust, has failed to fund its obligations hereunder, following written notice to the Trustee by the Manager of such funding obligations, and such failure continues for a period of ten (10) business days after written notice of such failure has been delivered to the Trustee by the Manager.

2.5 Limitations on Authority. In addition to any and all other limitations on the authority of the Manager set forth herein, the Manager shall not be authorized without the prior written consent of the Trustee (on behalf of the Trust) (which consent may be withheld or granted in its sole and absolute discretion and may be subject to direction of Certificateholders as appropriate or applicable) to: (a) take any action that would constitute a default under any document evidencing Permitted Indebtedness, any Master Lease or other material agreement (copies of which are in the possession of or have been provided to the Manager), law, or regulation affecting the Properties, (b) enter into any PSA except as permitted under the Trust Agreement, (c) agree to sell any of the Properties except to the extent that such sale is an Agreed Sale or constitutes a Strategic Disposition Transaction, (d) sell any of the Properties for consideration other than cash, (e) borrow money or execute any promissory note on behalf of the Trust or any of the Owners or encumbering any of the Properties, or (f) enter into any other leases (other than the Severed Leases expressly permitted pursuant to the terms of the Master Leases (with such modifications as are approved by Trustee (acting at the direction of the Certificateholders as appropriate or applicable), or counsel to the Trust)), master leases, or other material agreements affecting the Properties.

**3. COVENANTS.** The Manager shall reasonably cooperate with the Trustee's efforts to satisfy the following covenants set forth in Article VI of the Trust Agreement: Sections 6.06, 6.09(b), 6.09(c), 6.09(j), 6.09(k) and 6.09(l).

**4. FEES AND EXPENSES.**

4.1 Consideration. The Trust shall pay to Manager, in consideration of the Services, an annual base management fee (the "Base Fee") and the asset management fee (the "AM Fees") as set forth in Schedule 3 (collectively the "Consideration"). Manager shall be solely responsible for the compensation of any Approved Subcontractors and Personnel who may provide any Services pursuant to this Agreement.

4.2 Expenses.

(a) Expenses of Manager. Except as otherwise expressly provided herein or in any Annual Budget, Manager shall bear the expenses set forth in clauses (i) through (iii) below incurred in connection with the performance of its duties under this Agreement. Any other expenses incurred by Manager or the Officers in connection with the Services or the performance of each of their respective duties hereunder and not expressly set forth in this Section 4.2(a) shall be promptly reimbursed by the Trust to Manager within five (5) business days after receipt of a written request (together with reasonably detailed invoices) for such reimbursement by the Manager to the Trustee.

- (i) salary (including bonus and other wages), or employment expenses (including payroll taxes and any costs of insurance) of the Personnel (but not travel and other expenses incurred in connection with providing the Services);
- (ii) rent, telephone, utilities, office furniture, equipment and machinery (including computers, to the extent utilized) and other office expenses of Manager in connection with this Agreement, except to the extent such expenses relate solely to an office maintained by the Trustee separate from the office of Manager or the Officers; and
- (iii) miscellaneous administrative expenses relating to performance by Manager and the Officers of their respective obligations hereunder.

(b) Expenses of the Trust. Except as expressly otherwise provided in this Agreement and subject to the requirement set forth in Section 4.3 below, the Trust shall pay all of its expenses, and, without limiting the generality of the foregoing, it is specifically agreed that the following expenses of the Trust shall be (x) paid by the Trustee, on behalf of the Trust, and shall not be paid by Manager or (y) subject to the limitations set forth below, paid by the Manager and reimbursed by the Trustee, on behalf of the Trust, within five (5) business days following a written request for any such reimbursement provided by the Manager to the Trustee:

- (i) travel and other expenses of the Personnel and Officers incurred in connection with the Services (other than salary or employment expenses);
- (ii) the cost of borrowed money;
- (iii) taxes on income and taxes and assessments on real and personal property, if any, and all other taxes applicable to the Trust or the Properties;
- (iv) legal, auditing, accounting, underwriting, brokerage, listing, reporting, registration and other fees, and printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, trading, registration and listing of the Trust or any securities on the stock exchange, including transfer agent's, registrar's and indenture trustee's fees and charges;

- (v) expenses of organizing, restructuring, reorganizing or liquidating the Trust, including winding down, revising, amending, converting or modifying the Trust's organizational documents;
- (vi) fees and travel and other expenses paid to the Trustee and officers of the Trust (but not in their capacities as officers or employees of Manager) and fees and travel and other expenses paid to advisors, contractors, mortgage servicers, consultants, and other agents and independent contractors employed by or on behalf of the Trust;
- (vii) documented expenses directly connected with the investigation, disposition or ownership of the Properties or other real estate interests or other property (including third party property diligence costs, appraisal reporting, insurance premiums, legal services, brokerage and sales commissions, maintenance, repair, improvement and local management of property), other than expenses with respect thereto of employees of Manager, to the extent that such expenses are to be borne by Manager pursuant to Section 4.2(a) above;
- (viii) all insurance costs incurred in connection with the Trust (including director, trustee and/or officer liability insurance) or in connection with any director, trustee and/or officer indemnity agreement to which the Trust is a party;
- (ix) documented expenses for all third-party contracts entered into by or on behalf of Manager and as set forth in the applicable Annual Budget (or otherwise approved in writing by the Trustee), including, without limitation, those entered into with the Subcontractors; *provided* that any such-third-party contracts not provided for in the applicable Annual Budget or otherwise approved in writing by Trustee shall be subject to Section 4.2(c) below;
- (x) expenses connected with payments of dividends or interest or contributions in cash or any other form made or caused to be made by the Trustee to holders of securities of the Trust;
- (xi) all expenses connected with communications to holders of securities of the Trust and other bookkeeping and clerical work necessary to maintaining relations with holders of securities, including the cost of any transfer agent, the cost of preparing, printing, posting, distributing and mailing certificates for securities and proxy solicitation materials and reports to holders of the Trust's securities;
- (xii) legal, accounting and auditing fees and expenses in addition to those described in subsection (iii) above;
- (xiii) filing and recording fees for regulatory or governmental filings, approvals and notices to the extent not otherwise covered by any of the foregoing items of this Section 4.2(b);
- (xiv) software licensing fees and other fees and costs associated with proprietary software and programs used separately by the Trust; and
- (xv) all other costs and expenses of the Trust, including those set out in the Annual Budgets, other than those to be specifically borne by Manager pursuant to Section 4.2(a) above.

(c) If, during any calendar year, the aggregate total expenses of the Trust exceed (or are projected in good faith by the Manager to exceed) 120% of the aggregate total expenses of the Trust set forth in the then current Annual Budget, then the Manager shall, within ten (10) Business Days, provide an updated Annual Budget to the Trustee.

4.3 Invoices and Payment. Manager shall provide an invoice for, all reimbursable expenses, billed no more frequently than monthly, but no later than forty-five (45) days after receipt of an invoice by Manager, the Personnel and/or the Officers of any such reimbursable expenses. Each invoice shall be accompanied by reasonable back-up documentation of the charges contained therein including receipts or paid invoices for any reimbursable expenses to be reimbursed.

4.4 Full Payment. Payment of the Consideration and reimbursement of the reimbursable expenses hereunder shall constitute full and entire compensation for Services under this Agreement.



## 5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence as of the Effective Date and shall continue for a period of twenty-four (24) months thereafter; *provided*, however, that such twenty-four (24) month period shall be automatically extended in successive six (6) month increments until the termination of the Trust Agreement in accordance with its terms (the "Term").

