14 CV 8741

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JACOB FRYDMAN

Plaintiff,

-against-

WARREN DIAMOND and SCOTT DIAMOND

Defendants.

Civil Action

VERIFIED COMPLAINT

JURY DEMAND

Plaintiff, JACOB FRYDMAN ("Frydman" or "Plaintiffs"), complaining of Defendants, WARREN DIAMOND ("Warren") and SCOTT DIAMOND ("Scott") (Warren and Scott are sometimes referred to individually as "Defendant" and collectively as "Defendants" or the "Diamonds") alleges, as follows:

NATURE OF THE ACTION

1. This is an action for civil damages under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 et. Seq.) ("RICO"), flagrant breaches of fiduciary duty, breaches of the governance documents and other contractual breaches, the taking of unauthorized and ultra vires acts, fraud, abuse of control, gross mismanagement, liquidated damages, indemnification and declaratory relief as well as injunctive relief barring Defendants' culpable conduct with respect to the ownership and control of the DHL Center located at 500 Tenth Avenue, New York, New York as described in this Complaint.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over Plaintiffs' RICO claims pursuant to 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over Plaintiff's state law and common law claims pursuant to 28 U.S.C. § 1367(a), which claims are so related to Plaintiff's federal claims as to form part of the same case or controversy.

4. Venue and personal jurisdiction is also proper under § 1965(b) in this forum because the ends of justice require that any defendant residing in another District be brought before this Court. Venue is proper under §1391(a) and (b) in that a substantial part of the events or omissions giving rise to the claims occurred in this District. Venue is also proper under principles of pendent venue because all claims arise out of the same nucleus of operative facts.

PARTIES

5. Plaintiff Jacob Frydman is a natural person residing in the state of New York, with his principal place of business in New York County, New York.

6. Defendant Warren Diamond is a natural person residing in the state of New Jersey, with his principal place of business at 788 Shrewsbury Avenue, Suite 105, Tinton Falls, NJ 07724.

7. Defendant Scott Diamond is a natural person residing in the state of New Jersey, with his principal place of business at 788 Shrewsbury Avenue, Suite 105, Tinton Falls, NJ 07724.

PRELIMINARY STATEMENT

8. Plaintiff Frydman is the CEO and Chairman of United Realty Trust, a public real estate investment trust, and for more than the past 30 years, a real estate investor and developer.

9. For more than 20 years, Frydman, who is also an attorney[1] has partnered on numerous transactions with Mitch Rutter ("Rutter"), another attorney turned developer, in the acquisition, development and re-development of over 2,000,000 square feet of commercial real estate transactions in and around the city of New York.

10. In 2002 Frydman and Rutter formed Tunnel Associates LLC ("Tunnel") as their holding company to be the sole member in 500 Lincoln LLC ("500 Lincoln"), a single purpose bankruptcy-remote entity, through which they acquired control of 500 Tenth Avenue, an approximately 250,000 square foot building located on Tenth Avenue between 38th and 39th Streets in Manhattan, diagonally across from the entry to the Lincoln Tunnel (the "Property").

11. The Property is currently rented to DHL USA, LLC ("DHL"), the international letter carrier which is a wholly owned subsidiary of Deutsche Post, the German post office and used as the DHL Center in Manhattan.

12. Tunnel is currently, and has since its formation, been owned 50% by affiliates of Plaintiff and 50% by affiliates of Rutter. Plaintiff and Rutter are the two managers of Tunnel, who together control the management and operation of Tunnel.

13. In April 2002, 500 Lincoln was 100% owned by Tunnel.

14. 500 Lincoln (sometimes referred to herein as the "company" or the "partnership") is currently owned 50% by Tunnel and 50% by Corem Capital Partners, LLC ("Corem").

15. 500 Lincoln is a New York limited liability company which is governed pursuant to a limited liability company operating agreement (the "500 Lincoln Operating Agreement") which, since 2002 has been amended and modified by a series of other agreements. A copy of the 500 Lincoln Operating Agreement is attached hereto as Exhibit "A".

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[1] Frydman is licensed and in good standing in Ohio, but because he does not formally practice law, he maintains his license on inactive status so that he is not required to undertake mandatory continuing legal education courses.

16. Corem is, on information and belief owned 50% by SDD&F LP, 25% by John Del Monaco and 25% by Defendant Warren Diamond[2]. A copy of the Corem Operating Agreement is attached hereto as Exhibit "B".

17. SDD&F LP is on information and belief an affiliate of, and wholly controlled by Salvatore Cannizzaro ("Cannizzaro"). Cannizzaro is a co-manager of Corem together with Del Monaco and Defendant Scott Diamond, who are the two other co-managers of Corem.

18. Scott Diamond is Warren's son, and on information and belief the sole owner and manager of SLD 500 LLC. Scott and Warren have asserted that Scott is also the sole trustee of the Warren Diamond 2005 Grantor Trust (the "Diamond Trust").

19. The underlying dispute concerns the management of 500 Lincoln, and the rights and obligations of Defendants Scott and Warren with respect to the management and operation of the Property.

INTRODUCTION

20. As is more fully described herein, defendants Scott and Warren, in complete and utter disregard of their contractual and legal undertakings, and motivated solely by greed and their view that abusing their partners is a sport at which they excel, have spent the past 12 years abusing their respective positions of management of 500 Lincoln and the various other entities with which they have been involved with Plaintiff.

21. The Diamonds illegal and abusive conduct over the years has cost plaintiff and the other principals in 500 Lincoln (and the other entities in which the Diamonds and Plaintiff have been involved in) millions of dollars, *inter alia,* as a result of fraud, deceit, waste, stolen funds, litigation and arbitration costs and expenses, property damage, costs to protect their physical

[2] As is discussed in greater detail hereafter, in 2005, Warren Diamond's interest in Corem was supposed to be conveyed to the Warren Diamond 2005 Grantor Trust.

safety and lost business opportunities.

22. The financial losses caused by the Diamonds over the years pales in comparison to the emotional distress intentionally caused by the Diamonds on plaintiff and the other principals in 500 Lincoln.

23. Motivated by their desire to steal from Plaintiff and the other principals of 500 Lincoln, and injure their business and property, Warren and Scott are each a culpable person who conducts the affairs of an enterprise, through SLD and their real estate development company American Real Estate Management, through a pattern of racketeering, by, inter alia, committing numerous criminal acts as hereinafter set forth which constitutes "racketeering activity" as defined in section 1961(1) of RICO, in that they involve mail or wire fraud, criminal violations of the the Hobbs Act 18 U.S.C. § 1951, forgery, perjury in violation of violation of the Federal Perjury Statute 18 U.S.C. § 1621; attempted extortion; and making false and fraudulent representations in the 2005 and 2012 Settlement Agreements all with the intent to damage the business and property of Plaintiff.

24. Over the years Plaintiff and the other principals in 500 Lincoln have been subjected into or forced to initiate dozens of litigations and arbitrations against the Diamonds to protect their various interests. Each of these protracted and expensive litigations and arbitrations have in most cases been resolved by a settlement agreement, which at the time of its execution, promised to resolve the issues, place the Diamonds in a position where they cannot thereafter further abuse or harm plaintiff or the other principals in 500 Lincoln. Yet plaintiff has discovered that Defendants committed fraud in inducing Plaintiff to enter into the various settlement agreements in that as to each settlement agreement the Diamonds made false and fraudulent misrepresentations of fact which were made with the intent that plaintiff rely on said

misrepresentations, and on which Plaintiff did reasonably rely, to his detriment.

25. Plaintiff has had enough!

26. This action is being commenced by Plaintiff because as of October 24, 2014, and as a result of Defendants continuing criminal enterprise, the Diamonds have once again sought to extort Plaintiff, and otherwise abuse Plaintiff and their other partners, breach their various agreements, and caused 500 Lincoln to lose a $90 million financing, and exposing the 500 Lincoln principals to $86 million in phantom income tax liability over the next 11 years.

27. Plaintiff brings this action seeking a permanent injunction forever barring Warren or Scott from having any management or other control rights in 500 Lincoln and permanently enjoining them from disrupting the business of 500 Lincoln, abusing Plaintiff and the other principals, using their criminal shenanigans to steal from, extort and otherwise wreak havoc and cause harm to Plaintiff and his businesses.

HISTORICAL PERSPECTIVE

28. In April 2002 Tunnel entered into a ground lease and an option to purchase the fee interest in 500 Tenth Avenue, New York, NY ("500 Tenth Avenue" or the "Property") from its then owner.

29. At the time of the April 2002 transaction Corem was not involved in 500 Lincoln or the Property.

30. Corem came to the project later, when Defendant Warren, Corem's then principal, was introduced to Frydman and Rutter by a mutual acquaintance. At the time, the fourth and fifth floors of 500 Tenth Avenue were vacant and Tunnel was seeking a tenant to rent those floors.

31. Warren expressed interest in renting the two vacant floors for his self-storage business operated under the "American Self Storage" trade name. However, he was not interested in

renting in the building unless he also became one of its owners.

32. In October 2002, Tunnel made a deal with Warren through which his storage business ("Tunnel Self Storage, LLC" or "TSS") agreed to lease the two vacant floors. 500 Lincoln also sold a 49% interest in 500 Lincoln to Corem, thus making Warren a minority owner in the Property as well as a tenant.

33. As part of the deal, Tunnel wanted $1.5 million more than Warren was willing to pay for Corem's purchase of the minority interest in 500 Lincoln. To make the deal work, the parties agreed that Tunnel, or its affiliates, would acquire a minority interest in TSS, and that TSS would loan $1.5 million on a "non-recourse basis" to Tunnel's affiliated members in TSS.

34. Tunnel and Warren agreed that all landlord and tenant bank accounts would require joint signatures, one from either of Rutter or Frydman, and one from Warren.

35. Warren volunteered to open several of the accounts at a bank where he had long-standing relationships that was close to his office in New Jersey, offered to have his bookkeeper maintain the accounts, and send Plaintiff monthly statements and Plaintiff had no reason to object.

36. Warren opened two accounts for the business -- an operating account in November 2002 and a so-called Money Market Account in December 2003 and circulated signature cards for Frydman and Rutter to sign, which they did, and returned them to Warren so that he could deliver them to that bank.

37. During Tunnel's negotiations with Warren, Frydman asked Warren directly if he had ever been convicted of a crime or if he had any past dealings that would or could be of concern to Plaintiff as potential partners. Warren said he had none and Plaintiff did not find any evidence to the contrary.

WARREN'S FIRST FRAUD

38. In 2002, Frydman and Rutter could never have suspected that going into business with Warren would lead to more than a decade of frustration, headache and constant battles to protect their business interests.

39. Warren concealed from Frydman and Rutter that he was, in fact, a convicted felon who had served time in federal prison.

40. He had previously been charged and convicted on federal RICO charges relating to a wide variety of criminal activities in association with the Bonanno organized crime family, which was connected to the nationwide criminal organization known as "La Cosa Nostra."

41. Warren and his cohorts were charged in a sixty-four count federal indictment with participating in a racketeering enterprise which had as its object the control and use of a union to obtain money from New York moving and storage companies through various schemes and acts of extortion, rigging bids for government contracts, requiring unlawful employer payoffs, and receiving and making illegal payments to union representatives. In exchange for the payoffs, the companies received, according to the indictment, labor peace, lucrative government contracts, relaxed enforcement of union rules and contracts, and other benefits.

42. Warren was convicted of the charges and served time in federal prison.

43. As he was leaving prison, Warren had changed his name, which Plaintiff believes was so that he could conceal his criminal past.

44. Obviously, having a business partner with a criminal history is a major concern for real estate investors like Plaintiff. In addition to the obvious concerns, since the business relies on their ability to source capital, and since investors and lenders generally will not invest in a project where one of the principals is a convicted felon, Plaintiff always inquires.

45. But when Plaintiff asked Warren directly if he had ever been convicted of a crime (or if he had any past dealings that would be of concern), he lied and said he had none.

46. Warren's criminal history was a major issue, and his deliberate concealment of his past was just the beginning of a long series of troubles caused by him.

47. Plaintiff did not uncover Warren's criminal past until after Plaintiff had gotten into a dispute with Warren in March 2004, after TSS defaulted by failing to pay the rent for the fourth and fifth floors and 500 Lincoln was forced to serve a Notice of Default.

48. In response, Warren proceeded to threaten Plaintiff with serious physical harm.

49. He stated to Plaintiff that if he were to pursue the claims for unpaid rent he might find himself "dead in a garbage can".

50. He even threatened to "burn down" the two building which at that time they had jointly acquired.

51. To prove that he was serious Warren took a baseball bat to a classic collector Mercedes Benz owned by Plaintiff, which Plaintiff was storing in a jointly owned building, and smashed its windows, severely dented the car's body, and destroyed all the lights.

52. Plaintiff became concerned that he may in fact be in danger of physical harm, and so for most of the remainder of 2004 Plaintiff retained armed body guards to protect him against Warren.

53. In early 2004, at a time that Warren had been approximately $500,000 in arrears on the rent payments Plaintiff instituted a summary eviction action against the tenant.

54. To his great amazement, Warren's defense to that action was that the rent was indeed paid.

55. Not only had he claimed to have paid the past due rent, but he claimed in documents

filed with the court that he "pre-paid" the next six month's rent.

56. To prove his claim of rent payment he produced a copy of a check for more than $1.2 million drawn on the tenant's account, which showed, based on the endorsement, that it was deposited in the landlord's account.

57. Plaintiff was shocked and perplexed.

58. Plaintiff contacted the bank and learned that the bank balance in the landlord account ***after*** the rent payment was alleged to have been made, was ***exactly*** the same as the bank balance in the landlord account ***prior*** to the rent payment having been made.

59. Plaintiff requested that the bank directly send him a copy of all the bank statements showing all transactions on the two accounts.

60. When the documents arrived from the bank Plaintiff learned that on March 24, 2004, Warren stole $1.28 million from the landlord's Money Market Account. He deposited those stolen landlord's funds into the tenant's account, and drew a check on the tenant's account which he used as evidence in the court proceeding, claiming to have paid the past-due rent on behalf of TSS, and to pre-pay the rent for the next six months, and deposited that check into the landlord's account.

61. In effect, Warren used the landlord's own funds to claim to pay the rent on behalf of the tenant.

62. In reviewing the bank statements Plaintiff also learned that on February 26, 2004, Warren improperly withdrew, without Plaintiff' knowledge or consent, $833,000 from the Money Market Account, and attempted to use the funds to bid at an auction sale of a $7 million mansion in Middletown New Jersey[3].

63. In reviewing the bank statements Plaintiff also learned that Warren improperly, and

[3] He did not win the auction, and re-deposited the check the next day.

without Plaintiff's consent or knowledge, linked the landlord's Money Market Account to Warren's other accounts at that bank, to facilitate his theft of additional funds.

64. Warren knew that if he simply wrote bad checks on the tenant operating account that bounced, that the bank would shift funds from the Money Market Account to cover the shortfall.

65. Warren was able to conceal his criminal activity because the bank statements were sent only to Warren's office.

66. What Plaintiff eventually learned was that after Plaintiff delivered signed signature cards to Warren, he then added himself and others to those signature cards, giving himself check-signing privileges while withholding knowledge of that from Plaintiff.

67. Notwithstanding Plaintiff's numerous requests, Warren refused to provide Plaintiff with the signed signature cards for either the operating account or the Money Market Account.

68. Warren's actions were also a direct and willful breach of the terms of the 500 Lincoln Operating Agreement, which required the unanimous consent of 500 Lincoln's two managers – at the time, Warren and Tunnel – for all banking transactions.

69. These and numerous other disagreements led Plaintiff and Warren into very serious disputes concerning the management and ownership of 500 Lincoln.

70. From Plaintiff's perspective, these disputes were not mere disagreements about the management and direction of the enterprise, but derived from very grave concerns about Warren's criminal activities and wrongdoings, his threats on Plaintiff's physical safety, the destruction of Plaintiff's property, and his ongoing acts to steal from Plaintiff's businesses.