5.2 Termination. This Agreement may be terminated as follows:

- (a) By the Trustee (acting at the direction of the Majority Certificateholders for a termination pursuant to clause (v) below and otherwise pursuant to the Trust Agreement):
  - (i) immediately upon written notice thereof to Manager, in the event of any action or omission by the Manager or the Officers that constitutes fraud, willful material misrepresentation, willful misconduct, material breach of this Agreement (including any breach of the Performance Standard), willful misapplication or misappropriation of funds or gross negligence and, to the extent such action or omission constitutes a material breach of this Agreement and is otherwise curable (it being understood and agreed that any monetary breach of this Agreement shall be deemed not to be curable), which is not cured by the Manager or the Officers within thirty (30) days after the Manager or the Officers are provided written notice thereof; *provided* that if the Manager or the Officers cure any such material breach of this Agreement within the foregoing cure period, this Agreement will not so terminate and the applicable notice of termination shall be deemed to have been rescinded;
  - (ii) immediately and automatically, in the event of a liquidation or dissolution of the Manager;
  - (iii) immediately upon written notice thereof to Manager, in the event the Manager commences a voluntary case or proceeding under any bankruptcy law, consents to the commencement of any bankruptcy or insolvency case or proceeding against it, or files a petition or answer or consent seeking reorganization or relief against it, consents to the entry of a decree or order for relief against it in an involuntary case or proceeding under any bankruptcy law, consents to the filing of any such petition or to the appointment of or taking possession by a custodian of the Manager or for all or substantially all of its property, or makes an assignment for the benefit of creditors or admits in writing of its inability to pay its debts generally as they become due or takes any corporate action in furtherance of any such action;
  - (iv) immediately upon written notice thereof to Manager, in the event that a court of competent jurisdiction enters an order or decree under any bankruptcy law that is for relief against the Manager in any involuntary case or proceeding under any bankruptcy law, or adjudges the Manager bankrupt or insolvent, or approves as properly filed a petition seeking

reorganization, arrangement, adjustment or composition of or in respect of the Manager, or appoints a custodian of the Manager or for all or substantially all of its property, or orders the winding up or liquidation of the Manager, and any such decree or order for relief or any such other decree or order continues unstayed and in effect for a period of ninety (90) consecutive days; or

- (v) for any reason or no reason at any time after the Effective Date by providing not less than ninety (90) days' prior written notice thereof to Manager; *provided* that, except with respect to a termination pursuant to Sections 5.2(a)(i)-(iv), Manager shall be entitled to the sum, to the extent applicable, of: (i) all fees payable pursuant to Section 4; (ii) any accrued fees and expenses as of such termination date; (iii) with respect to Agreed Sales that are closed not more than one hundred eighty (180) days following the termination date, in the event that one or more definitive letters of intent or PSAs with respect to such Agreed Sales shall have been executed by the relevant parties prior to the termination date, the AM Fees Manager would have been entitled to receive in connection with such Agreed Sales but for its termination hereunder; and (iv) if terminated at any time prior to the last day of the fourteenth (14th) month following the Effective Date, the aggregate Base Fee for each remaining month in such fourteen-month period, notwithstanding such earlier termination.

(b) By Manager for any reason or no reason by providing not less than one hundred eighty (180) days' prior written notice thereof to the Trustee; in which event Manager shall be entitled to all fees payable pursuant to Section 4 until such termination becomes effective.

(c) Automatically as to each party hereto upon the final dissolution of the Trust following the sale of all Properties.

5.3 Effect of Expiration/Termination. Upon the expiration or earlier termination of this Agreement:

(a) The Parties shall have no further rights or obligations under this Agreement, except as specifically set forth herein, and the Trustee's obligation to pay any Consideration and to reimburse any Approved Expenses accruing from and after the date of such termination shall cease;

(b) The Trustee, on behalf of the Trust, shall be responsible for paying any Consideration and reimbursing any Approved Expenses incurred or accruing prior to the date of the expiration or termination of this Agreement; and

(c) Manager shall return, or cause to be returned, all Confidential Information, and any other property of the Trust, in its actual possession or control; *provided*, that (i) neither Manager nor the Officers shall have any obligation to return or destroy information (including copies, extracts and other reproductions) retained in standard archival or computer back-up systems or pursuant to its or its representatives' normal document or e-mail retention practices, (ii) Manager and the Officers may retain information to the extent required (based upon the advice of counsel) by legal requirements or by any governmental or regulatory authority, and (iii) Manager's accountants or attorneys may retain information pursuant to their professional obligations. Any information retained by the receiving party or its representatives as described in clauses (i), (ii) and (iii) shall be maintained as confidential and shall be subject to the terms and conditions of this agreement.

5.4 Post-Termination Transition Services. Notwithstanding anything in this Section 5 to the contrary, for a period of not less than one hundred eighty (180) days following any termination of this Agreement by the Trustee pursuant to Section 5.2(a), Manager shall be required to provide reasonable and customary assistance and transition services to any replacement manager(s) engaged by the Trust, which cooperation shall include, without limitation, reasonable access to (i) any information in the possession of the Manager Parties in respect of the Trust and (ii) the Officers and Personnel (collectively, the "Transition Services"). In connection with any Transition Services requested, the Trustee, on behalf of the Trust, shall pay to Manager an amount equal to \$75,000 per month until such time as the Trustee notifies Manager that such Transition Services are no longer required.

## 7. INDEPENDENT CONTRACTOR

The Trustee, on behalf of the Trust, acknowledges and agrees that (i) Manager will act as an independent contractor hereunder, and its responsibility is solely owed to the Trust and contractual in nature, and Manager does not owe the Trust, or any other person or entity (including, without limitation, any Certificateholders or holders of Trust Interests, affiliates, creditors or employees of the Trust), any fiduciary or similar duty as a result of its engagement hereunder or otherwise, (ii) the Manager Parties will not be liable for any losses, claims, damages or liabilities arising out of the actions taken, omissions of or advice given by other parties who are providing services to the Trust, (iii) Manager may provide tools or online document repository spaces to facilitate the Services, that such products or services are provided by third party vendors and that the Trust uses those products or services at its own risk, (iv) Manager is not an advisor as to legal, tax, accounting or regulatory matters in any jurisdiction, (v) the Trustee has consulted, and will consult, as appropriate, with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of this Agreement and the matters contemplated hereby, and that the Manager Parties shall have no responsibility or liability with respect thereto, (vi) the Trustee, on behalf of the Trust is capable of evaluating the merits and risks of this Agreement and accepts the terms, conditions, and risks herein and the transactions and fees contemplated hereunder, (vii) neither the Trustee nor its agents, employees or representatives shall represent themselves in any way as agents or employees of Manager nor shall any of the foregoing have any power to legally bind the Manager Parties to any third party and (viii) neither the Manager nor any Manager Parties or Personnel be deemed employees of the Trust or, except for the Officers (solely to the extent and pursuant to the express terms hereof), officers of the Trust.

## 8. TAXES

Manager shall be solely responsible for the payment of all federal, state and local taxes (including federal, state and local self-employment taxes) that are in any way connected with its performance of the Services, as applicable; *provided*, however that in no event shall the foregoing be construed as requiring Manager to pay any real estate, ad valorem or other similar taxes assessed on the Properties or any portion thereof ("Real Estate Taxes"), which Real Estate Taxes shall be the sole responsibility of the applicable Tenants under the Master Leases; provided, however, that from and after (i) the Partial Property Termination Date with respect to any Tenant Option Property (as such terms are defined in the Master Lease) or (ii) any other date, with respect to any Property, as of which the applicable Tenant is no longer paying the applicable Real Estate Taxes (whether as a result of the termination of the applicable Master Lease, a default thereunder or otherwise), Manager shall arrange for the payment, on behalf of the Trust, of such Real Estate Taxes, subject to the Trust's right to reimbursement thereof in accordance with its Master Lease. In each case where an amount in respect of tax is payable by the Trust in respect of a service provided by the Manager, the Manager shall furnish in a timely manner a valid sales (or other) tax receipt or invoice to the Trustee in the form and manner required by applicable law to allow the Trust to recover such tax to the extent allowable under such law.

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## 9. NO JOINT VENTURE

The Trustee, on behalf of the Trust, and Manager acknowledge and agree that the Trust and Manager are not partners or joint venturers with each other and neither the terms of this Agreement nor the fact that the Trust and Manager may have joint interests in any one or more investments, ownership in each other or other interests in any one or more entities or may have common officers or employees or a tenancy relationship shall be construed so as to make them such partners or joint venturers or impose any liability as such on either of them

## 10. ASSIGNMENT; DELEGATION

Except with respect to the employment of the Personnel, Officers and Subcontractors engaged or delegated to by Manager in connection with the Services, Manager shall not assign this Agreement, or delegate or enter into any subcontract for the performance of any of its obligations under this Agreement, including any portion of the Services, in whole or in part. Any purported assignment in violation of this provision shall be void and of no effect.

## 11. THIRD PARTY SERVICES; AFFILIATE SERVICES

The Manager may retain, or may seek to have the Trust retain, for and on behalf, and at the sole cost and expense, of the Trust, the services of such persons, third-party service providers and third-party service firms selected by Manager (each, a "Third-Party Firm") as the Manager reasonably deems necessary or advisable; *provided*, that: (i) any such services may only be provided by Affiliates of the Manager to the extent that (A) such services are on arms' length terms and at competitive market rates in relation to terms that are then customary for agreements regarding the provision of such services to companies that have assets similar in type, quality and value to the assets of the Trust; (B) the Trustee (acting with the approval of the Majority Certificateholders (as defined in the Trust Agreement)) has approved the retention of such Affiliate; and (C) the Manager shall remain fully liable for any failure by such Affiliates to perform the Manager's obligations under this Agreement as if such services were performed by the Manager itself; (ii) (x) to the extent that any such Services are delegated to a Third-Party Firm as contemplated by the initial Annual Budget, such expenses shall be at the sole cost and expense of the Trust, and Manager has the right to delegate any such Services to any Third-Party Firm providing substantially similar services and (y) if in the future a requirement for services of a kind not contemplated in the initial Annual Budget arises and such services are not customarily and usually performed by prudent institutional commercial property and asset managers in administering portfolios of commercial properties or historically performed by the Manager, then the Manager may retain for and on behalf, and at the sole cost and expense, of the Trust, the services of a Third-Party Firm; and (iii) whether such Third-Party Firms are Affiliates or third parties, the Services shall include Manager's supervision of such service providers. In performing its duties under this Section 11, the Manager shall be entitled to rely reasonably on qualified experts and professionals (including, without limitation, accountants, legal counsel and other professional service providers) hired by the Manager at the Trust's sole cost and expense; *provided*, *however*, that Manager shall not be permitted to hire any Third-Party Firm if the reasonable costs and expenses of such Third-Party Firm are not included on the applicable Annual Budget.

## 12. LIMITATION OF LIABILITY; INDEMNIFICATION

12.1 Limitation of Liability. Manager assumes no responsibility other than to render the Services in accordance with the Performance Standard and shall not be responsible for any action of the Trustee in following or declining to follow any advice or recommendation of Manager other than with respect to the Excluded Losses.

### 12.2 Indemnification.

(a) The Trust shall indemnify and hold harmless Manager and its officers, members, employees and directors, and each of their respective successors and assigns (collectively, the “Manager Parties”), to the fullest extent lawful, from and against any and all claims, liabilities, losses, actions, suits, proceedings, third party subpoenas, damages, out-of-pocket costs and expenses (an “Action”) (including, without limitation, full reimbursement of all reasonable and documented out-of-pocket fees and expenses of one counsel in investigating, preparing or defending against any such Action and in enforcing the terms of this Agreement, as incurred, related to or arising out of or in connection with the Services, the Properties or any portion thereof or this Agreement, whether or not resulting from the Manager Parties’ negligence (“Losses”)); *provided*, that the Trust shall not be responsible for or indemnify or hold harmless any Manager Parties from or against any Excluded Losses. “Excluded Losses” shall mean any Action or Losses that arise out of or are based on any action or failure to act by Manager to the extent such Action or Losses are determined, by a final non-appealable judgment by a court of competent jurisdiction, to have resulted or arisen from Manager’s bad faith, gross negligence or willful misconduct.

(b) the Manager shall, to the fullest extent lawful, reimburse, indemnify and hold the Trust (or any Subsidiary), the Trustee and its and their stockholders, directors and officers and each other Person, if any, controlling the Trust (each, a “Trust Party” and together with the Manager Parties, each, an “Indemnitee”), harmless of and from any Action or Losses in respect of or arising from the Manager’s bad faith, willful misconduct or gross negligence, as determined by a final adjudication.

12.3 Procedure. If any action or proceeding in respect of which indemnity may be sought in accordance with Section 12.2 is brought or asserted against any Indemnitee, such Indemnitee shall promptly notify the party against whom such indemnity is claimed (the “Indemnitor”) in writing (but the failure to give such notice shall not affect the Indemnitor’s obligations hereunder or otherwise unless the Indemnitor demonstrates that the defense of such action or proceeding was materially prejudiced by such failure), and the Indemnitor shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnitee and the payment of all defense costs and expenses. Each Indemnitee shall have the right to employ separate counsel in any such action or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be borne by the Indemnitee unless (i) the Indemnitor has agreed in writing to pay such fees and expenses, (ii) the Indemnitor shall have failed to assume the defense of such action or proceeding within ten business days after the Indemnitee gives written notice of such action or proceeding, or (iii) the named parties to any such action or proceeding include both the Indemnitee and the Indemnitor or an affiliate thereof such that joint representation would be inappropriate (in which case, if the Indemnitee notifies the Indemnitor that it elects to employ separate counsel at the expense of the Indemnitor, the Indemnitor shall not have the right to assume the defense of such action or proceeding on behalf of the Indemnitee; however, the Indemnitor shall not, in connection with any one such action or proceeding, be liable for the fees and expenses of more than one separate firm of attorneys, together with local counsel at any time for all Indemnitees, which firm shall be designated by the Indemnitee). If the Indemnitor assumes the defense of

such an action, (a) no compromise or settlement thereof may be effected by the Indemnitor without the Indemnitee's consent (which shall not be unreasonably withheld or delayed) unless (x) there is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnitee (y) the sole relief provided is monetary damages that are paid in full by the Indemnitor and (b) the Indemnitor shall have no liability with respect to any compromise or settlement thereof effected without its consent (which shall not be unreasonably withheld) and (z) such compromise or settlement includes an express unconditional release of such Indemnitee from all Losses arising out of such Action. If notice is given to the Indemnitor of the commencement of any action and it does not, within ten (10) business days after the Indemnitee's notice is given, give notice to the Indemnitee of its election to assume the defense thereof, the Indemnitor shall be bound by any determination made in such action or any compromise or settlement thereof effected by the Indemnitee.

12.4 Contribution. If, for any reason the indemnification in Section 12.2 is judicially determined to be unavailable to any such Indemnitee for any reason or insufficient to hold any such Indemnitee harmless, each Indemnitor agrees to contribute to any such Losses in such proportion as is appropriate to reflect the relative benefits received or proposed to be received by it, on the one hand, and by such Indemnitee, on the other, from the matters (whether or not consummated) contemplated by the Agreement or, if allocation on that basis is not permitted under applicable law, in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnitor, on the one hand, and Indemnitee, on the other, but also the relative fault of the Indemnitor and the Indemnitee, as well as any other relevant equitable considerations. Notwithstanding the provisions hereof, the aggregate contribution of all Manager Parties to all Losses shall not exceed the amount of fees actually received by Manager with respect to the services rendered pursuant to this Agreement. Relative benefits to the Trust, on the one hand, and to Manager, on the other hand, shall be deemed to be in the same proportion as (i) the total value received by the Trust from the matters contemplated by the Agreement bears to (ii) all fees actually received by Manager in connection with the Agreement.