71. As a result of these and other disputes, the parties became immersed in very significant multiple litigations.

72. On November 3, 2005, Plaintiff entered into a settlement agreement (the "2005

Settlement Agreement") based on Warren's promises to divest himself of all ownership and management rights in any and all of the jointly owned entities, by transferring those direct and indirect ownership interests to a trust over which he would have no control, to cause Plaintiff to be repaid the sums stolen from Plaintiff as a priority distribution from future proceeds, and his commitment that for so long as either Plaintiff or Mr. Rutter or any entity in which either of them or any of their family members had a direct or indirect interest, Warren would never be in a control or management position, nor would he ever thereafter have any ownership, or equitable interest, whether direct or indirect, in any of the entities which control or own any of the joint enterprises, and that he would not serve as trustee of the trust to which his prior interests were transferred.

73. In reliance on these promises, Plaintiff entered into the 2005 Settlement Agreement to (he thought) forever rid himself of Warren, settle existing litigations and put Plaintiff in a position where there would be no future litigation. A copy of the 2005 Settlement Agreement is attached hereto as Exhibit "C".

74. Plaintiff was wrong. With the ink barely dry on the 2005 Settlement Agreement Warren initiated a lengthy and protracted arbitration before the Honorable Michael J. Dontzin challenging provisions of the 2005 Settlement Agreement, and wrongfully attempting to extract money from Plaintiff.

75. Shortly before September 11, 2006, a date on which hearings in the arbitration were scheduled, Warren, through his lawyer, made a written request to Judge Dontzin that the September 11th hearing be continued because Warren was "participating in a September 11th Memorial Service".

76. Judge Dontzin granted Warren's request for the continuance.

77. Plaintiff had reason to believe that Warren in fact was ***not*** intending to participate in any memorial services on September 11th, and so Plaintiff hired a private investigator to follow him on that day.

78. In fact, Warren did not participate in any September 11th memorial service. He did not even attend any such service.

79. Nonetheless, on the next scheduled hearing date, Plaintiff's counsel at that time, Cyrus Vance, the current Manhattan District Attorney, asked Warren about this while he was under oath.

80. Warren perjured himself by saying that he did indeed participate in such a memorial service.

81. But when confronted with the true facts, he admitted that he did not participate or attend a memorial service, instead he went to a Japanese restaurant and a shopping mall with his wife, but attempted to justify his perjury by stating that he "drove-by" the National Cathedral where a memorial service was taking place.

82. In his December 22, 2006 arbitration decision, Judge Dontzin commented on Warren's perjury. The decision observed as follows:

> *I now turn to the disturbing credibility issue. I find it difficult to understand why Diamond created this problem for himself ...I find this to be a serious reflection on his credibility. ..*

THE 2005 SETTLEMENT

83. The critical component of the resolution set forth in the 2005 Settlement Agreement was Warren's agreement to create a blind trust (the "Diamond Trust") and to agree to give up his ownership interests in 500 Lincoln, 500 Tenth, Corem and the other relevant entities, and to transfer those interests to the blind trust.

84. Warren also agreed to give up his roles as manager of 500 Lincoln, 500 Tenth, Corem and the other entities.

85. The 2005 Settlement Agreement makes clear that the termination of Warren's participation in 500 Lincoln is intended to be permanent. Namely, the 2005 Settlement Agreement provides at ¶3(c) that:

> *If and for so long as either Frydman or Rutter or any entity in which either of them or any of their immediate family members has a direct or indirect beneficial, equitable, ownership, management or other interest, then in no event may Diamond ever (i) be a manager of 500 Lincoln, 500 Tenth, 636 Eleventh Mezzanine LLC, 636 Eleventh Associates, LLC, JD or American Telcom Mgmt., LLC again or ever have any ownership, equitable, whether direct or indirect, in any such entities again from and after the Effective Date (other than as a beneficiary of the Diamond Trust) or (ii) serve as the trustee of the Diamond Trust.*

86. The 2005 Settlement Agreement specifically provided that John Del Monaco, one of the beneficial owners of Corem, would succeed Warren as the co-manager of 500 Lincoln and Corem and as manager of several other entities.

87. In some cases Mr. Del Monaco was to act in his individual capacity, and in some instances he had a right to elect to act either in his individual capacity, or through JD Corem, LLC, an entity owned 100% by he and his wife, and of which Mr. Del Monaco was the manager.

88. The 2005 Settlement Agreement also provides that Warren's son, Defendant Scott Diamond may succeed John DelMonaco as manager of JD Corem, LLC after a six-year period. That provision, however, did not specifically apply to the management of 500 Lincoln.

<u>THE OPERATION OF 500 LINCOLN AFTER WARREN'S REMOVAL</u>

89. Following the execution of the 2005 Settlement Agreement, John DelMonaco became co-manager of 500 Lincoln and co-manager of Corem.

90. During the intervening six years, Mr. Del Monaco maintained a cooperative co-managerial relationship with Plaintiff and Mr. Rutter, and together, and with Warren and his agents out of the picture, they were able to greatly enhance the economic results for the beneficial owners of 500 Lincoln and significantly enhance the value of the Property.

91. Among other things, during Del Monaco's tenure as a co-manager of 500 Lincoln together with Frydman and Rutter they were successful in (i) buying out the lease of VGS, a tenant in the Property; (ii) causing DHL to expand into the space previously occupied by VGS at a significant rental increase; (iii) effect an early exercise of the purchase of the fee interest from the ground lessor; (iv) terminate the ground lease and cause 500 Lincoln to form a subsidiary, 500 Lincoln Owner, LLC to take title to the fee interest in the Property; (v) negotiate with Teachers Insurance and Annuity Association ("Teachers") and close on a $97 million single-tenant credit bond mortgage in favor of Teachers, secured by the Property; (vi) amend and modify the DHL lease at least three times to the mutual benefit of DHL and 500 Lincoln; and otherwise execute numerous co-instructions and directives to manage the enterprise for the mutual benefit of its owners.

92. In October 2011, Plaintiff, Rutter and Del Monaco issued joint bank instructions providing for automatic monthly electronic distribution of certain funds of 500 Lincoln to the beneficial owners of Tunnel and Corem. The instructions were consistent with the agreement between Tunnel and Corem to distribute the proceeds at issue 50-50.

SCOTT DIAMOND ASSERTS MANAGERIAL RIGHTS IN 500 LINCOLN

93. Unfortunately, the peace and harmony, not to mention the economic benefits, generated during the six years that the Diamonds were not involved in the management of the enterprise came to a halting stop when Del Monaco resigned as a co-manager of 500 Lincoln in

November 2011.

94. Scott, Warren's son, asserted that he succeeded Mr. Del Monaco as manager of the entity called JD Corem, LLC, and, by virtue of that role, was also co-manager of 500 Lincoln and Corem.

95. Based on Scott's January 2012 representation to Plaintiff and Citibank N.A. that he succeeded to the manager role of JD Corem, LLC, and that JD Corem, LLC was an entity with "certain management rights to 500 Lincoln" Plaintiff agreed to permit Scott to become a signatory on the 500 Lincoln bank account at Citibank in February 2012 as the successor to John Del Monaco.

96. In fact, Scott's representations to Plaintiff and Citibank were untrue.

97. On or about May 15, 2012 Plaintiff learned that in fact Scott did not succeed to the role of manager of JD Corem, LLC, and based on his misrepresentation of that fact to Plaintiff and Citibank, Plaintiff rescinded his consent to have Scott act as a signatory on the bank account of 500 Lincoln.

98. There was no provision in the Settlement Agreement which permitted Scott to succeed Mr. Del Monaco as a manager of 500 Lincoln in his individual capacity, and it is undisputed that Mr. Del Monaco was co-manager of 500 Lincoln in his individual capacity.

99. As a result Plaintiff and Tunnel asserted that Scott therefore had no right to act as Del Monaco's successor.

100. During the period from February through May 2012, prior to learning that Scott fraudulently induced Plaintiff to permit Scott to act for 500 Lincoln, Scott had acted in inappropriate ways to the detriment of 500 Lincoln, Corem and their respective members, all without true authority to do so.

101. Scott had issued unilateral instructions to Citibank effectively freezing 500 Lincoln's bank account in violation of the operating agreements of 500 Lincoln and to the detriment of Tunnel's and Corem's beneficial owners, thus causing disruption in the distribution of funds belonging to the beneficial owners of 500 Lincoln.

102. Scott had also refused to execute, or had sought to extract benefits for himself and/or Warren by demanding unacceptable amendments to, a lease amendment required by DHL, the tenant of the Property owned by 500 Lincoln, to undertake a significant construction project at the Property.

103. Scott's refusal to execute the lease amendment without extracting personal benefit for himself and/or Warren or the Diamond Trust, as well as the fact that he had no rights to execute same, but had been able to interfere with its execution, at that time threatened to expose 500 Lincoln to hundreds of thousands of dollars in additional costs associated with the work, and risked causing a default under the loan made by Teacher's Insurance Association to 500 Lincoln Owner, LLC secured by the Property.

104. Plaintiff believed that Scott was acting at the direction of and as the puppet of Warren in a manner not in the best interests of 500 Lincoln, its members, its tenant, its lender and in violation of the 2005 Settlement Agreement.

105. Scott's actions at that time threatened to cause losses and waste at 500 Lincoln.

WARREN NEVER DIVESTED FROM COREM

106. At about that same time Plaintiff learned that Warren breached material terms of the 2005 Settlement Agreement by failing to divest himself of his ownership and management in 500 Lincoln and Corem.

107. Specifically, Warren was required under the 2005 Settlement Agreement to

transfer all of his ownership interests to a blind trust (the "Diamond Trust") and to relinquish all managerial control with respect to 500 Lincoln and Corem and the other entities.

108. Warren represented and warranted to Plaintiff that he did transfer all of his ownership interests to a blind trust (the "Diamond Trust") and relinquished all managerial control with respect to 500 Lincoln and Corem and the other entities.

109. Warrens representations were false and fraudulent, in that, as detailed below, he neither transferred his ownership interests to a blind trust nor did he relinquish all managerial control with respect to 500 Lincoln and Corem and the other entities.

110. Plaintiff was unable to obtain confirmation that the trust was ever created, let alone that the interests were ever transferred to it.

111. Plaintiff also learned at that time that Corem never actually issued K-1s to the Diamond Trust, but instead, at Warren's accountant's instruction, issued the K-1s directly to Warren, thus evidencing Warren's breach of the 2005 Settlement Agreement.

112. Plaintiff also learned that the accountant for a member in 500 Lincoln has asked numerous times for the tax identification number for the Diamond Trust, but never received it.

113. Plaintiff also learned that the account to which Corem designated payments be made from 500 Lincoln (which payments were directed to the beneficial owners), to the "Warren Diamond Trust" was not a trust account, but rather a joint savings account at JP Morgan Chase in the names of Warren and Scott Diamond.

114. As a result of the foregoing, it appeared as if Warren never actually divested his interests in Corem as required by the 2005 Settlement Agreement. Additionally, Scott's behavior and actions led Plaintiff to believe that rather than act independently as envisioned by the 2005 Settlement Agreement, Scott was acting in concert with, in fact at the direction of,

Warren.

115. Thus Warren and Scott's representations to Plaintiff were false and fraudulent, and were made to induce Plaintiff to enter into various settlement agreements, and Plaintiff reasonably relied on said misrepresentations to his detriment.

116. Thus Warren and Scott also effected multiple breaches of the 2005 Settlement Agreement.

117. As a result of Warren and Scotts' fraudulent misrepresentations and breaches of the 2005 Settlement Agreement Plaintiff caused Tunnel to initiate litigation against Warren and Scott, and that litigation led to additional disputes between the parties.

ADDITIONAL FACTS RELATING TO THE CLAIMS ASSERTED HEREIN

118. As a result of the various disputes, during 2012 the parties again became immersed in multiple acrimonious litigations and disputes among Frydman and Rutter on the one hand, and Scott and Warren on the other, with respect to their respective management rights and obligations pursuant to the 500 Lincoln Operating Agreement and the Settlement Agreements[4].

119. In an effort to forever resolve these disputes, on December 12, 2012, Plaintiff and Defendants (together with Rutter, Tunnel and SLD 500 LLC, an entity believed by Plaintiff to be owned and controlled by Scott) entered into yet another settlement agreement (the "2012 Settlement Agreement"). A copy of the 2012 Settlement Agreement is attached hereto as Exhibit "D".

120. Pursuant to the 2012 Settlement Agreement, and in reliance on specific representations and warranties made by Scott in favor of Plaintiff, Plaintiff agreed that SLD 500

[4] Tunnel, Corem, 500 Lincoln and 500 Tenth, LLC were also Parties to a certain agreement dated as of April 27, 2009 (the "2009 Settlement Agreement"; together with the 2005 Settlement Agreement, collectively the "Settlement Agreements").

LLC ("SLD"), an entity claimed by Scott to be wholly owned by Scott, and of which Scott was to be the sole control person, would replace Del Monaco as the co-manager of 500 Lincoln.

121. In order to induce Plaintiff to agree to permit Scott to become his co-manager in 500 Lincoln, Scott expressly represented and warranted, agreed and covenanted to Plaintiff at Section 2 (b) of the 2012 Settlement Agreement:

> *"that: (i) SLD 500 LLC was formed by him solely to act as a co-manager of 500 Lincoln and 500 Tenth (and, if acceptable to Corem, Corem) and for no other purpose; (ii) that on the date hereof Scott Diamond in his individual capacity is a co-manager of Corem; (iii) that Scott Diamond owns 100% of the membership or other ownership interests in SLD 500 LLC; (iii) that Scott Diamond is the sole manager or sole managing member of SLD 500 LLC; (iv) that so long as 500 Owner, 500 Lincoln or 500 Tenth or any other entity in which Tunnel, Frydman or Rutter have any direct or indirect interest, owns the Property or any interest in the Property, Scott Diamond shall not: (a) sell SLD 500 LLC or any interests therein; (b) permit any other person to own any membership or other interest in SLD 500 LLC; (c) except as set forth herein, permit any other person to be a manager or managing member of SLD 500 LLC or otherwise have the ability to control or take any action on behalf of or otherwise cause SLD 500 LLC to act or refrain from acting on any matter whatsoever".*

122. In order to induce Plaintiff to agree to permit Scott to become his co-manager in 500 Lincoln, Scott expressly agreed and covenanted to Plaintiff at Section 2 (c) of the 2012 Settlement Agreement :

> *In the event that Scott Diamond in his individual capacity (or SLD 500 LLC, if it has become a substitute manager of Corem) shall cease to be a manager of Corem, then such event shall be deemed the automatic resignation of SLD 500 LLC as co-manager of 500 Lincoln and 500 Tenth.*

123. In order to induce Plaintiff to agree to permit Scott to become his co-manager in 500 Lincoln, Scott expressly agreed and covenanted to Plaintiff at Section 2 (d) of the 2012 Settlement Agreement :

> *that so long as Rutter or Frydman or any of their Affiliates have a direct or*

indirect interest in Tunnel, 500 Tenth, 500 Lincoln, and/or 500 Owner, Warren Diamond shall not be designated as a successor manager of SLD 500 LLC.

124. Among the many disputes between the Diamonds and plaintiff a recurring dispute related to the selection of lawyers to represent 500 Lincoln in its various business dealings.

125. Allen & Overy LLP had represented 500 Lincoln and Tunnel in various matters and Frydman was comfortable with Allen & Overy's representation of 500 Lincoln.

126. In order to forever resolve that issue (or at least plaintiff's expectation that it would forever be resolved) and in order to induce Plaintiff to enter into 2012 Settlement Agreement, Warren and Scott expressly agreed that law firm of Allen & Overy LLP would represent 500 Lincoln in connection with all general transaction matters except only the future sale or ground lease of the Property upon the termination of the DHL lease. (See definition of "Parties' Lawyers" at page 14 of the 2012 Settlement Agreement which states: "**"Parties' Lawyers"** means, with respect to general transaction matters other than any ground lease or sale agreement for the Property pursuant to Section 5 herein, including but not limited to matters pertaining to the DHL Lease, Allen & Overy LLP…").