12.5 Other Activities. Subject to Section 13 herein and the Manager acting in accordance with the Performance Standard in rendering the Services, nothing in this Agreement shall prevent any of the Manager Parties from engaging in other activities or businesses, including those that compete with the Trust, or from rendering services of any kind to any other person or entity, including any that may compete with the Trust, including investment in, or advisory service to others investing in, any type of real estate or real estate related investment, including investments which meet the principal investment objectives of the Trust (collectively, the "Investment and RE Matters"). The Trustee acknowledges and agrees that it is not entitled to preferential treatment in receiving information, recommendations and other services from Manager. The Trustee further acknowledges that certain conflicts may exist with regard to the allocation of Investment and RE Matters and for the time and attention of the Manager Parties in connection therewith and agrees that the Manager Parties may resolve such conflicts in good faith and in their fair and reasonable discretion.

12.6 Potential Opportunities. If any of the Manager Parties acquire knowledge of a potential business opportunity related to the Investment and RE Matters, and provided that the Manager Parties at all times act accordance with the Performance Standard, the Trust renounces any potential interest or expectation in, or right to be offered or to participate in, such business opportunity to the maximum extent permitted by applicable law. Accordingly, to the maximum extent permitted by applicable law (i) the Manager Parties are not required to present, communicate or offer any business opportunity to the Trust and (ii) the Manager Parties, on each of their own behalves, shall have the right to hold, exploit, direct, recommend, offer, sell, assign or otherwise transfer any such business opportunity to any person or entity other than the Trust. The foregoing shall not constitute or be construed or interpreted as a breach by Manager of any duties to the Trust under this Agreement, or an act or omission of any of the Manager Parties, as applicable, constituting bad faith, fraud, intentional misconduct or knowing disregard of the

duties of Manager under this Agreement. Notwithstanding the foregoing, in no event shall Manager or any of its Affiliates or Representatives be permitted to represent the counterparty in any transaction, arrangement or agreement with the Trust including, without limitation, in connection with the Property Documents (as defined in the Master Leases). The Manager shall not purchase any Property or acquire any Permitted Indebtedness of the Trust.

12.7 Survival. The agreements in this Section 12 shall survive the expiration or earlier termination of this Agreement.

### 13. CONFIDENTIALITY

13.1 Confidentiality Obligations. All non-public information (“Confidential Information”) obtained by the Trustee or the Trust on the one hand or the Manager, Officers and any Personnel on the other hand, or their respective Affiliates of any of the foregoing (collectively, “Representatives”), pursuant to, or in connection with any obligations (including performance of the Services) under, this Agreement, whether oral or written, shall be regarded as strictly confidential unless disclosure thereof (including disclosure of this Agreement) is required pursuant to applicable law or as otherwise provided in Section 13.5.

13.2 Definition of Confidential Information. “Confidential Information” includes, but is not limited to, all plans, drawings, renderings, studies, reports, analyses, records, agreements, sales and marketing materials, and other materials and documents including any derivative works with respect to any of the foregoing, and the information contained therein, provided or shown to the Party wishing to disclose such materials (the “Disclosing Party”) or its agents or employees by the other Party (the “Non-Disclosing Party”) or its agents or employees, or otherwise produced by the Trustee or the Manager in the course of providing the Services hereunder;

13.3 Non-Disclosure Obligation. In consideration of the disclosure of the Confidential Information, the Parties agree to receive and hold the Confidential Information in strict confidence, to advise their Representatives of the confidential nature of the information and direct them to maintain such information in strict confidence and, except as contemplated herein, never to disclose, disseminate, publish, reproduce or otherwise use the Confidential Information in any manner whatsoever, except as specifically authorized in writing by the Non-Disclosing Party. Each of the Parties also agrees not to analyze, sell, show or give the Confidential Information or documents relating thereto to any third party, and will not disclose the results of tests conducted using the Confidential Information.

13.4 Security Procedures. Each Party agrees to limit the dissemination of the Confidential Information within its own organization only to those officers, employees, contractors, attorneys and consultants who need to have access to the Confidential Information solely in connection with such Party’s obligations hereunder.

13.5 Exclusions. The foregoing undertakings of confidentiality and non-disclosure shall not apply to Confidential Information that (a) prior to or after the date hereof was or becomes generally known to the public other than by reason of the Disclosing Party’s breach or deemed breach of the foregoing confidentiality undertakings, (b) is disclosed by the Disclosing Party pursuant to a requirement of law, provided that the Disclosing Party shall have complied with Section 13.6, (c) is disclosed in connection with any governmental or regulatory filings by the Trust or presentations to investors in the Trust (subject to compliance with Regulation FD), (d) is disclosed following the Disclosing Party receiving express written permission from the Non-Disclosing Party and (e) is disclosed pursuant to Section 13.6.

13.6 Disclosures Required by Law. If the Disclosing Party becomes legally obligated to disclose any Confidential Information, the Disclosing Party shall give the Non-Disclosing Party prompt and timely notice of such fact so that the Non-Disclosing Party may obtain a protective order or other appropriate remedy concerning any such disclosure or waive otherwise waive the Disclosing Party's compliance with the provisions of this Section 13. The Disclosing Party shall cooperate fully with the Non-Disclosing Party in connection with the Non-Disclosing Party's efforts to obtain a protective order or other appropriate remedy. In the event Non-Disclosing Party is unable to obtain a protective order or other appropriate remedy with respect to the Confidential Information or has not responded to the Disclosing Party's notice within ten (10) days after receipt thereof and the Disclosing Party has otherwise complied with its obligations under this Section 13.6, the Disclosing Party shall not be liable for the disclosure of Confidential Information legally required to be disclosed and not subject to a protective order or other appropriate remedy. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Manager is required to disclose Confidential Information, the Manager may disclose only that portion of such information that is legally required without liability hereunder; *provided, that* the Manager agrees to exercise its commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such information.

13.7 Return of Confidential Information. Except as otherwise provided in Section 5.3(c), each Party agrees that upon the earlier to occur of (i) the conclusion of the provision of the Services, or (ii) the earlier termination of this Agreement, each Party will promptly deliver to the other all Confidential Information in its possession generated or prepared by the other Party, without retaining any copy thereof; provided, that a Non-Disclosing Party may retain copies of Confidential Information, subject to this Agreement, in accordance with its internal record retention policies and procedures for legal, compliance or regulatory purposes.

13.8 Remedies. Each Party acknowledges that the Confidential Information is proprietary and confidential, and that the Non-Disclosing Party will suffer irreparable injury in the event of the use, delivery or disclosure of the Confidential Information, other than as expressly permitted herein, and there may be no adequate remedy at law for such violation. The Disclosing Party agrees that in the event of any unauthorized use, delivery or disclosure or threatened unauthorized use, delivery or disclosure of the Confidential Information, the Non-Disclosing Party, in addition to all other remedies it may have in law or equity, shall be entitled to seek a temporary restraining order and/or injunction, on an *ex parte* basis, prohibiting any further use, delivery or disclosure of the Confidential Information by the Disclosing Party.

13.9 Indemnification. The Disclosing Party agrees to indemnify, save and hold the Non-Disclosing Party, as applicable, harmless from and against any Claims that the Non-Disclosing Party may incur as a result of any knowing disclosure or knowing use of the Confidential Information not expressly permitted hereunder.

13.10 Information Policy. The Manager acknowledges that the United States securities laws: (i) restrict the Trust and the Manager from communicating any material non-public information about the Trust, its subsidiaries and the Properties ("MNPI") to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell Trust Interests (as defined in the Trust Agreement) or interests therein; (ii) prohibit selective disclosure of any MNPI, including, but not limited, to holders of Trust Interests; and (iii) restrict any Certificateholders who have received MNPI from purchasing or selling Trust Interests or interests therein. The Manager shall comply with the United States securities laws in connection with all information about the Trust, its subsidiaries and the Properties. The Manager shall not disclose MNPI to Certificateholders or their Affiliates, unless the Trustee (to the extent authorized under the Trust Agreement) has consented to such disclosure.



#### 14. EXCULPATION.

The Trustee agrees, on behalf of itself and the Trust, to look solely to Manager's interest in and to this Agreement (including the right to any fees hereunder) and any available insurance proceeds and rights of recovery for the satisfaction of any claim now existing or hereafter arising or accruing against the Manager Parties and in no event shall the Manager Parties have any personal liability hereunder beyond the interest, if any, of Manager in and to this Agreement.

#### 15. INSURANCE.

15.1 General Requirements. During the Term, Manager shall procure and maintain commercially reasonable types and limits of insurance covering Manager and the performance of the Services, subject to the terms, conditions and exclusions of such policies. Any Approved Subcontractor providing Services or entering onto the Property shall also be required to comply with the insurance requirements set forth in this Section 15. The insurer shall provide for at least thirty (30) days prior written notice to the Trustee in the event Manager and its insurer or insurers materially change, cancel or non-renew any insurance policy. The following insurance coverage is required:

15.2 Commercial General Liability Insurance. Commercial general liability insurance providing commercially reasonable limits for general aggregate and aggregate for products and completed operations. The Trustee may reasonably request higher liability limits or aggregate coverages at any time during the Term if in the Trustee's sole discretion, the risk warrants. The Trustee will give Manager reasonable notice of its request for higher liability limits or aggregate coverages and any agreed-upon change to the liability limits or aggregate coverages, and the Manager shall use commercially reasonable efforts to secure such coverage.

15.3 Professional Liability Insurance. Limit of Liability and deductible shall be commercially reasonable. The professional liability insurance shall cover wrongful acts, errors and omissions, including liability assumed under this Agreement, subject to the terms, conditions and exclusions of such policy. Manager may permit its insurer to write this coverage on a claims-made basis, provided that Manager shall use commercially reasonable efforts to maintain a "tail" or similar extended reporting period, in the event of the expiration of coverage, for occurrences arising out of the performance of the Services for a period of at least three (3) years after the expiration of the Term.

15.4 Workers' Compensation and Employer's Liability. Workers' Compensation limits shall be the statutory limits, and employers' liability insurance, with commercially reasonable limits for (1) Each Accident–Bodily Injury by Accident; (2) Each Employee–Bodily Injury by Disease; and (3) Policy Limit–Bodily Injury by Disease. Manager shall provide a waiver in favor of the Trustee for its workers' compensation coverage. Manager hereby waives all rights of recovery against the Trust, the Trustee and the other Manager Parties arising out of claims made under the workers' compensation or employers' liability insurance required to be maintained under this Agreement, and all such insurance shall include, by endorsement or otherwise, a waiver of subrogation in favor of the Trust, the Trustee and the other Manager Parties.

15.5 Master Lease Insurance Coverage. Manager shall, to the extent required in connection with the sale of any Property, use commercially reasonable efforts to: (i) facilitate the re-allocation of the BI Premium Cap under Section 11.1(c) of the Retail Master Lease for a BI Policy once a Property is sold and the related Property (or Properties) become severed Properties subject to a Severed Lease; and (ii) if a BI Policy is required by the applicable buyer (or its lender) and Manager recommends that the Trust, as seller, provide such coverage at its cost in connection with such sale, Manager shall (A) request from Tenant that Tenant obtain a quote for Tenant to procure such BI Policy, and (B) use commercially reasonable efforts to obtain, on behalf of the Trust, one or more quotes from independent insurance brokers and/or insurers, to procure such BI Policy; and (iii) if an enhanced rating for an insurer providing insurance coverage to Tenant is required by the applicable buyer (or its lender) and Manager recommends that the Trust, as seller, provide such coverage at its cost (through a "wrap policy" or an independent insurance product then available in the market) in connection with such sale, Manager shall (A) request from Tenant that Tenant obtain a quote for Tenant to procure such enhanced rating or coverage, and (B) use commercially reasonable efforts to obtain, on behalf of the Trust, one or more quotes from independent insurance brokers and/or insurers, to procure such enhanced rating or coverage.

15.6 Maintain in Full Force. Manager shall deliver certificates of insurance, policy declarations pages, and additional insured endorsements providing proof of coverage to the Trustee as soon as reasonably practicable (including in respect of continuation of coverage upon renewal or replacement of an existing policy upon the written request of the Trustee). The Trustee reserves the right to require Manager to provide certified copies of the original policies of all insurance obtained in respect of the Trust at any time upon ten (10) days written notice to Manager subject to the Trustee's agreement to keep such policies confidential.

15.7 Directors and Officers Liability. Limit of Liability and deductible shall be commercially reasonable. The Trustee, at the direction and with the assistance of the Manager, shall obtain and maintain director and officer liability insurance and shall add the Officers and Manager (together with any other Manager Parties reasonably requested by Manager) as additional insureds thereunder. Manager may permit its insurer to write this coverage on a claims-made basis, provided that Manager shall use commercially reasonable efforts maintain a "tail" or similar extended reporting period, in the event of the expiration of coverage for a period of at least six (6) years after the expiration of the Term.

## **16. SURVIVABILITY OF TERMS**

In addition to those sections which expressly survive the expiration or termination of this Agreement, the following sections of this Agreement shall survive the expiration or termination of this Agreement: 5.3, 5.4, 12, 13, 14, 15.6, 16, 17, 19 and 20.

## **17. NOTICES**

Except as set forth below, any notices and other communication required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered (a) in person with a signed delivery receipt, (b) by reputable overnight delivery service with proof of delivery; (c) by registered or certified mail, postage prepaid, return receipt requested, to the address of the respective party below, or (d) by email, with an original sent by any means described in (a), (b), or (c). Either party may, by notice to the other, change the names and addresses above given.

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If to the Trust:

GLAS Trust Company LLC, as trustee  
3 Second Street, Suite 206  
Jersey City, NJ 07311  
Email: ClientServices.Americas@glas.agency

with a copy to:

Milbank LLP  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Attention: Casey Fleck  
Email: CFleck@milbank.com

and to:

Milbank LLP  
55 Hudson Yards  
New York, New York 10001  
Attention: Kevin O'Shea  
Email: koshea@milbank.com & RENotice@milbank.com

If to Manager:

Hilco JCP, LLC  
5 Revere Drive, Suite 206  
Northbrook, Illinois, 60062  
Attention: Neil Aaronson and Larry Finger  
Email: naaronson@hilcoglobal.com & lfinger@hilcoglobal.com

## 18. PUBLICITY

Except as expressly provided for in this Agreement, and including, for avoidance of doubt, as believed necessary or appropriate to perform the Services, each Party may not, without the prior written consent of the other Party, which may be granted or withheld in such Party's sole absolute discretion (and in the case of the Trustee, without direction by Certificateholders as it may deem necessary or appropriate) (a) make any public pronouncements, issue any press releases or otherwise furnish information regarding this Agreement or the transactions contemplated to any third party other than its attorneys, consultants, accountants, Personnel or Subcontractors (in the event Manager is the disclosing Party) or any other such parties on a need to know basis or (b) include references to the Trust, the Trustee or Manager, as applicable, in any marketing or promotional materials. Notwithstanding the foregoing, with respect to any public pronouncements or public disclosures required by applicable law, Manager shall have the opportunity to review any such pronouncements or disclosures and provide comments to same not less than five (5) business days before the public dissemination thereof and, provided the Trustee complies with this sentence, Manager's consent shall not be unreasonably granted or withheld.