127. The representation for general transaction matters to be provided by Allen & Overy LP, as contemplated by the 2012 Settlement Agreement included, without limitation, all matters relating to the DHL lease as well as all matters relating to the financing or refinancing of the Property which involved pledging rents to be paid under the DHL lease as collateral for such financings.

128. The 2012 Settlement Agreement provides at paragraph 20 thereof that it modifies and amends, in accordance with its terms, the terms of each of the 500 Lincoln Operating Agreement, and the Settlement Agreements, and that in the event of any inconsistencies between

the 2012 Settlement Agreement and the 500 Lincoln Operating Agreement or the Settlement Agreements, the terms of the 2012 Settlement Agreement controls.

129. At the time of their execution of the 2012 Settlement Agreement the parties also agreed to the extent not modified by the Settlement Agreements, to "ratify and reaffirm each of the terms, agreements, conditions, representations, warranties and covenants set forth in each of the Operating Agreements and Settlement Agreements and acknowledge that such agreements constitute the valid and legally enforceable undertakings and obligations of the parties". (See Section 20 of the 2012 Settlement Agreement which provides: "Except as specifically amended by the terms hereof, the Parties hereto hereby ratify and reaffirm each of the terms, agreements, conditions, representations, warranties and covenants set forth in each of the Operating Agreements and Settlement Agreements and acknowledge that such agreements constitute the valid and legally enforceable undertakings and obligations of Parties")

130. The 2012 Settlement Agreement also provided at section 18 thereof, that each party agreed to immediately indemnify, defend and hold each of the other parties harmless against any and all claims and all losses, reasonable attorney's fees and costs related to such parties breach of any representation, warranty, covenant or obligation contained in the 2012 Settlement Agreement, the 500 Lincoln Operating Agreements and/or the 2005 Settlement Agreement.

131. Recital H (ii) of the 2005 Settlement Agreement provides that:

> *[Warren] Diamond has agreed to assign 100% of (i) [Warren] Diamond's role as a manager of 500 Lincoln, ... to DelMonaco, (ii) [Warren] Diamond's ownership interest in each such entity to the Diamond Trust, which [Warren] Diamond represents and warrants is and shall remain a so-called "grantor's trust" having Scott Diamond as its trustee for so long as Scott Diamond is alive and able to perform his duties as its trustee, and Diamond as its beneficiary, (iii) any other direct or indirect management interests of [Warren] Diamond in each such entity and Corem to DelMonaco ....*

132. Section 3 (a)(ii) of the 2005 Settlement Agreement provides that on the Effective Date:

> *Diamond shall transfer and assign to the Diamond Trust all of [Warren] Diamond's right, title and membership interest in Corem and shall withdraw as a member of Corem and shall cede any and all power and control with respect to Corem...*

133. Section 3 (c) of the 2005 Settlement Agreement provides that:

> *If and for so long as either Frydman or Rutter or any entity in which either of them or any of their immediate family members has a direct or indirect beneficial, equitable, ownership, management or other interest, then in no event may Diamond ever (i) be a manager of 500 Lincoln [or] 500 Tenth .. again or ever have any ownership, equitable, whether direct or indirect, in any such entities again from and after the Effective Date (other than as beneficiary of the Diamond Trust) or **(ii)** serve as the trustee of the Diamond Trust.*

134. Section 3 (f) of the 2005 Settlement Agreement provides that although Warren may act as a consultant and give advice to Corem or Scott regarding 500 Lincoln, his rights are expressly limited, in that:

> *As a consultant and solely with respect to anything in any way relating directly or indirectly to 500 Lincoln or any of its affiliates or the 500 Property, [Warren] Diamond is not authorized or permitted to sign checks on behalf of, or to serve as agent or as attorney-in-fact for Corem; JD; DelMonaco; Grace DelMonaco; Cannizzaro; FLP; any other principal or manager of Corem or JD; [or] 500 Lincoln...*

135. Notwithstanding his ability to consult, Warren was expressly prohibited from ever attending any meetings the purpose of which would be to take "any action requiring a vote or consent of the members or the managers of 500 Lincoln or any affiliate of 500 Lincoln". (See Section 3(f) of the 2005 Settlement Agreement).

136. Section 9 of the 2005 Settlement Agreement provides with respect to the financing of the 500 Lincoln Property, as follows:

> *Corem and Tunnel Associates agree that 500 Lincoln and/or 500 Tenth (as appropriate) should maximize the full leverage potential of the 500 Property; neither party shall withhold their consent to any financing or financings of the 500 Property based on any assertion or belief that it is no longer in the best interest of 500 Lincoln and/or 500 Tenth (as appropriate) or any stakeholder therein to leverage the 500 Property for less than 100% of the maximum amount capable of being financed from the 500 Property through any one or more institutional financings.*

137. Section 9 of the 2005 Settlement Agreement also established specific provisions with respect to the interest rate, term, recourse and other terms of a prospective financing, but those provisions only applied to financings through 2010, and do not apply to any financings thereafter.

138. Section 18 of the 2012 Settlement Agreement provides as follows:

> *Each Party hereto hereby agrees to immediately indemnity, defend, and hold each other Party harmless against any and all claims and all losses, reasonable attorneys' fees, and costs related to such Patty's breach of any representation, warranty, covenant or obligation contained in this Agreement, the Operating Agreements and the Settlement Agreements. Each indemnified Party having a right to a defense hereunder shall have the immediate right of payment from the breaching Party for costs and attorneys' fees related to his/her/its defense, and may seek an immediate award and payment through the legal and equitable powers of any court or arbitration panel at any time during the subject matter proceedings, and if an action or motion requesting relief under this paragraph is brought to enforce same, then claimant shall be entitled to an additional award for their reasonable attorneys' fees and costs related to said motion. Each indemnified Party having a right to a defense hereunder: (i) hereby reserve the absolute right to its choice of counsel at all times; and (ii) may, at its sole discretion, settle any litigation, claim, or regulatory matter without the consent of the breaching Party and without prejudicing such non-breaching Party's rights to indemnification and defense contained herein.*

139. Section 34 of the 2005 Settlement Agreement provides a collection methodology if it is determined that a member of the Corem group on the one hand or any member of the

Tunnel group on the other hand breaches an indemnification obligation, and provides as follows:

> *without limiting those obligations or any other right or remedy the indemnitee(s), shall automatically and without the need of any further documentation have a first priority lien any distributions or payments otherwise payable to any member of the defaulting group (i.e., the Corem Group or the Tunnel Associates Group, as the case may be) under or contemplated by this Agreement, and (not by way of limitation) if such distribution or payment is to be made by 500 Lincoln or 500 Tenth, then the same shall be paid to the indemnitee(s) (plus interest at twelve percent (12%) per annum) before any other distributions or payments of net cash flow are made to any member of such company or other party.*

140. Section 22 of the 2012 Settlement Agreement provides:

> ***No Other Actions Authorized.*** *Except as otherwise expressly provided herein, in the Operating Agreement and Settlement Agreements, no action may be taken by 500 Owner, 500 Lincoln or 500 Tenth without the express prior written and notarized authorization of Frydman (or his successors as manager of Tunnel) and Rutter (or his successors as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC, or his successors as manager of SLD 500 LLC). Each of the Parties hereto represent and warrant, agree and covenant to each of the other Parties hereto that he/she/it shall not unilaterally, directly or indirectly, through agents, employees, representatives or otherwise, without the express written agreement of undertake any action not specifically authorized by this Agreement.*

141. Section 17 of the 2012 Settlement Agreement provides for liquidated damages in the event of a breach by a party of any representation, warranty or covenant made in the 2012 Settlement Agreement, the 500 Lincoln Operating Agreement and/or the 2005 Settlement Agreement. That section also provides for injunctive relief against the breaching party as well as the right to seek specific performance of the provisions of the referenced agreements.

142. Specifically, section 17 of the 2012 Settlement Agreement provides:

> ***Breach of this Agreement.*** *It is recognized that damages in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a nonbreaching Party might have against a breaching Party, each Party shall also*

have the right to:

> *(a)* ***Injunction****. An injunction against a breaching Party issued by a court or arbitrator or arbitration panel of competent jurisdiction enjoining such breach, and each breaching Party hereby consents to the issuance of any preliminary or permanent injunction enjoining the breaching conduct without limitation and without bond; and*
>
> *(b)* ***Liquidated Damages.*** *The Parties agree that in the event of a breach by a Party of any covenant contained in this Agreement, actual damages would difficult or impossible to ascertain, and that therefore, each single occurrence which may be considered a breach of any covenant contained in this Agreement shall require the imposition of a liquidated damage award in favor of the non-breaching Party in the amount of two hundred fifty thousand dollars ($250,000) per violation, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage per violation.*
>
> *(c)* ***Specific Enforcement.*** *The right to have such covenants specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any breach of any of such covenants will cause irreparable injury to the nonbreaching Party to whom such covenant was made and that money damages will not provide an adequate remedy. Each Party acknowledges and agrees that the covenants are reasonable and valid in all respects.*
>
> *(d)* ***Other Remedies.*** *Nothing contained in subsections [17](a), [17](b) and/or [17] (c) shall be construed as exclusive or as prohibiting a Party from pursuing any other remedies available for such breach or threatened breach or for the breach of any other provision of this Agreement.*

COREM'S INTERNAL ISSUES

143. Apparently Warren and Scott did not limit their disruptive conduct to Tunnel and its principals, they also had on-going disputes with their own partners within the Corem Group.

144. These disputes led to a settlement agreement among the members of Corem and Warren in June of 2014 (the "2014 Corem Settlement Agreement"). A copy of the 2014 Corem Settlement Agreement is attached hereto as Exhibit "E".

145. Plaintiff, Rutter and Tunnel were unaware of the 2014 Corem Settlement Agreement until sometime in October of 2014.

146. The 2014 Corem Settlement Agreement acknowledged that pursuant to the Settlement Agreements Corem previously had appointed SLD as the co-manager with Tunnel to manage 500 Lincoln.

147. The 2014 Corem Settlement Agreement amended the Corem Operating Agreement, by, among other things, modifying the management provisions of the Corem Operating Agreement to require three co-managers of Corem who can only act by unanimous approval with respect to any actions taken by Corem.

148. Pursuant to the 2014 Corem Settlement Agreement, as of June 19, 2014 the three co-managers of Corem were John Del Monaco, Salvatore Cannizzaro and SLD, who were required to act together unanimously to effect any act of Corem.

149. Pursuant to section 6 of the 2014 Corem Settlement Agreement, on June 19, 2014 Corem elected to substitute itself in the place of and instead of SLD to be the successor manager to SLD in 500 Lincoln.

150. By virtue of Corem's action taken on June 19, 2014, which action was agreed to by Scott and SLD as well as by Warren by their execution of the 2014 Corem Settlement Agreement, neither Scott nor SLD was thereafter the co-manager of 500 Lincoln.

151. Neither Scott nor SLD informed Plaintiff or Tunnel of said substitution, nor did they seek nor obtain Tunnel's approval for said substitution.

152. In fact, since June 19, 2014 Scott has continuously misrepresented to Plaintiff and Tunnel that he continued to be the co-manager of 500 Lincoln, even though Scott knew (i) that Corem had been substituted for SLD as co-manager of 500 Lincoln in violation of the 2012

Settlement Agreement; and (ii) that neither Scott nor SLD had any ability to make any decisions for 500 Lincoln without the prior unanimous consent of both Del Monaco and Cannizzaro in violation of Scott's representations to and covenants in favor of Plaintiff, Rutter and Tunnel.

153. The act of substituting Corem as the successor manager to SLD on June 19, 2014 constituted a material breach of the 2012 Settlement Agreement.

154. Scott's and Warren's actions in consenting to the substitution of Corem as manager of 500 Lincoln instead of SLD by signing the 2014 Corem Settlement Agreement constituted a material breach by each of them of the 2012 Settlement Agreement.

155. Scott's and Warren's actions in failing to disclose to Plaintiff that Corem had been substituted for SLD as manager of 500 Lincoln and continuing to act as though SLD was still the co-manager of 500 Lincoln after June 19, 2014 constituted fraud.

THE 2014 FINANCING

156. The rents collected by 500 Lincoln from its tenant DHL increase annually, and are used primarily to pay the debt service and amortize the $97 million mortgage placed on the Property in 2010 in favor of Teachers (the "Teachers Loan")

157. The Teachers Loan was structured to substantially amortize over the balance of the term of the DHL lease so that only $4 million of unpaid principal would remain due at the end of the current DHL lease term.

158. Because most of the cash flow being generated from the Property was being used to service the debt and amortize the principal balance of the Teachers Loan, the beneficial owners of 500 Lincoln were about to face an ever growing phantom income problem, in that the

taxable income would be significantly higher than the amount of cash available to be distributed, resulting in a tax liability without corresponding cash distributions to make the tax payments.

159. As of June 2014 the original $97 million loan that was placed on the Property, just 4 years earlier, had been reduced to approximately $84 Million.

160. During June 2014 Frydman and Rutter ran a series of projections which revealed that over the balance of the term of the DHL lease the beneficial owners of 500 Lincoln could face as much as $85 million in phantom income.

161. During June 2014 Frydman and Rutter reached out to Teacher's Insurance to discuss their concerns about the looming phantom Income issue, and to explore the possibility of additional financing structured in a way that would potentially alleviate the phantom income.

162. Plaintiff and Rutter began discussing the prospect of the teacher's loan with Scott shortly after they commenced discussions with Teachers in June 2014.

163. The 500 Lincoln Operating Agreement provides at Section 3.3 that "[t]he Managers shall receive compensation for acting as Managers of the Company as mutually agreed upon by the Managers".

164. Historically, the entities with which the principals of Tunnel, Corem and 500 Lincoln have been involved, have, from time to time, been paid substantial management fees to their respective mangers. (See, for example paragraphs 1 and 2 of the 2014 Corem Settlement Agreement).

165. Plaintiff was concerned that Scott had recently been showing an increasing lack of interest in acting as a co-manager of 500 Lincoln.

166. Given that Scott had no real economic interest in 500 Lincoln, and given that Scott's relationship with his father Warren has been known to be strained from time to time, and

given that getting Scott to promptly deal with Company matters was increasingly becoming difficult, and given Scott's practice of not participating in scheduled conference calls, or being "too busy" or distracted to undertake the managerial responsibilities for which he was obligated, Plaintiff was interested in finding a way to motivate and incentives Scott to perform the duties he was charged to perform on behalf of 500 Lincoln.

167. Anticipating that 500 Lincoln was about to embark on an important refinancing to further "maximize the full leverage potential of the 500 Property" as the managers of 500 Lincoln were contractually bound to pursue pursuant to Section 9 of the 2005 Settlement Agreement, Plaintiff wanted to incentivize Scott to devote the necessary time and effort to accomplish the goals of the Company as set out in its financing strategy by focusing on the refinancing of the Property.

168. Towards that end, Plaintiff, with the consent of Rutter, and in accordance with the express right granted at paragraph 3.3 of the 500 Lincoln Operating Agreement, and consistent with the parties' historical practices, proposed to Scott that each of the co-managers be paid a management success fee equal to 2% of the loan proceeds in the event of the closing of a new loan, which management fee would be paid out of the proceeds of the loan, not to exceed $1 million for SLD and $1 million for Tunnel.

169. Initially Scott liked Plaintiff's proposal, and wanted time to consider it. Scott was uncertain that such an arrangement was permissible under the terms of the 500 Lincoln Operating Agreement, and wanted time to review that agreement and "think" about the offer.