## 19. REPRESENTATIONS AND WARRANTIES

19.1 By Manager. Manager represents and warrants that:

(a) Manager is a Delaware limited liability company in good standing under the laws of the State of Delaware, with full power and authority to enter into and fully perform its obligations under this Agreement and in any other jurisdiction in which it conducts any business so as to require such qualification;

(b) Manager has obtained all necessary licenses and approvals required under all applicable federal, state or local laws, rules and regulations and any other applicable requirements of any government or agency or instrumentality thereof, as such may be amended, modified or supplemented from time to time, necessary to perform the Services hereunder;

(c) Manager has full power and authority to enter into and perform this Agreement and has not granted any rights pertaining to the subject matter hereof to any third party in a manner that prevents Manager from performing the Services hereunder;

(d) Neither this Agreement nor anything required to be done hereunder by Manager violates or shall violate any partnership agreement, contract, or other document to which Manager is a party or by which Manager is otherwise bound;

(e) There are no actions or proceedings against, or, to Manager's knowledge, investigations of, the Manager before any court, administrative or other tribunal (i) that would prohibit its entering into this Agreement or assert the invalidity of this Agreement, (ii) seeking to prevent the consummation of the transactions contemplated by this Agreement or (iii) that prohibit or would materially adversely affect the performance by the Manager of its obligations under, or the validity or enforceability of, this Agreement;

(f) The execution and delivery of this Agreement by Manager have been duly authorized, and this Agreement constitutes the valid, binding, and enforceable obligation of Manager;

(g) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Manager of, or compliance by the Manager with, this Agreement or the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the date of this Agreement;

(h) Neither Manager nor any of its Affiliates shall, directly or indirectly, purchase or acquire in any manner any of the Properties;

(i) Neither Manager nor any of its Affiliates shall, directly or indirectly, act as a lender or a source of financing in any manner (including with respect to any Permitted Indebtedness to the Trust);

(j) Neither Manager nor its Affiliates shall, and shall use their good faith efforts to cause their representatives to not, use the Confidential Information for any purpose except in connection with its performance of the Services hereunder;

(k) To the extent that a vote of the Certificateholders is required for any reason pursuant to the Trust Agreement, Manager shall cooperate with Trustee to effectuate such vote; and

19.2 By the Trust. The Trustee, on behalf of the Trust, represents and warrants that:

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

(b) the Trustee has full power, authority and legal right to execute and deliver this Agreement and has taken all necessary action to authorize the execution and delivery by it of this Agreement;

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

(d) There is no litigation pending nor, to the Trustee's knowledge, is any litigation threatened against the Trust to any of the matters which are the subject of this Agreement or which is reasonably likely to impact the Trust's ability to perform hereunder; and

(e) The execution and delivery of this Agreement by the Trustee on behalf of the Trust have been duly authorized and this Agreement constitutes the valid, binding, and enforceable obligation of the Trust.

## 20. MISCELLANEOUS

20.1 Entire Agreement; Amendment. This Agreement constitutes the full and complete agreement of the Parties with respect to the subject matter hereof. This Agreement may only be amended or waived in a writing signed by the Parties. In the event of any conflict between (a) the provisions of the body of this Agreement and (b) the provisions of any of the Schedules or Exhibits hereto, provisions of the body of this Agreement shall prevail and control the operation of this Agreement.

20.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, any successors of the Trust and Manager and neither shall be permitted to assign. This Agreement shall be binding upon, and inure to the benefit of, any successors of the Manager and Trust but shall not be assigned by the Manager or Trust without the prior written consent of the other party, which consent shall not be unreasonably withheld if the proposed assignee is an Affiliate of the Manager.

20.3 No Third Party Beneficiary. No Person other than the Parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement, including, without limitation, any trust beneficiaries.

20.4 Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall thereupon be deemed modified only to the extent necessary to render the same valid or excised from this Agreement, as the situation may require, and this Agreement shall be enforced and construed as if such provision had been included herein as so modified or had not been included herein, as the case may be.

20.5 Choice of Law, Consent to Jurisdiction. THIS AGREEMENT HAS BEEN DELIVERED IN THE STATE OF NEW YORK AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Each of the parties hereto, to the extent it may do so under applicable law, for purposes hereof: (a) irrevocably submits itself to the exclusive jurisdiction of the courts of the State of New York sitting in the City of New York and to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement, the subject matter hereof or any of the transactions contemplated hereby brought by any party or parties hereto or thereto, or their successors or permitted assigns; (b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof or any of the transactions contemplated hereby may not be enforced in or by such courts; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to each party hereto at its address set forth in Section 17, or at such other address of which the other parties shall have been notified pursuant thereto; and (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction.

20.6 Waiver of Jury Trial. EACH OF THE PARTIES PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS TRUST AGREEMENT, ANY CERTIFICATE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS TRUST AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

20.7 Waiver and Delay. No waiver by either Party of any breach or series of breaches or defaults in performance by the other Party, and no failure, refusal or neglect of either Party to exercise any right, power or option given to it hereunder or to insist upon strict compliance with or performance of either Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach thereof or a waiver by either Party of its right at any time thereafter to require exact and strict compliance with the provisions thereof.

20.8 Titles for Convenience; Interpretation. Titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants, or conditions of this Agreement. In this Agreement, unless the context otherwise requires, (i) words used in the singular or in the plural include both the plural and singular, (ii) references to this Agreement and all expressions like "herein", "hereof" and "hereunder" shall be deemed to refer to this Agreement and all exhibits as amended from time to time, including as affected by any such amendment, (iii) "or", "either" and "any" are not exclusive, (iv) "including" and its variants mean "including, without limitation," and its variants, (v) references to "written," "in writing" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form, (vi) all pronouns and any variations thereof refer to the masculine, feminine or neuter as the context may require, (vii) "Sections" refer to Sections of this Agreement unless otherwise specified, and (viii) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if."

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20.9 Attorneys' Fees. If any legal action is initiated by either of the Parties hereto, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees in addition to any other relief that may be awarded.

20.10 Non-Disparagement. Trustee shall not, and shall cause the Trust to not, disparage the Officers or the Manager Parties to any third party. Neither the Officers nor the Manager Parties shall disparage the Trustee or Trust. For purposes of this section, "disparage" shall mean any negative comments regarding any such party's business practices, investment-related decisions, personnel, integrity, fairness, satisfaction of obligations, or overall performance.

20.11 Damages. The Officers or the Manager Parties shall not be liable for consequential, speculative, remote or punitive damages, and the Trust hereby waives and releases any right to seek or collect any such consequential, speculative, remote or punitive damages against any of the foregoing.

20.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one instrument. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission (including DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[balance of page intentionally left blank – signature page to follow]*

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IN WITNESS WHEREOF, the Trust and Manager have duly executed this Management Agreement as of the Effective Date.

**TRUST:**

**COPPER PROPERTY CTL PASS THROUGH TRUST,**

by GLAS Trust Company LLC, solely in its capacity as Trustee.

By: /s/ Yana Kislenko  
Name: Yana Kislenko  
Title: Vice President

**MANAGER:**

**HILCO JCP, LLC**

By: /s/ Ronal M. Lubin  
Name: Ronald M. Lubin  
Title: Vice President



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**SCHEDULE 1**

**SCOPE OF SERVICES**

Without limiting any of the services to be provided by Manager pursuant to the Trust Agreement or pursuant to the express terms of this Agreement, each of which are expressly incorporated by reference herein, Manager shall provide the Trust with the following services and any ancillary services related thereto, together with any such services as are reasonably requested by the Trustee or are otherwise necessary to accomplish and/or effectuate any of the Services described herein.

**1. Real Estate & Trust Operations Management**

**a. Property Level Management**

- i. Monitor tenant CAM/Real Estate Tax payments.
- ii. Review anticipated Cap Ex plans and expenditures.
- iii. Monitor tenant Cap Ex activities.
- iv. Monitor ground lease payments.
- v. Ground Lease Data Management and Reporting.
- vi. Maintain and monitor insurance
- vii. Repairs and maintenance with respect to Landlord and Tenant option properties after partial / full lease termination
- viii. Use diligent efforts to collect all rents and other income due to the Trust in accordance with the Master Leases or otherwise related to the Properties. All such funds will be deposited in the relevant Company Account within one (1) business day of Manager's receipt thereof.
- ix. Review of tenant's financial reporting.
- x. Delivery of all reports required for waterfall distributions.
- xi. Monitoring of tenant responses to material HVAC, Facilities, Elevator, Mechanical Operations issues.
- xii. Oversight of Onsite Security Plan and Operation.
- xiii. Delivery of all required reports to Trustee.
- xiv. Coordinate with Trust Auditor as necessary.
- xv. Create and distribute monthly report of information received from tenants.
- xvi. Tenant Status Report.
- xvii. Serve as Landlord notice party under the Master Leases.
- xviii. Promptly take all actions required by Landlord under the Master Leases.
- xix. Act as initial Leasing Agent and Property Manager (each as defined in the Trust Agreement).
- xx. Re-market and re-lease any Properties or portions thereof to the extent they are not subject to a Master Lease, a Severed Lease or other lease, including through the retention, to the extent reasonably required, and supervision of third-party leasing agents (subject to Section 11 of the Management Agreement)

**b. Financial Reporting**

- i. Develop, review and certify (CEO and CFO) all filings required to be made with the SEC pursuant to the Securities Act of 1933, as amended (the "Securities Act") or the Securities and Exchange Act of 1934, as amended, including annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K.

- ii. Cooperate with and assist the Trustee in connection with (w) the preparation of a registration statement under the Securities Act, for the registered offer and sale of Trust Certificates (including as may be required pursuant to the Registration Rights and Resale Cooperation Agreement), (x) any third party sales pursuant to a Cooperation Request Notice (as defined in the Registration Rights and Resale Cooperation Agreement), (y) causing the Trust Certificates to be quoted on the OTCQB and/or OTCQX markets and (z), any registration or qualification of the Trust Certificates under the securities laws or Blue Sky laws of states or other jurisdictions of the United States of America, as may be requested, in each case pursuant to the Registration Rights and Resale Cooperation Agreement attached as Exhibit E to the Trust Agreement.
  - iii. Execute all required accounting functions
  - iv. Develop all materials for the Monthly / Quarterly Report in the forms attached to the Trust Agreement
  - v. Provide all information necessary for the Trustee to prepare the Distribution Date Schedule
- c. Investor Relations**
- i. Draft and Issue Monthly and Quarterly (and as appropriate ad hoc) press releases and 8Ks
  - ii. Quarterly Earnings calls
  - iii. Develop Investor slide decks
  - iv. Attend and coordinate investor meetings
  - v. Develop and maintain Trust website with relevant investor materials.
- d. Financial Management**
- i. Create and distribute property sales and marketing status activity reports.
- e. Property Condition Administration**
- i. Review of Property Condition Report "PCR".
- f. Environmental Administration**
- i. Oversight and Admin of Material Environmental Remediation Recommendations.
  - ii. Oversight of Environmental Remediation Firms engaged in Remediation.
- g. Oversight and Support of key property counterparties**
- i. Ground lessors.
  - ii. REA counterparties.
  - iii. Municipal counterparties.
  - iv. Other property-related counterparties.
  - v. Oversight and Support of Real Estate Tax Services.
  - vi. Appeals and audit defense, where appropriate.
- h. Constituent Status Calls**
- i. Originate Weekly/Bi-weekly status meeting, best practices and priority issue calls with other trust advisors, counsel and representatives

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## 2. Asset Management

### a. Global Marketing Strategy and Asset Sale Administration

- i. Creation of global marketing strategy, structuring plan and sales process, including the direction and management of third-party brokers as appropriate.
- ii. Oversight of all marketing/property sales activity.
- iii. Develop and supervise asset sale grouping and timing strategies to optimize sale proceeds.
- iv. Develop strategies to address unusual tenant provisions in the Master Lease including go dark rights and substitution rights.

### b. Third Party Broker Management and Supervision

- i. Assist with the selection process to locate a robust national network of well positioned, best in class brokers.
- ii. To quick start the sales process, download the global marketing strategy to the selected brokers.
- iii. Collaborate with selected broker(s) to establish an aggressive, targeted sales campaign utilizing Manager buy-side contacts, as well as brokers' contact buyer lists.
- iv. Direct broker sales process, advising in strategic negotiation responses, and issue resolution.
- v. With the selected broker(s), create an overall marketing plan for the entire Property – in tranches and/or a single property basis – including price range consideration, marketing time projection, issue mitigation, and target buyer profile.
- vi. Oversee and approve all marketing collateral, advertising, social media, and public relations.
- vii. Coordinate with the selected broker(s) to create a reasonable yet aggressive negotiation strategy. Provide oversight and strategic response to real time negotiation points.
- viii. Provide a final sale recommendation report to the Trustee that details sale results, issue resolution results, and negotiation rationale.
- ix. Coordinate with the Trustee in obtaining, on a quarterly basis, a BOV for each Property that is a Trust Asset pursuant to the Trust Agreement.

### c. Data Management

- i. Creation and administration of buyer Data Room required materials for immediate selected broker access:
  1. Site Plans
  2. Stacking Plans
  3. Property Photos
  4. PCR
  5. Property Level Financial Reports
  6. Corporate Financial Statements
  7. Phase 1 ESA
  8. Survey

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- d. Asset Sale Closing Management**
    - i. Closing Statement Review
    - ii. Sale proceeds reconciliation
    - iii. Cash distribution management
    - iv. Creation of Monthly Settlement Statements
    - v. Assistance with negotiating and closing Property sales, including in connection with Strategic Disposition Transactions (as defined in the Trust Agreement)
  - e. Constituent Status Calls**
    - i. Originate Weekly/Bi-weekly status meeting, best practices and priority issue calls with other trust advisors, counsel and representatives
  - f. Permitted Indebtedness / Equity Sales**
    - i. Cooperate with the Trustee and the Certificateholders (to the extent applicable) with respect to the negotiation of the terms of, execution, consummation and incurrence of any Permitted Indebtedness or any sale of the Trust Certificates (pursuant to the Registration Rights and Resale Cooperation Agreement) on behalf of the Trust with any applicable lenders, noteholders, arrangers, underwriters, structuring agents, bookrunners or similar agents
    - ii. Engage legal counsel and other professional advisors to assist the negotiation, execution and incurrence of Permitted Indebtedness or in connection with any sale of the Trust Certificates pursuant to the Registration Rights and Resale Cooperation Agreement
    - iii. Assist the Trust in the execution of any documentation and satisfaction of any conditions precedent in connection with the Permitted Indebtedness and otherwise assist the closing and disbursement of any Permitted Indebtedness
  - g. Master Lease Administration and Compliance**
    - i. Enforce all rights and remedies of the Landlord (as such term is defined in each Master Lease) with respect to all properties then leased under the related Master Leases and ensure that Landlord is complying with all of its obligations under such Master Leases.
    - ii. Review all budgets and other matters submitted for the approval of the Landlord (as such term is defined in each Master Lease) and make recommendations to the Trustee for approval or denial of approval of such budgets and other matters.
    - iii. Review all financial information and financial and other reporting received from the Tenant (as such term is defined in each Master Lease) and the Lease Guarantors (as such term is defined in each Master Lease) under the Master Leases to verify that such information and reporting complies with the requirements of the Master Leases and, upon such verification, forward such information and reporting to the Trustee.
    - iv. Upon obtaining all property-by-property information (including, without limitation, Base Rent, EBITDA, EBITDAR-to-Rent and EBITDA margins) required to be provided by the Tenant and/or Lease Guarantors pursuant to the Reporting Package (as such term is defined in each Master Lease) for stratification by the Landlord under the Retail Master Lease, make recommendations to the Trustee for such stratifications in accordance with the requirements of the Retail Master Lease.

- v. In connection with sales of properties by the Trust, (1) coordinate with the Trustee in managing and responding to all First Offer Rights, ROFO Rights, Modified ROFO Rights and Marketing Inclusion Rights (as such defined terms are used in each of the Master Leases) applicable under the Master Leases; (2) review offers made by third parties and make recommendations to the Trust as to which offers to accept or reject; (3) once an offer has been accepted, working with counsel to the Trust, negotiate and finalize the form of purchase and sale agreement and the form of Severed Lease (as defined in each Master Lease); (4) close the sale transaction; and (5) manage the reduction of each Permitted No Consent Sublease and Go Dark Substitution basket under the Retail Master Lease resulting from such sales.