170. Eventually Scott elected to forego paying a success management fee to the 500 Lincoln Mangers.

171. Plaintiff believes that Scott came to this "decision" based on Warren's threats because a payment of a management fee to Scott would diminish the net proceeds which would be distributed to the Diamond Trust (or actually, Warren, because Plaintiff believes that there was never a transfer of the interests to the Diamond Trust), and because Warren took the time to call Plaintiff and yell at him for even considering paying Scott any Management fees.

172. In fact during the referenced phone conversation Warren expressed regret that because Scott was involved Warren was paying Scott approximately $9,000 per month out of Warren's funds, and Warren was clearly not happy with that arrangement.

173. As a result of a series of discussions between Tunnel and Teachers, in early August 2014 Teachers proposed making an additional $53 million zero coupon loan which would provide the beneficial owners of 500 Lincoln with significant proceeds of refinancing, and at the same time alleviate the phantom income issue.

174. Plaintiff commenced a series of discussions with Scott and Rutter to explore the financing option proposed by Teachers as well as other financing options from other potential lenders.

175. On August 26, 2014 Teachers issued a proposed term sheet for the proposed loan. A copy of the August 26, 2014 term sheet is attached hereto as Exhibit "F".

176. On August 26th Plaintiff and Rutter and Scott had a conference call to discuss the various financing proposals available to 500 Lincoln, and as a result of that conference call Plaintiff, Rutter and Scott agreed to pursue the Teachers proposal.

177. Prior to issuing a commitment, Teachers requested that 500 Lincoln obtain an appraisal of the Property.

178. Plaintiff obtained a proposal from KTR Valuation services to prepare the appraisal requested by Teachers. Time was of the essence in getting that appraisal completed as Teachers needed the appraisal to meet certain valuation thresholds in order to be able to issue a commitment, and obtain a quote for Residual Value Insurance, which was a requirement of the Teachers Loan.

179. The KTR appraisal needed to be completed in approximately two weeks, and therefore KTR needed to be retained quickly so that it could meet Teacher's requested timeline.

180. Prior to initiating the appraisal KTR required a signed retainer agreement and a $10,000 deposit.

181. On the afternoon of August 26, 2014 Plaintiff received a phone call from Terry Tenner, President of KTR, advising that he had been contacted by Teachers Insurance and expected the retainer letter back that afternoon in order to meet Teachers' deadline.

182. Immediately after concluding the phone call with Mr. Tenner, Plaintiff asked his assistant to try to locate Scott on his cell phone to advise of the urgency of the matter.

183. Plaintiff's assistant located Scott on his cell phone, but Scott refused to speak to plaintiff because he was about to play tennis at his tennis club and was "too busy" to speak to plaintiff. Plaintiff's assistant advised that this was an urgent matter and could he please just take a one-minute phone call, but Scott hung up.

184. Plaintiff thereafter immediately attempted to reach Scott directly on his cell phone, believing that Scott would be available to deal with an urgent matter relating to a $53 million loan, but Scott refused to answer his cell phone.

185. In an effort to expedite matters, on August 26th, Plaintiff wrote an email to Scott stating: "I just called you to get your approval, but apparently on the tennis court and not able to

address this till tomorrow. I'm traveling tomorrow not available until after Labor Day. If you're unable to speak now I must make an executive decision without you. Given the urgency of this matter I am going to move forward and sign off on behalf of 500 Lincoln LLC on the KTR appraisal. I assume that will meet with your approval. So that you have ample opportunity to voice your opposition, I will withhold sending this to Terry for the next half hour. If I do not hear back from you in the next half hour I will assume that you are in consent. I have Mitch's consent." A copy of the referenced email is attached hereto as Exhibit "H".

186. Plaintiff did not hear back from Scott, so rather than bind the 500 Lincoln, Plaintiff paid the retainer deposit of $10,000 out of his own funds, and accepted the retainer advising KTR that Scott had not yet consented, and if he would not, then Tunnel would pay for the appraisal.

187. Rather than thank Plaintiff for expediting an important component of the loan, once Scott finally did get back to Plaintiff, days later, he took offense that the KTR retainer had been signed without his consent, notwithstanding that neither he nor 500 Lincoln undertook any liability with respect to said appraisal.

188. Plaintiff sought to communicate with Scott about the proposed loan, but for a period of more than two weeks Scott was "missing in action", in that he was not communicating with Plaintiff until September 15, 2014.

189. Instead, from August 31, 2014 through September 15, each time Plaintiff sought to communicate with Scott, he received a response from Warren, which, in each event, constituted a breach of the 2005 Settlement Agreement as well as the 2012 Settlement Agreement.

190. On August 31, 2014, in violation of the terms of the 2005 and 2012 Settlement Agreements, Warren, acting as manager, sent an email to Plaintiff stating: "[i]n an effort to resolve the differences that the parties have with regard to the proposed loan and any changes or modifications in our existing agreements, which need to be addressed prior to closing, will you please come to her offices in New Jersey at your convenience. Please set something up with Scott we will try to make it work. A copy of the August 31, 2014 email attached hereto as Exhibit "I".

191. Plaintiff responded that he did not know of any "differences" and requested that he reveal what "differences" they would like to address.

192. On September 2, 2014 Warren responded that Plaintiff would be receiving a letter from his lawyer, Ira Kleinman, shortly.

TEACHERS ISSUES ITS LOAN COMMITMENT

193. On September 9, 2014 Teachers issued its loan commitment to 500 Lincoln to make the $53 million zero coupon loan. A copy of the Teachers commitment is attached hereto as Exhibit "G".

194. The Teachers commitment represented a financing which would maximize the full leverage potential of the 500 Property as required under the terms of the 2005 Settlement Agreement.

195. All of the principals of 500 Lincoln and Coram, including, without limitation, managers of and the entities owned and/or controlled by Plaintiff, Rutter, Cannizzaro and Delmonico, which together represents 87.5% of all of the beneficial ownership interests in 500 Lincoln, were in favor of accepting the Teachers commitment and maximizing the leverage potential the 500 Property as they had previously agreed to in the 2005 Settlement. Agreement.

196. The Teachers commitment required that it be executed by Scott, Frydman and Rutter and returned to Teachers together with a good faith deposit of $250,000 on or before September 16, 2014.

SCOTT AND WARREN FLAGRANTLY BREACH THEIR AGREEMENTS AND SCOT BREACHES HIS FIDUCIARY DUTIES

197. On information and belief defendants Scott and Warren also desired to accept the Teachers commitment. However, in clear violation of the governance documents of 500 Lincoln, including, the 2005 and 2012 Settlement agreements, Warren and Scott embarked upon a plan and conspired to use this opportunity to again seek to extort for themselves benefits which they were not entitled to from the other beneficial owners of 500 Lincoln.

198. On September 13, 2014, in violation of his agreements to the contrary, Warren wrote to Plaintiff, Rutter, Delmonico, Cannizzaro and Scott stating: "guys, it appears we have a approx fifty thousand available for the mortgage commitment in the Lincoln Accounts. We need 100 K from Tunnel and 100 K from Coram. Everybody knows what they have to do. There is one document that must be signed by all parties that will be circulated by Scott prior to the signing of the commitment. It has to do with a modification of a prior settlement agreement or agreements".

199. On September 15, 2014, the day before the Teachers commitment was required to be accepted, executed and returned with a $250,000 good faith deposit, Scott sent a letter to Plaintiff and others stating "as a manager of 500 Lincoln LLC, I write to advise I will agree to the payment of the $250,000 good faith deposit required by the commitment letter dated September 9, 2014, received from TIAA-CREF on the following conditions: … My agreement to go forward with funding the good faith deposit at this time, shall not be construed as an agreement to enter into or close the transaction itself. I have a number of reservations about the

transaction, and certain issues which must be resolved prior to the closing. While I anticipate that my concerns will be alleviated and the closing will take place, I wanted to make my position clear at the outset, so that there is no question of liability in the event we cannot reach agreement." A copy of Scott's September 15, 2014 letter is attached hereto as Exhibit "J".

200. In essence, Scott's September 15, 2014 letter provides (i) that Scott is in favor of moving forward with the Teachers Loan, and (i) funding the good faith deposit at that time, but he inexplicably wanted to have "certain issues resolved" prior to the closing which, gave him "reservations about the transaction".

201. In his letter Scott also wished to make clear that if after 500 Lincoln accepted the Teachers commitment and funded the good faith deposit, but if he couldn't resolve his "certain" issues, then there would be "no question of liability" in the event he would then blow up the closing.

202. Plaintiff interpreted Scott's message to mean that Scott was fully prepared to move forward with the Teacher's Loan, but Scott (in cahoots with Warren) was seeking to extract something he was not entitled to, and was not yet willing to reveal exactly what it was that he was seeking to extract in exchange for his agreement to close the Teacher's Loan, but wanted to make sure that he would not be subject to liability in the event that he held up all of the other beneficial owners in 500 Lincoln while seeking to obtain this undisclosed "resolution".

203. On September 15, 2014 Scott sent a follow-up email to Plaintiff and Rutter, copying Warren and Del Monaco, and stating "I've been repeatedly advised by you that there is a very aggressive and strict timeline imposed on us by TIAA. As such I seek to have the attached letter signed by all parties, so that we may proceed in compliance with the TIAA timeline. I'm in the air tomorrow can approve the wire at about 2:30 PM provided were all signed up here."

SCOTT AND WARREN CONSPIRE TO EXTORT THE BENEFICIAL OWNERS OF 500 LINCOLN

204. On September 14, 2014 Warren provided Plaintiff with a glimpse of the coming extortion attempt being cooked up by him and Scott.

205. On September 14, 2014, in violation of his agreements to the contrary, and in violation of Scott's agreements to the contrary, Warren sent Plaintiff an email demanding that Plaintiff pay $200,000 to Scott and Warren, presumably as a prerequisite to Scott's acceptance of the Teachers commitment, which would be "donated by you to one of our charities." A copy of Warren's September 14, 2014 email is attached hereto as exhibit "K".

206. Warren's September 14, 2014 email continued "we're looking at $200,000 that is being asked for and we will MATCH it. How wonderful is that!!!! I'm sure you will concur."

207. On information and belief, Warren was seeking to extort these funds because Warren and Scott had made a $2.5 million commitment (to be paid over a multi-year period in monthly installments) to the Monmouth Medical Center Foundation to create the Cheryl L. Diamond Cancer Care Pavilion at the Leon Hess Cancer Center at Monmouth Medical Center, which, on information and belief, after making the first four monthly payments against this long-term commitment, they defaulted on their pledge. Plaintiff further believes that Warren and Scott were seeking to extort plaintiff so as to give them other people's funds to try to cure the default in their pledge.

208. Defendants acts constitute extortion in violation of the Hobbs Act, 18 U.S.C. 1951, which states: "Whoever in anyway or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in

furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both".

209. "Extortion" means "the obtaining of property from another, with his consent, induced by wr For 500 Lincoln Owner LLC ed force, violence or fear, or under color of official right." "Fear" nomic loss.

210. By: Scott Diamond, comanager, or respond to Defendants' extortion attempt.

WARREN FORGES SCOTT'S SIGNATURE ON 500 LINCOLN'S ENGAGEMENT OF ALLEN & OVERY

211. Shortly after receiving the Teacher's commitment Plaintiff and Rutter desired to have the commitment letter reviewed by Allen and Overy, counsel to 500 Lincoln.

212. On September 16, 2014 Allen and Overy circulated an engagement letter to be executed by Plaintiff, Rutter and Scott.

213. Plaintiff and Rutter executed the engagement letter. But, based on Scott's email of September 15, 2014, he was going to be "in the air" on September 16, 2014.

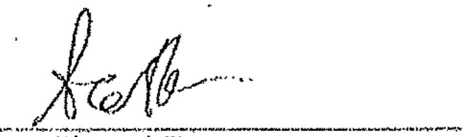
214. However, miraculously, the Allen and Overy engagement letter was ostensibly executed by Scott.

215. Plaintiff, however, on information and belief, asserts that Scott did not in fact signed the Allen and Overy engagement letter, but rather, that Warren, in express violation and breach of his and Scott's agreements to the contrary, wrongfully acted as agent for or on behalf of Scott, and forged Scott's signature on the September 16, 2014 engagement letter, thereby, again usurping managerial control over 500 Lincoln in express violation of his agreements not to do so. A copy of the Allen and Overy engagement letter is attached hereto as exhibit "M".

216. Scott's signature and initials on the Allen & Overy engagement letter is duplicated below:

Contrast these signatures and initials to Scott's signature and initials on the 2014 Corem Settlement Agreement:

Contrast these signatures and initials to Warren's signature and initials on the 2014 Corem Settlement Agreement:



Scott Diamond, Trustee

217. Not having heard from Plaintiff in respo September 14 email, on September 19, 2014, again in violation of his agreements rary, and in violation of Scott's agreements to the contrary, Warren sent Plaintiff an email stating "we were hoping for response to my email that was sent to you the other day about being charitable. …Your silence does speak volumes." And now, having failed in their initial extortion attempt, Warren and Scott for the first time look to find ways to justify not closing on the Teacher's Loan unless they're able to extort Plaintiff.

Warren M. Diamond, Beneficiary
Diamond Trust and Individually

218. Warren's September 19, 2014 email goes on to state "as far as the mortgage goes Scott and I think it's to [sic] expensive. Scott said he is going to make one last attempt to resolve this issue with you directly. If you're serious about getting the mortgage my strong suggestion to you is not to wait until the last minute and resolve this with him. Otherwise, your opportunity to get your hands on this money will be squandered. That I am very sure of. I wish you the best of

luck in resolving this with Scott." A copy of Warren's September 19, 2014 email is attached hereto as Exhibit "L".

219. Plaintiff responded to Warren's September 19 email with another email on the same date stating ": you are right. My silence does speak volumes. I have no idea where you think you have the right to ask me for anything, let alone for charitable donation for you or Scott to make with respect to my money. You're obviously free to make any charitable donations you like, and I will make whatever charitable donations I like. I hope this addresses your question. With respect to the loan—if you and Scott believe that this loan is too expensive please produce a cheaper commitment. If you're unable to do so then I suggest you track your statement, because I believe this is a very cost-effective loan. Moreover I've no idea what you mean with respect to your quote strong suggestion" to resolve an issue with Scott. I've no idea Scott has an issue or not, but if he does he has yet to articulate it to me."

220. On that same date, September 19, 2014, there was a conference call scheduled between Allen, Plaintiff and Rutter and Scott to review the Teachers commitment letter.

221. On September 19, 2014 Scott finally reappears. In response to plaintiff's email to Warren earlier that day, Scott sends Plaintiff an email at 1:02 PM stating: "a reminder that the Diamond Trust asked all partners to consider buying it out. I am hardly surprised there is tension among the parties. This was my reason for seeking to sever the relationship. Again, I am against this loan at this point unless you can think of a way to make the additional share of approximately $90mm in risk worth the while. I feel that further engaging Allen and Overy is a waste of money at this point. I won't be on the call. Warren, as my consultant, can join the call, if he thinks it's prudent.

222. Scott's authorizing Warren to take the Allen & Overy conference call as his agent, constitutes a breach of the 2005 and 2012 Settlement Agreements.

223. In response to Scott's email Plaintiff canceled the conference call with Allen & Overy.

224. On September 19, 2014 at 1:19 PM Warren wrote to Rutter by email stating "Scott will not be on the call and asked me to take it as his consultant. I attempted to get on the call and no one was present."

225. Warren's acting independently of Scott with respect to the conference call with Allen & Overy constitutes a material breach of the 2005 and 2012 Settlement Agreements.

226. In response to Warren's email plaintiff canceled the scheduled conference call with Allen & Overy.

WARREN AND SCOTT WRONGFULLY TERMINATE ALLEN & OVERY AND THREATEN THEM WITH ETHICS VIOLATIONS

227. The fact that plaintiff canceled the Allen & Overy conference call so as not to permit Warren to participate in violation of the various agreements prohibiting Warren's participation in such calls, so angered Warren that, again in violation of his and Scott's various agreements to the contrary, without authority to do so and in direct and express violation of the various governance agreements of 500 Lincoln, and specifically in violation of the agreement that Allen & Overy represent 500 Lincoln in all matters other than with respect to the ground lease or sale of Property after the end of the DHL lease.