**h. Other Services**

- i. Oversee, supervise, assist and approve the work of the Trust's accountants, including all SEC filings including 10Qs, 10Ks and 8Ks and coordinate with the Trust's auditors related to the year-end audit.
- ii. Certification of SEC filings as principal financial officer, to the extent required by law.
- iii. Participation in investor relations activities (including participation in earnings calls and meetings with potential investors).
- iv. All necessary and reasonable assistance in connection with the Long-Term Plan.
- v. Maintain and update Schedule III of the Trust Agreement in coordination with the Trustee.
- vi. Identify those portions of the DC Properties that contain excess developable land parcels ("Excess Land Parcels") which can be sold to third party buyers; take all steps required to create separate tax lots and legally subdivide the Excess Land Parcels so that they can be sold as expeditiously as possible; market for sale and sell the Excess Land Parcels in substantially the same manner as the marketing and sale of other Properties.
- vii. (A) monitor compliance with Section 4.05 of the Trust Agreement, including by keeping anup-to-date (to the extent of its actual knowledge) list of all Tenants (including sub-tenants) and the Collections derived from each Tenant (including each sub-tenant); and (B) take any action it reasonably deems necessary to avoid or mitigate any adverse tax consequences to the Trust, the intended classification of the Trust for U.S. federal income tax purposes or the Trust Assets from any change in Tenant (including any sub-tenant).
- viii. Directly or through reliance on accountants or other professional advisors, monitor and determine on a monthly basis the applicable Assignee/Subtenant Attributable Rent Percentage (as defined in the Trust Agreement). If at any time the Assignee/Subtenant Attributable Rent Percentage for the preceding month is, or the Manager reasonably should expect that such percentage for the following month will be, greater than 3.5%, then, within 10 Business Days after Schedule III is next updated, the Manager shall (if so instructed by the Trustee), determine whether any Excepted Holder (as defined in the Trust Agreement) and its Affiliates own Relevant Equity Interests (as defined in the Trust Agreement) in any Tenant (including any subtenant) and, in such case, whether the Trust would be related to any such Tenant for purposes of Code section 856(d)(2)(B) such that rental income received by the Trust attributable to such Tenant would not be qualifying real property rents under Code section 7704(d)(3) and to determine the amount thereof.

## SCHEDULE 2

### **DEFINITIONS**

The following defined terms shall have the meanings set forth below and in the Agreement:

- a) “Affiliates” means with respect to a Person any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or is a director of such Person. For purposes of this definition, “control” (including the terms “controlling,” “controlled by” and “under common control with”) when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 50% or more of the voting securities of such Person or to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this Agreement, none of the Manager Parties shall be deemed an Affiliate of the Trust or Trustee nor shall the Trust or Trustee be deemed an Affiliate of any of the Manager Parties.
- b) “Agreement” has the meaning set forth in the Introductory Paragraph.
- c) “AM Fee” has the meaning set forth in Section 4.1.
- d) “Approved Subcontractor” has the meaning set forth in Section 11.1.
- e) “Base Fee” has the meaning set forth in Section 4.1.
- f) “Claims” or a “Claim” has the meaning set forth in Section 12.1.
- g) “Confidential Information” has the meaning set forth in Section 13.2.
- h) “Consideration” has the meaning set forth in Section 4.1.
- i) “DC Properties” has the meaning set forth in the Recitals.
- j) “Disclosing Party” has the meaning set forth in Section 13.1.
- k) “Effective Date” has the meaning set forth in the Introductory Paragraph.
- l) “Manager” has the meaning set forth in the Introductory Paragraph.
- m) “Manager Parties” has the meaning set forth in Section 12.1.
- n) “ISO” has the meaning set forth in Section 15.2.
- o) “JC Penney” has the meaning set forth in the Recitals.
- p) “JCP Executive Officer” has the meaning set forth in Section 2.1(a).
- q) “JCP Financial Officer” has the meaning set forth in Section 2.1(a).
- r) “Master Leases” has the meaning set forth in the Recitals.
- s) “Non-Disclosing Party” has the meaning set forth in Section 13.1.
- t) “Officers” has the meaning set forth in Section 2.1(a).
- u) “the Trust” has the meaning set forth in the Introductory Paragraph.
- v) “Party” and “Parties” has the meaning set forth in the Recitals.

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- w) “Performance Standard” means the Manager shall use good faith efforts to: service and administer the Properties solely on behalf of the Trust for the benefit of the Certificateholders and in accordance with applicable law, the terms of this Agreement, the terms of the Trust Agreement. With respect to the foregoing, the Manager shall perform the Services: (a) substantially the same manner in which and with substantially the same care, skill, prudence and diligence with which the Manager services and administers similar properties for itself and/or other third-party portfolios, giving due consideration to customary and usual standards of practice of prudent institutional commercial property and asset managers in administering portfolios of commercial properties for Lenders and owners; (b) use good faith efforts to maximize the recovery on the properties to the Certificateholders of the Trust on a net present value basis; (c) use good faith efforts to timely execute on all of the Manager’s material obligations under the Management Agreement; and (d) in good faith, without regard to any conflicts that may arise with respect to (i) any relationship that the Manager or any affiliate thereof may have with JC Penney, any tenant under the Master Leases, or any of their respective affiliates, or (ii) the ownership or management for others of any other property or portfolios of properties by the Manager.
  - x) “Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.
  - y) “Personnel” has the meaning set forth in Section 3.1.
  - z) “Properties” has the meaning set forth in the Recitals.
  - aa) “Property Level Contractors” has the meaning set forth in Section 2.2.
  - bb) “Restricted IP” has the meaning set forth in Section 19.1.
  - cc) “Retail Properties” has the meaning set forth in the Recitals.
  - dd) “Services” has the meaning set forth in Section 2.1.
  - ee) “Subcontractor” has the meaning set forth in Section 11.1.
  - ff) “Term” has the meaning set forth in Section 5.1.
  - gg) “Trust Agreement” means that certain Amended and Restated Trust Agreement, dated as of January 30, 2021 by and between Copper BidCo LLC and GLAS Trust Company LLC, as trustee.
  - hh) “Work Product” has the meaning set forth in Section 14.

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**SCHEDULE 3**

**COMPENSATION**

**1. Base Fee.** The Trust shall pay to Manager a base fee (the "Base Fee") in an amount equal to the greater of: (i) 5.75% of the Lease Payments (as defined in the Trust Agreement but excluding the impact of any rent abatements under the Retail Master Lease or the DC Master Lease unless to the extent covered by business interruption or lost profits insurance) of the Properties per month; and (ii) \$333,000 per month. The Base Fee shall be paid to Manager monthly in arrears on the tenth (10<sup>th</sup>) day of each month during the Term.

**2. AM Fees.** The Trust agrees to pay to Manager, the AM Fees as set forth below:

- (A) A closing fee (the "DC Closing Fee") in an amount equal to \$50,000 per DC Property sold, payable on the 10<sup>th</sup> day of the month succeeding the month during which a DC Property (as defined in the Trust Agreement) is sold in accordance with the Management Agreement and the Trust Agreement; provided that any accrued but unpaid DC Closing Fees shall become due and payable on the termination date of the Management Agreement; and
- (B) Any success fee as set forth in the parameters agreed by the Trustee on behalf of the Trust and the Manager.



**COPPER PROPERTY CTL PASS THROUGH TRUST**

**LIST OF SUBSIDIARIES**

**Name of Subsidiary**

CTL PropCo I LLC

CTL PropCo I LLC

CTL PropCo I LP

CTL PropCo II LP

**State of Formation,  
Organization, or Incorporation**

Delaware

Delaware

Delaware

Delaware

**Consent of Independent Registered Public Accounting Firm**

We consent to the use of our report dated March 20, 2020 with respect to the consolidated financial statements of Old COPPER Company, Inc., formerly known as J. C. Penney Company, Inc. as of February 1, 2020 and February 2, 2019 and for each of the years in the three-year period ended February 1, 2020 incorporated by reference herein. Our report on the consolidated financial statements refers to a change in accounting method as of February 3, 2019 for the adoption of Financial Accounting Standards Board Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842), as amended.

/s/ KPMG LLP

Dallas, Texas  
February 5, 2021