228. Warren independently undertook to fire Allen and Overy as 500 Lincoln's counsel.

229. Warren also demanded that the Teacher's Loan be immediately "killed". Almost by knee-jerk reaction at 1:43 PM on September 19, 2014 Warren wrote to Plaintiff, Rutter and

Scott stating "it would be prudent if you notify teachers we are not interested in the loan at this time. Who is doing that? Let's kill it the right way."

230. On September 22, 2014, in violation of his and Scott's agreements to the contrary, Warren sent an Email to Kevin Yaakov Sheinfeld at Allen & Overy stating: "Yaakov and Kevin What are you doing? We advised you pens down on this deal. If this goes forward it will be difficult for us to use your firm for this closing or anything else in the future. It appears you take orders from one side only. I am going to advise Scott based on your actions to look for other counsel. Perhaps you have now been engaged by Tunnel now? If so tell us because Scott will not pay for your services." A copy of Warren's September 22, 2014 email is attached hereto as Exhibit "N".

231. Warren however was not satisfied. He needed to go further. He therefore threatened Allen and Overy with filing ethics complaints against them. Warren's September 22 email continues: "This is a serious matter and if not rectified immediately ethics complaints may be filed. Please guide yourself accordingly.

232. Not wanting to be left out of the firing process, and to ensure that he too would participate with Warren in the wrongful act of firing Allen and Overy, on September 22, 2014 Scott reiterated his and Warren's desire to fire Allen and Overy in violation of the governance agreements of 500 Lincoln by sending yet another insulting email to 500 Lincoln's lawyer at Allen and Overy stating "Respectfully, I'm confused. Why are you working on this when you were told to stop?"

233. Allen & Overy was rightfully insulted by Warren's and Scott's outrageous and wrongful conduct. In response to the series of emails referenced above Kevin O'Shea, the head of the real estate department at Allen and Overy wrote to Warren, Scott, and the other managers

and members of 500 Lincoln stating: "With as much due respect as I can muster under the circumstances, we agreed to assist the partnership on the refinancing of its existing loan on one simple condition: that we not be dragged into the middle of the partner's long-standing bickering. To that end, we got conflicting direction from the partners in our sole motivation for circulating these comments on the term sheet to all partners was to be transparent to each of the partners, to give everyone the opportunity to review/comment and to make sure everyone was on the same page. Clearly, that is not the case. I've no interest or time to spend mediating the circus, so as of today, we consider us acting for nobody. As a parting gift, you will get no bill for time spent to date reviewing the term sheet. We wish you, and your next counsel, the best of luck in the future."

234. On September 22, 2014 plaintiff sent Allen and Overy's comments to the Teachers commitment to teachers for review.

235. On September 27, 2014 teachers issued a revised commitment adopting some of the proposed changes and extending the time to execute and return same with the good-faith deposit. The revised Teachers commitment was also sent to Scott.

236. On September 30, 2014 Scott revealed the reason that he is slow to respond to any matters relating to the Teacher's loan. On September 30, 2014 email to Mr. Rutter on which plaintiff was copied, Scott states: "if I don't respond with the speed you expect I think it behooves the partnership to allow my consultant to be heard".

237. Clearly, Scott believes that if he shirks or avoids his responsibilities to 500 Lincoln that would act as a catalyst for putting his consultant, Warren, at center stage on these negotiations. Obviously that's what both Warren and Scott want, and obviously that is violative of all of the governance agreements of 500 Lincoln.

238. On October 1, 2014 Rutter wrote to Scott on behalf of Tunnel Associates and its members reviewing the matters leading up to the refinancing meeting. Rutter wrote: in reviewing various cash flow statements I realize that we are facing $86 million phantom income over the course of the next 11 years. ... It became clear that if we simply had a $90 million loan with 30 year amortization will be able to eliminate phantom income tax at the same time generate over $2 million per your cash flow. . . . The problem was that the current Teacher's loan would need to be prepaid thereby causing a defeasance penalty of approximately $12 million.. . . Teachers would also require residual value insurance gap insurance. . . Which would require 18 million in costs."

239. Rutter then reviewed Teachers revised proposal of a zero coupon loan, which seemed to solve everyone's problems and was acceptable to all of the principals of 500 Lincoln. Rutter pointed out all the reasons why such a loan should in fact close. Rutter concluded that the Teacher's loan is prudent and beneficial to the partnership, and implored Scott to stop playing games and finalize the transaction with Teachers.

WARREN AND SCOTT SEEK TO EXTORT CLOSE TO $1 MILLION

240. In response to the revised commitment issued by Teachers, Warren and Scott caused their independent counsel Ira Kleinman to draft a proposed "modification agreement". A copy of the draft modification agreement is attached hereto as exhibit "O".

241. The proposed Modification Agreement was nothing short of the next extortion attempt by Warren and Scott. Except unlike the prior extortion attempt which sought $200,000, the current extortion attempt sought to extort $920,000.

242. Paragraph eight of the proposed Modification Agreement provided that: "The Parties agree that at the closing of the contemplated loan with Teachers for $93,000,000,

("Loan") SLD 500 LLC shall receive the sum of $200,000 from Tunnel for services rendered. Additionally, at closing, the Diamond Trust shall receive from proceeds the sum representing its share of monies paid for RVI Insurance, but not less than $720,000.00."

243. Defendants' acts in requiring the payment of $920,000 as a condition to the execution of the Teachers commitment constitute extortion in violation of the Hobbs Act, 18 U.S.C. 1951.

244. In addition Scott proposed to unwind several of the provisions which were specifically negotiated in the 2012 Settlement Agreement to protect the beneficial owners of 500 Lincoln from further shenanigans by Warren.

245. On October 14, 2014 Scott emailed plaintiff again encouraging him to either accept the modification agreement or agree to proceed with the Teachers Loan by signing the commitment letter and posting the good-faith deposit, but agreeing that Scott and Warren would have no liability if they refused to close the loan because they didn't get what they want.

246. Obviously, plaintiff rejected both of Scott's unreasonable proposals.

247. On October 20, 2014 Scott again wrote to plaintiff reminding him that "the progress remains at a standstill". The way you can advance that is known: To work on the modification agreement with the understanding that if we don't come to terms among us we lose our deposit, pay our professionals and call it a day. There is no liability and no litigation. To date you ignored this request and to date I haven't signed the commitment, nor do I intend to."

248. Obviously, by his own admission, Scott was holding up the partnership either to extort economic benefits that neither he nor Warren were entitled to, or were prepared to put the Company at further risk by wasting $250,000 on a fee they knew they would let go if Plaintiff refused to later be extorted.

TEACHERS WITHDRAWS ITS COMMITMENT

249. On October 13, 2014 Scott wrote to Teachers saying that he could not accept the commitment because it provided that the signatories agreed that they will "cause [their] affiliates not to disclose" the terms of the commitment. Scott went on to say that "I don't have enough control over my affiliates to be comfortable signing such a document. Can you propose weaker language that I may sign."

250. In response Teachers advised Scott, in writing, that he could strike the language relating to his affiliates.

251. Based on Scott's prior email, and the fact that Teachers gave Scott what he wanted, Plaintiff expected that Scott would sign the Teachers commitment.

252. Such was not the case.

253. On information and belief, Scott would not sign the Teachers commitment if he was not able to extort economic and other benefits to which neither he nor Warren are entitled.

254. On October 20, 2014, after having the commitment out for almost 6 weeks, Teachers notified Plaintiff, Scott and Rutter that unless the commitment were accepted and signed, and returned with the $250,000 good faith deposit by the close of business on October 24, 2014, the commitment would be withdrawn.

255. On October 21, 2014 Scott emailed Plaintiff to advise that what he and Warren really wanted was for the Diamond Trust to sell its interest in Corem for $20 million. A copy of Scott's October 21, 2014 email is attached hereto as Exhibit "P".

256. Again, Scott and Warren were over reaching. They knew that their interest in Corem was worth approximately one-half of the requested $20 million. Yet they again made an outrageous demand that would be detrimental to the partnership, but unusually beneficial to

themselves.

257. Plaintiff rejected Scott's outrageous offer.

258. On October 22, 2014 Cannizzaro wrote an email to Scott, wherein he stated:

> *I reviewed with great disappointment your terse e-mail proposal of October 21, 2014 in which you suggest that we "buyout" the membership interest of Diamond Trust (the "Trust") in Corem Capital Partners LLC ("Corem") for Twenty Million Dollars. The request not only displays a shocking ignorance of the value of the Trust's membership interest in Corem, but is, unfortunately, emblematic of the manner in which the Trust has put its own financial self-interest before its fiduciary obligations to Corem and its members.*
>
> *For some time, we have been engaged in a frustratingly protracted attempt to get the Trust, in its capacity as SLD 500 LLC, a manager of 500 Lincoln LLC ("Lincoln"), to focus on a needed refinancing of the property owned by Lincoln. All parties directly and indirectly involved have agreed, and any objective observer would conclude, that the refinance of the Lincoln properties currently on the table is a well-reasoned determination resting on sound business judgment that would benefit Lincoln, and its members, including Corem. However, it is clear that you never truly entertained the notion of cooperating fairly or honestly as is now evidenced by your absurd purported buyout proposal. Rather, what appears to have been transpiring is that your steadfast refusal to participate in, much less consent to, the refinancing is part of a larger effort on the Trust's part to leverage its own interest and promote a selfish agenda. You have systematically attempted to sabotage Corem and Lincoln with the bad-faith intent of gaining a tactical advantage and forcing an unfavorable buyout. This will not continue and suffice it to say, your "offer" is rejected.*
>
> *Be further advised that your impractical and intransigent refusal to consent or consider a refinance of the Lincoln properties at this time is a violation of your fiduciary duties to both Corem and Lincoln. As a fiduciary with the responsibility to preserve assets entrusted to it, the Trust is duty-bound to act in a manner so as to benefit and protect the venture it is charged with operating and to take no steps to harm them. The Trust's refusal to participate in the determination to refinance Lincoln is a gross violation of its duty as a fiduciary. We will not sit back while Corem and Lincoln suffer from your actions. You will be made to account for any and all damage and loss occasioned by your misguided acts.*

> *Inasmuch as there is a very narrow window of opportunity for Lincoln to avail itself of the refinance opportunity, I think it is worthwhile for you to reconsider your positions and move forward in a manner the benefits Corem as a whole. Please contact me at once before things become irreversible.*

259. On October 23, 2014 Warren responded to Cannizzaro by email stating: "I suggest you might look at the other options Scott has afforded the partnership. The option you have threatened would be the nuclear one. Now that is pure ignorance!!!!!!"

260. Plaintiff understood Warren's email to mean that unless Warren and Scott could extract $920,000 from the beneficial owners of 500 Lincoln, Scott would not sign the Commitment, and Teacher's would end up withdrawing their commitment the following day.

261. Neither Plaintiff, nor any of the other beneficial owners of 500 Lincoln were willing to be extorted by Warren.

262. The Teacher's commitment was not signed by the close of business on October 24, 2014.

263. After Business hours on October 24, 2014, Teachers confirmed in an email to Plaintiff, Rutter and Scott that the commitment expired and was withdrawn.

264. As a result, Plaintiff lost the benefit of a $53 million financing. As a result Plaintiff will incur his proportionate share of $86 million in phantom income over the next 11 years.

FACTUAL ALLEGATIONS COMMON TO ALL RICO COUNTS

265. Defendants Scott and Warren, directly and through SLD, American Real Estate Management, and each other are attempting to injure Frydman and his businesses by, among other things, seeking to extort Frydman into paying them $200,000 for their charities, by seeking to extort Frydman of $970,000 through the demand that he sign the proposed Modification Agreement before they will agree to accept the Teachers commitment in violation of the Hobbs Act 18 U.S.C. § 1951, and by operating as part of a common enterprise to perpetuate the scams asserted herein.

266. Through Defendants' illegal and tortious acts, Plaintiff has been denied valuable business opportunities and has suffered damage to his business and property.

Culpable Person.

267. Defendant Warren is an individual capable of holding a legal or beneficial interest in property as defined by 18 USC §1961(3).

268. Defendant Warren is a "Culpable Person" under RICO.

269. Defendant Scott is an individual capable of holding a legal or beneficial interest in property as defined by 18 USC §1961(3).

270. Defendant Scott is a "Culpable Person" under RICO.

Enterprise

271. Defendants Warren and Scott are, on information and belief, direct or indirect owners, and principal control person of SLD and American Real Estate Management and American Self Storage.

272. According to a March 29, 2011 Wall Street Journal Article, Warren is the CEO of American Real Estate Management, a developer of commercial and residential real estate in New York and New Jersey.

273. According to his LinkedIn page, Warren is CEO of American Self Storage.

274. According to its web site, American Self-Storage is one of the leading self-storage developers and operators in the metropolitan New York and New Jersey markets. American Self Storage has headquarters in the Bronx, NY and Tinton Falls, NJ, and plan to have 20 self-storage stores open and operating by 2012.

275. SLD, American Real Estate Management and American Self Storage are each a person distinct from the enterprise or enterprises known as SLD, which further comprise other persons with various employment, contractor, or supplier relationships, and maintain staffed facilities in Tinton Falls, NJ.

276. SLD and American Real Estate Management each comprises an "enterprise" as defined in 18 USC §1961(4).

277. The SLD and American Real Estate Management enterprises comprise other persons with various employment or contractor relationships, including, without limitation, Defendants Warren and Scott.

278. The SLD and American Real Estate Management enterprises each have an existence apart from and beyond the racketeering activity complained of in this action, and each is an entity distinct from the persons Warren and Scott.

Interstate Commerce

279. The activities of the enterprise and the predicate acts of racketeering complained of herein affect interstate commerce.

280. Warren and Scott affected interstate commerce through the use of email, interstate wires, and other instrumentalities of interstate commerce in executing their plan or scheme to extort Plaintiff and defraud the principals and beneficial owners of 500 Lincoln and transmitted same with the intent to defraud Plaintiff and other principals and beneficial owners of 500 Lincoln to whom they are directed.

281. In executing their plan or scheme it was reasonably foreseeable that the mail or wires will be used, and in fact the Warren and Scott did use the mail or wires or other instrumentalities of interstate commerce to further the scheme.

282. Additionally, on information and belief, SLD and American Real Estate Management use out of state domain hosting services, which in turn use servers located out-of-state, and use out-of-state internet service providers for sending emails. As such, all internet and email communications from SLD and American Real Estate Management are carried over interstate wire transmissions no matter whether any particular recipient or viewer is located within or without New York or New Jersey.

283. Warren and Scott advertise and promote their businesses on LinkedIn and other internet websites. All communications posted by Warren and Scott through LinkedIn and other internet websites make use of interstate wire communications.

284. Each and every email communication sent by Warren or Scott as hereinabove described make use of interstate wire communications.

285. The fraudulent statements and misrepresentations complained of herein were relied on by Plaintiff in entering into the 2005 and 2012 Settlement Agreements to his in reliance on said fraudulent statements and misrepresentations.

Pattern of Racketeering

286. Warren and Scott have violated the provisions 18 USC §1962(c) by conducting or participating, directly or indirectly, in the conduct of the affairs of an enterprise or enterprises, through a pattern of racketeering activity, as further set forth with the required specificity under each separate count.

287. The pattern of racketeering activity described herein and conducted and operated by Warren and Scott commenced in 2002 and continues through the present day.

288. The pattern of racketeering conducted by Warren and Scott consisted of multiple predicate acts which are related and continuous and have the same or similar purposes, results, participants, victims, methods of commission, or otherwise interrelated by distinguishing characteristics and are not isolated events, the last of which occurred within ten years after the commission of a prior act of racketeering activity as described above, and as such constitute a "pattern of racketeering" as defined in Section 1961(5) of RICO.

289. The pattern of racketeering conducted by Defendants as herein set forth has continued on a consistent basis since April 2002, has seen no cessation, and has been escalating with greater frequency over time which evidences an ongoing threat of continuity.

290. The pattern of racketeering conducted by Defendants in violation of 18 USC §1962(c) has caused injury to the business and property of Plaintiff as contemplated by 18 USC §1964(c), as set forth with the required specificity under each separate count.

Racketeering Activity

291. Defendants predicate acts as above set forth constitutes "racketeering activity" as defined in section 1961(1) of RICO, in that they involve mail or wire fraud, criminal violations of the the Hobbs Act 18 U.S.C. § 1951, forgery, perjury in violation of violation of the Federal Perjury Statute 18 U.S.C. § 1621; attempted extortion; and making false and fraudulent

representations in the 2005 and 2012 Settlement Agreements all with the intent to damage the business and property of Plaintiff.

Injury

292. Plaintiff Frydman is a "person" who sustained injury to his business or property by reason of the Defendants' violation of Sections 1962 of RICO.

293. Plaintiff's injury under Section 1962(c) stems from the predicate acts conducted by the Defendants as described above.

294. Plaintiff's injury under Section 1962(d) stems from the overt acts committed by the Defendants as herein stated.

Statute of Limitations

295. The complained-of unlawful activities are ongoing. The doctrine of continuing tort or injury applies to the claims asserted herein. Therefore, there is no time bar to this action other than the 10- year outer limit for civil-RICO.

Standing to sue

296. Plaintiff's standing to bring civil-RICO claims will be established by Plaintiff showing a pattern of violation of 18 USC §1962 by the Defendants, with such violations directly causing injury to Plaintiff's business or property, which Plaintiff alleges here and sets forth with the required specificity herein under each separate count.

COUNT I

AGAINST WARREN AND SCOTT FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT SECTION 1962(c)

297. The allegations set forth in paragraphs 1 through 296 of this Complaint are re-alleged as if fully set forth herein.

298. This Count is against Defendants Warren and Scott jointly and severally.

299. SLD and American Real Estate Management is an enterprise engaged in and whose activities affect interstate commerce.

300. Warren and Scott are employed by or associated with the enterprise.

301. 299. Warren and Scott agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for the unlawful purpose of intentionally injuring Plaintiff and his businesses.

302. Pursuant to and in furtherance of their fraudulent scheme, Warren and Scott committed multiple related acts of racketeering activity in the form of the predicate acts identified above, which include, without limitation, mail or wire fraud, criminal violations of the Hobbs Act 18 U.S.C. § 1951, forgery, perjury in violation of violation of the Federal Perjury Statute 18 U.S.C. § 1621; attempted extortion; and making false and fraudulent representations in the 2005 and 2012 Settlement Agreements all with the intent to damage the business and property of Plaintiff, and otherwise as complained of herein.

303. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

304. Warren and Scott have directly and indirectly conducted and participated in the conduct of the enterprise's affairs through the pattern of racketeering and activity described above, in violation of 18 U.S.C. § 1962(c).

305. Warren's and Scott's fraudulent scheme complained of herein constitutes a fraud upon Plaintiff and the other 500 Lincoln principals in that Warren and Scott made numerous

misrepresentations of fact as specifically set forth above in order to induce Plaintiff and the other 500 Lincoln principals to execute the various Settlement Agreements and permit Scott or SLD to act as co-manager of Lincoln, when in fact, Warren and Scott knew said representations were false and fraudulent, in that they never intended to create the Diamond Trust, nor to transfer Warrens interests to the Diamond Trust, never intended to abide by the management restrictions on Warren as set forth in the various Settlement Agreements which Warren and Scott intended all along to breach, and which misrepresentations were made by Warren and Scott in order to induce Plaintiff to execute the Settlement Agreements, and upon which Plaintiff reasonably relied and was induced to execute the settlement agreements, while at all times Warren and Scott knew that the representations made were false and fraudulent in that they never created the Diamond Trust, they never intended to transfer Warren's interest in 500 Lincoln to the Diamond Trust; and they never intended for Warren to give up managerial control.

306. As a direct and proximate result of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiff has been injured in his business and property in that he has been denied valuable business opportunities, has suffered damage to his business and property.

307. Specifically, and as shall be proven at trial, Plaintiff lost his \$13 million distribution from the proceeds of the Teachers' Loan; and Plaintiff will incur approximately \$10 million in tax obligations as a result of the loss of the benefit of the zero coupon loan absorbing \$86 million of phantom income over the next 11 years, and otherwise as shall be proved at trial.

308. As a result of Defendants' violations of Section 1962 (c) of RICO Plaintiff has been damaged in an amount to be determined at trial believed to be not less than \$30 million.

309. 18 U.S.C. section 1964(c) creates a private right of action for treble damages for the criminal wrongs complained of herein.

COUNT II

AGAINST WARREN AND SCOTT FOR CONSPIRACY UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT SECTION 1962(d)

310. The allegations set forth in paragraphs 1 through 309 of this Complaint are re-alleged as if fully set forth herein.

311. This count is against Defendants Warren and Scott jointly and severally.

312. Defendants Warren and Scott agreed and conspired to violate 18 U.S.C. §§ 1962 (c) by conducting and participating in the conduct of the affairs of the enterprise through a pattern of racketeering activity as above set forth.

313. Defendants Warren and Scott knew that their predicate acts were part of a pattern of racketeering activity and agreed to the conduct constituting a conspiracy to violate 18 U.S.C. §§ 1962(c) in violation of 18 U.S.C. § 1962(d).

314. As a direct and proximate result of the conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Plaintiff has been injured in his business and property in that he has been denied valuable business opportunities, has suffered damage to his business and property.

315. Specifically, and as shall be proven at trial, Plaintiff lost his $13 million distribution from the proceeds of the Teachers' Loan; and Plaintiff will incur approximately $10 million in tax obligations as a result of the loss of the benefit of the zero coupon loan absorbing $86 million of phantom income over the next 11 years, and otherwise as shall be proved at trial.

316. As a result of Defendants' violations of Section 1962 (d) of RICO Plaintiff has been damaged in an amount to be determined at trial believed to be not less than $30 million.

COUNT III

AGAINST WARREN AND SCOTT FOR EQUITABLE RELIEF UNDER RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT SECTION 1964(a)

317. The allegations set forth in paragraphs 1 through 316 of this Complaint are re-alleged as if fully set forth herein.

318. This count is against Defendants Warren and Scott jointly and severally.

319. 18 U.S.C.S. § 1964(a) empowers district courts to "prevent and restrain" Racketeer Influenced and Corrupt Organization violations, thus authorizing injunctive relief. It does so generally rather than limiting the jurisdiction conferred only to cases brought by the Attorney General or some other public actor. (see *Chevron Corp. v. Donziger*,974 F. Supp. 2d 362, 376,2014 U.S. Dist. LEXIS 28253, 1,44 ELR 20044(S.D.N.Y.2014).

320. As a direct and proximate result of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiff has suffered the continuing loss of keeping Warren out of the management of 500 Lincoln, which cannot be properly calculated and thus constitutes irreparable harm and an injury for which Plaintiff has no adequate remedy at law.

321. Plaintiff will continue to suffer irreparable harm unless this Court enjoins Warren and Scott's racketeering activities and conduct.

COUNT IV

AGAINST WARREN FOR LIQUIDATED DAMAGES AS A RESULT OF BREACHES OF THE 2005 AND 20012 SETTLEMENT AGREEMENTS AGAINST WARREN

322. The allegations set forth in paragraphs 1 through 321 of this Complaint are re-alleged as if fully set forth herein.

323. This count is against Defendant Warren.

324. By virtue of Section 17 the 2012 Settlement Agreement "in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a nonbreaching Party might have against a breaching Party, each Party shall also have the right to: … (b) …. A liquidated damage award in favor of the non-breaching Party in the amount of two hundred fifty thousand dollars ($250,000) per violation, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage per violation".

325. Warren breached the 2005 Settlement Agreement by:

a. Failing to transfer and assign to the Diamond Trust all of Warren's direct and indirect ownership, rights, title and membership interest in Corem in violation of Section 3 (c) (ii);

b. Failing to live up to his commitment that for so long as either Plaintiff or Mr. Rutter or any entity in which either of them or any of their family members had a direct or indirect interest, Warren would never be in a control or management position, nor would he ever thereafter have any ownership, or equitable interest, whether direct or indirect, in any of the entities which control or own any of the joint enterprises;

c. By failing to sign the Teachers commitment in violation of Section 9 of the 2005 Settlement Agreement required that 500 Lincoln maximize the full leverage potential of the 500 Property, and by withholding his consent to the Teacher's Loan;

d. By wrongfully acting as agent for or on behalf of Scott in express violation and breach of the 2005 Settlement Agreement;

e. By wrongfully acting as agent for or on behalf of Scott by forging Scott's signature on the September 16, 2014 Allen & Overy engagement letter, thereby usurping managerial control over 500 Lincoln in express violation of his agreements not to do so.

326. Warren breached the 2012 Settlement Agreement by:

a. By consenting to the substitution of Corem as manager of 500 Lincoln instead of SLD by signing the 2014 Corem Settlement Agreement and in failing to disclose to Plaintiff that Corem had been substituted for SLD as manager of 500 Lincoln and continuing to act as though SLD was still the co-manager of 500 Lincoln after June 19, 2014 constituted a material breach of the 2012 Settlement Agreement.

b. By wrongfully acting as agent for or on behalf of Scott, and forging Scott's signature on the September 16, 2014 Allen & Overy engagement letter, thereby, usurping managerial control over 500 Lincoln in express violation of his agreements not to do so.

c. By attempting to extort Plaintiff on September 14, 2014 of $200,000 for one of his charities constitutes a breach of the 2012 Settlement Agreement.

d. By taking the September 19, 2014 Allen & Overy conference call as Scott's agent, without Scott being present;

e. By terminating Allen & Overy's representation of 500 Lincoln on September 22, 2014;

f. By his September 19, 2014 demand that the Teacher's Loan be immediately "killed";

g. By seeking to extort $920,000 from Plaintiff and the partnership though his October 23, 2014 stating: "I suggest you might look at the other options Scott has afforded the partnership. The option you have threatened would be the nuclear one. Now that is pure ignorance!!!!!!"; and

h. By issuing the proposed Modification Agreement seeking to extort $920,000 from Plaintiff and the partnership.

327. Plaintiff is a nonbreaching party as contemplated under the 2012 Settlement Agreement.

328. Pursuant to the 2012 Settlement Agreement Plaintiff is entitled to $250,000 in liquidated damages from Warren for each of the violations referenced above, and for each of the other violations which may be proved at trial..

329. As a result of Warren's breaches as above set forth plaintiff is entitled to an award of $3,000,000 or such other amount as may be proved at trial.

COUNT V

AGAINST SCOTT FOR LIQUIDATED DAMAGES AS A RESULT OF BREACHES OF THE 2005 AND 20012 SETTLEMENT AGREEMENTS

330. The allegations set forth in paragraphs 1 through 329 of this Complaint are re-alleged as if fully set forth herein.

331. This count is against Defendant Scott.

332. By virtue of Section 17 the 2012 Settlement Agreement "in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a nonbreaching Party might have against a breaching Party, each Party shall also have the right to: … (b) …. A liquidated damage award in favor of the non-breaching Party in the amount of two hundred fifty thousand dollars ($250,000) per violation, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage per violation".

333. Scott breached the 2005 Settlement Agreement by:

a. Failing to transfer and assign to the Diamond Trust all of Warren's direct and indirect ownership, rights, title and membership interest in Corem in violation of Section 3 (c) (ii);

b. Failing to live up to his commitment that for so long as either Plaintiff or Mr. Rutter or any entity in which either of them or any of their family members had a direct or indirect interest, Warren would never be in a control or management position, nor would he ever thereafter have any ownership, or equitable interest, whether direct or indirect, in any of the entities which control or own any of the joint enterprises;

c. By failing to sign the Teachers commitment in violation of Section 9 of the 2005 Settlement Agreement required that 500 Lincoln maximize the full leverage potential of the 500 Property, and by withholding his consent to the Teacher's Loan;

d. By wrongfully permitting Warren to act as his agent in express violation and breach of the 2005 Settlement Agreement;

e. By wrongfully permitting Warren to act as his agent by forging Scott's signature on the September 16, 2014 Allen & Overy engagement letter, thereby usurping managerial control over 500 Lincoln in express violation of his agreements not to do so.

334. Scott breached the 2012 Settlement Agreement by:

a. By consenting to the substitution of Corem as manager of 500 Lincoln instead of SLD by signing the 2014 Corem Settlement Agreement and in failing to disclose to Plaintiff that Corem had been substituted for SLD as manager of 500 Lincoln and continuing to act as though SLD was still the co-manager of 500 Lincoln after June 19, 2014 constituted a material breach of the 2012 Settlement Agreement.

b. By wrongfully permitting Warren to act as his agent, and forging Scott's signature on the September 16, 2014 Allen & Overy engagement letter, thereby, usurping managerial control over 500 Lincoln in express violation of his agreements not to do so.

c. By attempting to extort Plaintiff on September 14, 2014 of $200,000 for one of his charities constitutes a breach of the 2012 Settlement Agreement.

d. By permitting Warren to take the September 19, 2014 Allen & Overy conference call as Scott's agent, without Scott being present;

e. By permitting Warren to terminate Allen & Overy's representation of 500 Lincoln on September 22, 2014;

f. By permitting Warren on September 19, 2014 to demand that the Teacher's Loan be immediately "killed";

g. By seeking to extort $920,000 from Plaintiff and the partnership though his October 23, 2014 stating:

h. By issuing the proposed Modification Agreement seeking to extort $920,000 from Plaintiff and the partnership;

i. By emailing Plaintiff on October 14, 2014 encouraging him to either accept the modification agreement or agree to proceed with the Teachers Loan by signing the commitment letter and posting the good-faith deposit, but agreeing that start and Warren would have no liability if they then sought to strong arm the managers into executing the modification agreement, or presumably, any other treatment they might dream up between now and then, either to extort more money from the beneficial owners of 500 Lincoln or otherwise dilute the protective provisions of the 2005 and 2012 Settlement Agreements;

j. By not sign the Teachers commitment if he was not able to extort economic and other benefits to which neither he nor Warren are entitled;

k. By demanding that the only way to get the Teacher's Loan commitment signed would be if Plaintiff would purchase the interests owned by Warren or the Diamond Trust in Corem for $20 million.

335. Plaintiff is a nonbreaching party as contemplated under the 2012 Settlement Agreement.

336. Pursuant to the 2012 Settlement Agreement Plaintiff is entitled to $250,000 in liquidated damages from Scott for each of the violations referenced above, and for each of the other violations which may be proved at trial.

337. As a result of Scott's breaches as above set forth plaintiff is entitled to an award of $4,000,000 or such other amount as may be proved at trial.

COUNT VI

AGAINST SCOTT FOR BREACH OF FIDUCIARY DUTY

338. The allegations set forth in paragraphs 1 through 337 of this Complaint are re-alleged as if fully set forth herein.

339. This count is against Defendant Scott.

340. Defendant Scott owes Plaintiff fiduciary obligations. By reason of their fiduciary relationships, Defendant Scott has the highest obligation of good faith, fair dealing, loyalty and due care.

341. Defendant Scott violated and breached his fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

342. Defendant Scott authorized, or by abdication of duty, undertook the numerous wrongs herein set forth, and permitted Warren to undertake the numerous wrongs herein set forth in connection with management of 500 Lincoln in violation of Scott's agreements, representaions and covenants in favor of Plaintiff.

343. As a direct and proximate result of Defendant Scott's breaches of fiduciary duties, Defendant Scott have caused, and will continue to cause, Plaintiff to suffer substantial monetary damages as will be proved at trial.

344. Plaintiff has been directly and substantially injured by reason of Defendant Scott's breaches and or reckless disregard of his fiduciary duties to Plaintiff as co-manager of 500 Lincoln, and to Plaintiff as the beneficial owner of interests in 500 Lincoln. Plaintiff seeks damages and other relief for the Company in an amount to be proven at trial.

COUNT VII

AGAINST SCOTT FOR GROSS MISMANAGEMENT

345. The allegations set forth in paragraphs 1 through 344 of this Complaint are re-alleged as if fully set forth herein.

346. This count is against Defendant Scott.

347. By his actions as herein alleged, Defendant Scott abandoned and abdicated his responsibilities and duties with regard to prudently managing the assets and business of 500 Lincoln to Warren in violation of 2012 Settlement Agreement and as otherwise set forth herein.

348. As a direct result of Defendant Scott's mismanagement and breaches of duty alleged herein, Plaintiff has sustained and will continue to sustain significant damages.

349. As a result of the misconduct and breaches of duty alleged herein, Defendant Scott is liable to Plaintiff in an amount to be proven at trial.

COUNT VIII

AGAINST DEFENDANTS WARREN AND SCOTT FOR INDEMNIFICATION

350. The allegations set forth in paragraphs 1 through 349 of this Complaint are re-alleged as if fully set forth herein.

351. This count is against Defendants Warren and Scott jointly and severally.

352. On account of the wrongful acts, practices, and related misconduct alleged against Defendants Warren and Scott, Plaintiff is entitled to indemnification pursuant to the

indemnification provisions of the 2005 Settlement Agreement and the 2012 Settlement Agreement liable in an amount to be proven at trial believed to be not less than $30 million.

COUNT IX

AGAINST DEFENDANT SCOTT FOR ABUSE OF CONTROL

353. The allegations set forth in paragraphs 1 through 350 of this Complaint are re-alleged as if fully set forth herein.

354. This count is against Defendant Scott.

355. The conduct of Defendant Scott as alleged herein, constitutes an abuse of control over 500 Lincoln and the Property.

356. As a direct and proximate result of the Defendant Scott's abuse of control, Plaintiff has suffered, and will continue to suffer, damages for which Defendant Scott is liable in an amount to be proven at trial believed to be not less than $30 million.

COUNT X

AGAINST DEFENDANTS WARREN AND SCOTT FOR BREACH OF CONTRACT

357. The allegations set forth in paragraphs 1 through 356 of this Complaint are re-alleged as if fully set forth herein.

358. This count is against Defendants Warren and Scott jointly and severally.

359. Defendants Warren's and Scott's actions as hereinabove set forth constitute flagrant breaches of the 2005 and 2012 Settlement Agreements.

360. Plaintiff have been damaged by Defendants Warren's and Scott's numerous breaches of contract as hereinabove set forth. Plaintiff, a result thereof, seeks damages in an amount to be proven at trial believed to be not less than $30 million.

COUNT XI

AGAINST DEFENDANTS WARREN AND SCOTT FOR FRAUD

361. The allegations set forth in paragraphs 1 through 360 of this Complaint are re-alleged as if fully set forth herein.

362. This count is against Defendants Warren and Scott jointly and severally.

363. The actions of Defendants Warren and Scott as hereinabove set forth constitutes fraud.

364. As a result of the fraud committed by Defendants Warren and Scott, Plaintiff has been damaged as above set forth and seek damages and other relief as a result thereof, in an amount to be proven at trial believed to be not less than $30 million.

365. Defendants Warren and Scotts' actions were willful and malicious and performed with an evil motive and with reckless indifference to the rights of Plaintiff entitling Plaintiff to punitive damages.

COUNT XII

Injunctive Relief

366. The allegations set forth in paragraphs 1 through 365 of this Complaint are re-alleged as if fully set forth herein.

367. This count is against Defendants Warren and Scott.

368. Pursuant to Section 17 of the 2012 Settlement Agreement Plaintiff is entitled to injunctive relief.

369. Section 17 of the 2012 Settlement Agreement provides:

> *It is recognized that damages in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the*

Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a nonbreaching Party might have against a breaching Party, each Party shall also have the right to:

(a) ***Injunction****. An injunction against a breaching Party issued by a court or arbitrator or arbitration panel of competent jurisdiction enjoining such breach, and each breaching Party hereby consents to the issuance of any preliminary or permanent injunction enjoining the breaching conduct without limitation and without bond; and*

370. Plaintiffs, on behalf of the Company, request that this Court issue a preliminary and permanent injunction, enjoining Defendants Warren and Scott, from directly or indirectly claiming to have or taking any action in connection with the management of 500 Lincoln and each of its affiliates, and in any way participating in the management, operation or control of 500 Lincoln, LLC and each of its affiliates, and forever barring Warren or Scott from having any management or other control rights in 500 Lincoln and permanently enjoining them from disrupting the business of 500 Lincoln, abusing Plaintiff and the other principals, using their criminal shenanigans to steal from, extort and otherwise wreak havoc and cause harm to Plaintiff and his businesses.

371. Plaintiff has suffered and shall continue to suffer irreparable injury unless Defendants Warren and Scott are enjoined from directly or indirectly claiming to have or taking any action in connection with the management of 500 Lincoln and each of its affiliates, and in any way participating in the management, operation or control of 500 Lincoln, LLC and each of its affiliates.

372. Plaintiff has no adequate remedy at law.

COUNT XIII

FOR SPECIFIC PERFORMANCE

373. The allegations set forth in paragraphs 1 through 372 of this Complaint are re-alleged as if fully set forth herein.

374. This count is against Defendants Warren and Scott.

375. Pursuant to Section 17 of the 2012 Settlement Agreement Plaintiff is entitled to specific performance of the terms of the 2012 Settlement Agreement.

376. Section 17 of the 2012 Settlement Agreement provides:

> *It is recognized that damages in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a nonbreaching Party might have against a breaching Party, each Party shall also have the right to:*
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> > *(c)* ***Specific Enforcement.*** *The right to have such covenants specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any breach of any of such covenants will cause irreparable injury to the nonbreaching Party to whom such covenant was made and that money damages will not provide an adequate remedy. Each Party acknowledges and agrees that the covenants are reasonable and valid in all respects.*

377. Plaintiff has no adequate remedy at law, and hereby seek to require Defendants Warren and Scott to specifically perform the terms of the 2012 Operating Agreement.

COUNT XIV

AGAINST DEFENDANTS WARREN AND SCOTT FOR CIVIL CONSPIRACY

378. The allegations set forth in paragraphs 1 through 377 of this Complaint are re-alleged as if fully set forth herein.

379. This count is against Defendants Warren and Scott jointly and severally.

380. Defendants Warren and Scott conspired with one another to illegally cause the unauthorized and illegal wrongs as more fully set forth herein.

381. Defendants committed numerous overt acts in furtherance of the conspiracy including, but not limited to the actions detailed above as well as other overt acts.

382. As a direct result of the foregoing conduct, undertaken by Defendants Warren and Scott have caused and continue to cause damages to Plaintiff, including but not limited to depriving plaintiffs of significant economic rights with respect to his beneficial interests in 500 Lincoln in an amount to be proved at trial, and believed to be not less than $30 million.

383. Defendants' conspiracy was willful and malicious and performed with an evil motive and with reckless indifference to the rights of others, entitling Plaintiffs to punitive damages.

COUNT XV

AGAINST DEFENDANT SCOTT FOR BREACH OF DUTIES OF CARE, LOYALTY, GOOD FAITH AND FAIR DEALING

384. The allegations set forth in paragraphs 1 through 383 of this Complaint are re-alleged as if fully set forth herein.

385. This count is against Defendant Scott.

386. By reason of his relationship as a co-manager of 500 Lincoln, Defendant Scott owes Plaintiff the highest obligation of good faith, fair dealing, loyalty and due care.

387. Defendant Scott violated and breached his duties of good faith, fair dealing, loyalty and due care owed to Plaintiff.

388. As a direct and proximate result of Defendant Scott's breaches of his duties of good faith, fair dealing, loyalty and due care, Defendant Scott has caused, and will continue to cause, Plaintiff to suffer substantial monetary damages.

389. As a result of Defendant Scott's breaches of his duties of good faith, fair dealing, loyalty and due care Plaintiff have been directly and substantially injured, and Plaintiffs seek damages and other relief for the Company in an amount to be proven at trial believed to be not less than $30 million.

COUNT XVI

FOR DECLARATORY RELIEF

390. The allegations set forth in paragraphs 1 through 389 of this Complaint are re-alleged as if fully set forth herein.

391. This count is against Defendants Warren and Scott.

392. The actions of Defendants as herein set forth substituting Corem as co-manager of 500 Lincoln pursuant to the 2014 Corem Settlement Agreement in the place of and instead of SLD to be the successor manager to SLD in 500 Lincoln on June 19, 2014, which action was agreed to by Scott and SLD as well as by Warren by their execution of the 2014 Corem Settlement Agreement, resulted in the retirement of Scott or SLD as co-manager of 500 Lincoln.

393. Plaintiff seeks a declaratory judgment that as a result of the wrongful substitution of Corem as co-manager of 500 Lincoln, Scott and SLD are no longer managers of 500 Lincoln, and as Corem cannot be a manager of 500 Lincoln, as its decision making authority requires approval of persons other than SLD or Scott alone, 500 Lincoln is now and hereafter to be managed solely by Tunnel.

394. Thus, such conduct by Defendant creates a justiciable dispute between Plaintiffs'

rights and those of Defendants.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

395. Awarding compensatory damages against each respective Defendant in amounts to be proven at trial;

396. Award treble damages in connection with the violations of RICO which provide for treble damages;

397. Awarding appropriate equitable relief, including injunctive relief, specific performance and declaratory relief requested herein;

398. Awarding punitive damages at the maximum amount permitted by law;

399. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs.

400. Awarding such other relief as this Court may deem just and proper.

JURY DEMAND

401. Plaintiffs demand a trial by jury on all claims so triable.

Dated: November 3, 2014

Jacob Frydman
Pro se
60 Broad Street
34th Floor
New York, NY 12538

212-388-6800
Jacob.f@urpa.com

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

JACOB FRYDMAN, being duly sworn, deposes and says:

I am a Plaintiff in this action. I have read the forgoing Verified Complaint and know the contents thereof. The same is true to my own knowledge, except those matters therein which are stated to be alleged on information or belief, and as to those matters I believe them to be true.

Dated: November 3, 2014

New York, New York

Jacob Frydman

EXHIBIT A

ORIGINAL

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AMENDED AND RESTATED OPERATING AGREEMENT
OF
500 LINCOLN, LLC

AGREEMENT made as of the 31 day of October, 2002, by and between TUNNEL ASSOCIATES, LLC, ("**Tunnel**") a New York limited liability company having an address % Essex Capital Partners, Ltd., 635 Madison Avenue, New York 10022, and COREM CAPITAL PARTNERS, LLC ("**Newco**"), a New York limited liability company having an address % American Self-Storage Mgmt. Assoc., Inc., 550 S.E. Fifth Avenue, Boca Raton, Florida 33432 (each referred to individually as a "Member" or collectively as the "Members").

W I T N E S S E T H:

WHEREAS, Tunnel formed a New York limited liability company known as 500 Lincoln, LLC (the "Company"); and

WHEREAS, Newco was subsequently assigned a 49% interests in the Company; and

WHEREAS, the Members desire to amend and restate the Operating Agreement of the Company.

NOW, THEREFORE, the Members agree as follows:

ARTICLE 1

MEMBERS, TERM, NAME, PURPOSE

AND PLACE OF BUSINESS

1.1 Formation of the Company. The parties hereto agree to form 500 LINCOLN, LLC under the New York Limited Liability Company Law, as amended, from time to time (the

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"Law"). In the event of any inconsistency between any provision of the Law and the provisions of this Agreement, the provisions of this Agreement shall govern.

1.2 Name. The name of the Company is 500 LINCOLN, LLC. The business of the Company shall be conducted solely under such name and title to all assets of the Company shall be held in such name.

1.3 Purposes of the Company

1.3.1. Purposes. The purpose of the Company shall be:

1.3.1.1 To acquire a leasehold or other interest in the land, building(s) and other property located at 503-519 Tenth Avenue, 505-507 West 38th Street and 512 West 39th Street, New York, New York located on the parcel of land more particularly described on Exhibit A attached hereto, and to develop, improve, operate, mortgage, lease, license, own and manage and maintain such property and any other property, real or personal, hereafter acquired by the Company pursuant to and in accordance with this Agreement (the leasehold or other interest in the land, building(s) and other properties listed above together with any other property (real or personal) acquired by the Company are collectively called the "Property");

1.3.1.2 To sell, exchange or otherwise transfer or dispose of the Property, or any part of the Company's interest therein.; and

1.3.1.3 To engage in such other activities as may be permitted by law.

1.3.2 Single Purpose Entity. For so long as the Company is a party to any agreement that requires the Company to conform to certain requirements in order to preserve its existence as a "single purpose entity", the Members agree to use their good faith commercially reasonable efforts to ensure that the company conforms to those requirements.

1.5 Place of Business. The principal place of business of the Company shall be located at % Essex Capital Partners, Ltd., 635 Madison Avenue, New York 10022 or at such other

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location as may be selected by the Managers from time to time. The Managers shall give notice to the Members of any change in the location of the principal place of business of the Company.

1.6 Term. The Company shall continue until dissolved and liquidated pursuant to the provisions of Article 8 hereof.

ARTICLE 2

CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS

2.1 Interests of Members.

2.1.1 Subject to Articles 7 and 8 hereof, the respective interests of the Members ("Percentage Interests") in the Company shall be as follows:

Tunnel:	51%
Newco:	49%
Total	100.0%

2.1.2 If the Percentage Interests of any Members are changed pursuant to the terms of this Agreement during any calendar year, then the amount of all items to be credited, charged, allocated or distributed to such Members for such entire calendar year in accordance with Percentage Interests in the Company shall be apportioned to the portion of such calendar year which precedes the date of such change and to the portion of such calendar year which occurs on and after the date of such change in proportion to the number of days in each such portion. The amounts of the items so allocated to each such portion shall be credited, charged, allocated or distributed to such Members in proportion to their ~~Percentage~~ Interests in the Company during each such portion of the calendar year in question.

2.1.3. Tunnel together with its "Permitted Transferees" (as hereinafter defined) may be referred to herein from time to time collectively, as the "Tunnel Group" and Newco together with its Permitted Transferees may be referred to herein from time to time collectively as the "Newco Group."

2.2 Capital Contributions

2.2.1 Each Member or his assignor has contributed to the capital of the Company the cash or property shown on the books of the Company.

2.2.2 No Member may withdraw any capital from the Company without the consent of all of the Managers.

2.2.3 Except as otherwise provided herein, no Member shall have the right to demand or receive property, other than cash, in return for a capital contribution or have priority over another Member, either as to the return of capital contributions or as to profits, losses or distributions, or as to compensation by way of income.

2.2.4 No Member shall be entitled to interest of any kind on its capital contribution.

2.2.5 If the Managers shall determine that additional capital is needed for any Company purpose, each Member shall be required to contribute additional cash to the capital of the Company in the proportions of their respective Percentage Interests. The Managers shall advise each Member of the amount of each Member's required contribution pursuant to this Section 2.2.5 and, within fifteen (15) days of such notice, each Member shall contribute to the

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Company such Member's required contribution. No Member shall be obligated to make any future additional capital contributions other than as set forth in this Section 2.2.5 or as set forth in Section 2.2.6.

2.2.6 Notwithstanding any other provision in this Agreement to the contrary, provided that either Manager shall determine, in such Manager's commercially reasonable discretion, that funds are required for Company purposes and that an alternative source for such funds is not otherwise provided for herein, such Manager may require the Members, without the consent of the other Manager, to contribute cash to the capital of the Company, in equal amounts, provided, however, that after such time as additional contributions have been made to the capital of the Company by each of the Members since the date hereof in the aggregate amount of $100,000.00 each (the "Mandatory Contribution"), the requirement to contribute any further additional contributions to the capital of the Company shall require the consent of both Managers. For example, once Tunnel has made additional contributions of $ 100,000.00 and Newco has made additional contributions of $ 100,000.00, the consent of both Managers will be required for any further contributions.

2.3 Capital Accounts. A capital account ("Capital Account") shall be maintained for each Member on the books of the Company in accordance with the provisions of Treasury Regulation section 1.704-1(b) (2) (iv) as such regulation is in effect on the date hereof.

2.3.1 The Capital Account of each Member shall be credited with (i) an amount equal to such Member's cash capital contributions and the fair market value of property contributed to the Company (net of liabilities secured by such property), and (ii) such Member's share of the Company's Net Profit and any item of gain specially allocated to such

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Member in accordance with Article 5 hereof, but for this purpose including income and gain exempt from tax;

2.3.2 The Capital Account of each Member shall be debited by (i) the amount of cash distributions to such Member and the fair market value of property distributed to the Member (net of liabilities secured by such property), and (ii) such Member's share of the Company's Net Loss and any item of loss or expense specially allocated to such Member pursuant to Article 5 hereof, and of expenditures which are permitted to be neither capitalized nor deducted for tax purposes (including for this purpose losses or expenses which may not be deducted for tax purposes pursuant to either Section 267 (a)(1) , Section 709 or Section 707 (b) of the Internal Revenue Code of 1986, as amended (the "Code")

2.3.3 Upon the transfer of an interest in the Company, the Capital Account of the transferor Member (as adjusted, if at all, as required by this Section 2.3.3) that is attributable to the transferred interest will be carried over to the transferee Member.

2.3.4 The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Treasury Regulations promulgated under Section 704 of the Code (the "Regulations"), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Managers may make such modification as they deem necessary.

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2.4 Managers' Liability for Capital. The Managers shall have no personal liability for the return of any Capital Contributions to the Members or to compensate a negative balance in the Capital Account of any Member existing at any time.

ARTICLE 3

MANAGEMENT

3.1 Management Powers of the Managers.

3.1.1 (A) The management, operation and control of the Company and its day-to-day business and affairs shall vest initially and solely in two (2) Managers. The Managers need not be Members of the Company. Each of Tunnel and Newco shall designate one (1) of the Managers provided that they continue to own, together with any of their Permissible Transferees (herein defined), a forty nine (49%) percent interest or more in the Company (a "Majority Member Group"). The initial Managers of the Company shall be Tunnel Associates, LLC and Warren Diamond, which shall each have a term of fifteen (15) years from the date hereof and, subject to the next sentence, shall not be subject to removal or resignation during such term. In the event that the interest of a Majority Member Group shall decline below forty nine (49%) percent, then any other Majority Member Group or the Member(s) holding fifty two (52%) percent or more (either alone or combined with other Members) of the Percentage Interests in the Company shall have the right to remove the Manager previously appointed by the Members who are no longer a Majority Member Group. In such event and so long as there still remains a single Majority Member Group, the Company shall be managed by a single manager elected by the vote of the Majority Member Group, which may be by the sole remaining Majority

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Member Group. In the event there shall not be any Majority Member Group of the Company, the Company shall be managed by two (2) managers, to be elected by a majority of interest of the Members, and each having a term of two (2) years from the date of such election.

(B) Each Majority Member Group shall designate one or more persons (which may include the other) who shall serve as a successor Manager of the Company in the place and stead of such person in the event that such person cannot or will not serve as a Manager of the Company. Such designation shall be made in writing and kept with the books and records of the Company as provided in Section 6.2. The designation may be changed at any time. Any vacancy occurring for any reason among the Managers, whether resulting from the death, resignation or removal of one or more Managers, failure of either of the Managers to appoint a successor, failure of the Members to approve such successor or otherwise, shall be filled by either (i) the designation by the Majority Member Group entitled to designate such Manager, or (ii) if such Majority Group Member cannot or does not designate its Manager, by a vote of a majority in Percentage Interests of the Members.

3.1.2 The Managers, acting unanimously, i.e., either jointly or separately with the written consent of the other Manager, shall have all necessary and appropriate powers to carry out the purposes of the Company, including, without limitation, the power:

(a) to negotiate, execute, deliver and perform on behalf and in the name of the Company any and all ground leases, contracts, deeds, assignments, deeds of trust, leases, subleases, promissory notes and other evidences of indebtedness, mortgages, bills of sale, financing statements, security agreements, easements, stock powers, and any and all other instruments necessary or incidental to the business of the Company and the financing thereof;

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(b) to borrow money, without limit as to amount, and to secure the payment thereof by mortgage, pledge, or assignment of, or security interest in, all or any part of the assets then owned or thereafter acquired by the Company;

(c) to establish, maintain and draw upon checking and other accounts of the Company in such bank or banks as the Managers may from time to time select;

(d) to execute any notifications, statements, reports, returns or other filings that are necessary or desirable to be filed with any state or Federal agency, commission or authority;

(e) to employ a managing agent for the Property provided, however, that such managing agent expressly agree to provide cash flow statements to both Managers, on a monthly basis, in form satisfactory to the Managers and containing such additional information as may be required by the Managers;

(f) to execute, acknowledge and deliver any and all documents and instruments deemed appropriate to carry out any of the foregoing or the purposes and intent of this Agreement.

In the event at any time there shall be a single Manager of the Company, such Manager shall have all the authority provided for managers of limited liability companies under the Law.

3.1.3 The Manager(s) shall use ordinary care and reasonable diligence in carrying out the affairs of the Company. The Manager(s) shall not be liable to the Members for any mistake of judgment, any action or action omitted to be taken in good faith on behalf of the Company or for any loss due to the negligence, fraud or willful misconduct of any employee, broker or agent of the Company who was selected, engaged or employed by the Manager(s),

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provided that such employee, broker or agent was selected, engaged or retained by the Managers) with reasonable care and in accordance with the terms of this Agreement. The Manager(s) may consult with legal counsel selected by it or them on matters relating to the Company, and any action taken or omitted to be taken by it in good faith in reliance and in accordance with the opinion or advice of such counsel shall be full protection and justification to it with respect to the action taken or omitted to be taken. The liability of the Managers for damages for any breach of duty to the Company or the Members shall be limited to the maximum extent permitted to be limited by the Law.

3.1.4 The Manager(s) shall carry on, manage and conduct the Company business and shall devote so much of his time thereto as shall be reasonably necessary. The Manager(s) shall not be obligated to devote all of their time and effort to the Company and its affairs. The Manager(s) may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as the Manager(s) may from time to time designate. Such officers, agents, consultants and employees need not be Members of Manager(s), and shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Manager(s) and may be removed at any time, with or without cause, by the Manager(s).

3.1.5 All deeds, bills of sale, mortgages, leases, contracts of sale, bonds, notes, or other contracts, documents, agreements, instruments, or writings shall bind the Company and be effective for all uses and purposes if signed on behalf of the Company by both Managers acting together or by either Manager, acting alone but with the written consent of the other Manager.

3.2 The Members Have No Management Powers.

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3.2.1 The Members (other than the Managers) shall have no voice or participation in the management of the Company business, and no power to bind the Company or to act on behalf of the Company in any manner whatsoever, except as specially authorized by this Agreement.

3.3 Compensation of the Managers: Reimbursement for Expenses.

The Managers shall receive compensation for acting as Managers of the Company as mutually agreed upon by the Managers. All costs and expenses actually incurred in connection with the organization of the Company and the ongoing operation or management of the business of the Company shall be borne by the Company. The Company shall reimburse the Managers for all actual and reasonable out-of-pocket costs and expenses incurred by the Managers in connection with the organization and business of the Company.

3.4 Indemnification. The Managers and the principals, members, managers, partners, officers, directors and shareholders of such Managers, shall be indemnified and held harmless by the Company (but not by any Member except to the extent of their capital contributions) to the fullest extent permitted by law from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever arising out of or in connection with the transactions contemplated by this Agreement or the Managers' management of the Company's affairs; such indemnification shall not apply with respect to liabilities arising out of those acts for which the Managers may be held liable pursuant to Section 3.1.3 of this Agreement. The indemnification authorized by this Section shall include, without limitation, payment of (i) reasonable attorneys' fees or other expenses incurred in connection with settlement or in defense of any legal proceeding and (ii) the removal of any liens affecting the property of the indemnitee. Such attorneys' fees and expenses shall be paid by the Company as they are incurred upon receipt, in each case, of an undertaking by or on behalf of the indemnified person to repay such amounts if it is ultimately determined that such person is not entitled to indemnification with respect thereto. The indemnification rights contained in this section shall be cumulative of, and in addition to, any and all rights, remedies and resources to which the Managers, their employees, agents and affiliates may be entitled, whether pursuant to the provisions of this Agreement, at law or in equity. Indemnification hereunder shall be made from assets of the Company and no Member shall be personally liable to any indemnitee.

3.5 Members May Engage in Other Activities. The Members (including the Managers) and their affiliates shall have the right to engage in any other business (including, but not limited to, acting as a Member or Manager in any other Company formed for purposes similar to the purposes of the Company) and to compete directly or indirectly, with the business of the Company, and neither the Company nor any Members shall have any rights or claims as a result of such activities. The Members hereby waive any and all rights and claims which they may otherwise have against the other Members and their Affiliates as a result of such activities.

3.6 Reserve. The Company shall maintain reserves in an amount as determined from time to time, by the Managers in their sole and absolute discretion, for normal repairs, debt service replacements, technological upgrades of the Property, working capital, contingencies, and cash flow needs of the business, as well as reserves for new business opportunities.

3.7 Certain Tax Matters.

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3.7.1 The Managers shall engage an accountant to prepare at the expense of the Company all tax returns and statements, if any, which must be filed by or on behalf of the Company.

3.7.2 The Managers agree to use their best efforts to meet all requirements of the Code and currently applicable regulations, rulings and other procedures of the Internal Revenue Service to ensure that the company will be classified for Federal Income tax purposes as a partnership and not as an association taxable as a corporation.

3.8 Meetings. Meetings of the Members shall not be held unless the Manager(s), in its or their sole discretion, decide to call a meeting of the Members for any purpose.

3. 9 Voting. All of the Members of each of Tunnel and Newco and their respective Permissible Transferees shall vote their Percentage Interests on all matters to be voted on by the Members as designated by the Majority Group Manager of each such group. The Majority Group Manager of the Tunnel Group is Tunnel and the Majority Group Manager of Newco is Warren Diamond or his legal representative in the case of his incapacity.

3.10 Loans. If any Member, with the consent of the Managers, makes a loan to the Company, such loan shall be repaid with interest at a rate of interest equal to two (2%) over the rate of interest publicly announced from time to time by JP Morgan Chase Bank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by JP Morgan Chase Bank, N.A. from time to time for the rate presently referred to as its "prime lending rate") and such loan shall, except as otherwise permitted by the lender, be repaid in full with interest prior to any payments to the Managers or any distributions being made to any of the Members as herein set forth.

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ARTICLE 4

CASH DISTRIBUTIONS

4.1 Net Cash Flow. Subject to the provisions of Sections 4.3 and 8.2, the Managers shall distribute or cause to be distributed to the Members, as and when determined by the Managers, but no less often than quarterly, in accordance with Section 4.2, the excess, if any ("Net Cash Flow") of:

4.1.1 The aggregate amount of all income and receipts of all kinds received by the Company from all sources during a period, including, without limitation, operations, insurance proceeds, proceeds from Capital Transactions and the proceeds from loans or capital contributions. "Capital Transaction" shall mean the sale, refinance or disposition of all or any substantial portion of the Company's property or any interest therein or any condemnation or casualty loss with respect thereto, plus any existing cash reserves which the Managers determine to be unnecessary and therefore may be released, over

4.1.2 All cash disbursements of the Company during that period, including those used to pay (A) costs and expenses from operations during such period, (B) the cost of any repairs, replacements or additions to the Company's business (whether or not capitalized for federal income tax purposes) and of any other capital expenditures paid for in cash during such period, (C) indebtedness of the Company and (D) amounts reserved in accordance with Section 3.6.

4.2 Allocation of Net Cash Flow. Net Cash Flow distributable in accordance with Section 4.1 shall be distributed to the Members in proportion to their Percentage Interests.

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4.3 Limitation on Distributions. Notwithstanding Section 4.2, Net Cash Flow from a transaction which is a part of the liquidation of the Company in accordance with Section 8.2, together with other funds remaining to be distributed at such time, shall be distributed to the Members in accordance with Section 4.2 no later than the later of (a) the end of the taxable year of the Company in which such liquidation occurs or (b) within 90 days after the date of such liquidation event, after payment of all Company liabilities and expenses (or adequate provision therefor), except that in no event shall the distribution to a Member exceed the positive balance in such Member's Capital Account after giving effect to all allocations to such Member under Article 5 of Net Profits and Net Losses, so that liquidation proceeds shall be distributed in accordance with each Member's positive Capital Account balance (within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(b) as in effect on the date hereof).

ARTICLE 5

ALLOCATION OF TAXES; SPECIAL ALLOCATIONS

5.1 **Definition of Net Profits and Net Losses.** "Net Profits" or "Net Losses", as the case may be, shall mean, for any fiscal year of the Company, the net profit or net loss of the Company determined for Federal income tax purposes, but including as an item of income or gain any such item which is earned by the Company during such year and is exempt from Federal income tax, and deducting the amount of any expenditures incurred by the Company during such fiscal year that are described in Section 705 (a) (2) (B) of the Code or the corresponding provisions of any subsequent law and excluding any items that are specially allocated under Section 5.4 hereof.

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5.2 **Allocation of Net Profits**. Subject to Section 5.4, for each fiscal year of the Company, Net Profits shall be allocated to the Members as follows:

5.2.1 First, to those Members having negative Capital Account balances, in the proportion of such negative balances until such balances are eliminated.

5.2.2 Next, to the Members in the proportions necessary to render positive Capital Account balances in the same proportion as the Membership Interests.

5.2.3 Lastly, to the Members in proportion to their Membership Interests.

5.3 **Allocation of Net Losses**. Subject to Section 5.4, for each fiscal year of the Company, Net Loss shall be allocated to the Members as follows:

5.3.1 First, to those Members having positive Capital Account balances, in the proportions necessary to render their respective Capital Account balances in the same proportion as their respective Membership Interests.

5.3.2 Next, to those Members having positive Capital Account balances, in the proportion of such balances until such balances are eliminated.

5.3.3 Next, to the Members in the proportions necessary to render negative Capital Accounts in the same proportion as the Membership Interests.

5.3.4 Lastly, to the Members in accordance with their Membership Interests.

5.3.5 Notwithstanding the foregoing, if the allocation of Net Loss to a Member would create or increase a Qualified Income Offset Amount (as defined in Section 5.4.4), there shall be allocated to such Member only that amount of Net Loss as will not create or increase a Qualified Income Offset Amount. In the event some but not all of the Members would have a Qualified Income Offset Amount as a consequence of an allocation of Net Loss, the limitation

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set forth in this Section 5.3.5 shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulation Section 1.704-1 (b) (2) (ii) (d) .

5.4 **Special Allocations**. The following special allocations should be made in the following order:

5.4.1 **Minimum Gain Chargeback**. Except as otherwise provided in Section 1.704-2(f) of the Tax Regulations, notwithstanding any other provision of this Article V, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-2(g) of the Tax Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Tax Regulations. This Section 5.4.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Tax Regulations and shall be interpreted consistently therewith.

5.4.2 **Partner Minimum Gain Chargeback**. Except as otherwise provided in Section 1.704-2(l)(4) of the Tax Regulations, notwithstanding any other provision of this Article V, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in

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accordance with Section 1.704-2(i)(5) of the Tax Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Tax Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Tax Regulations. This Section 5.4.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Tax Regulations and shall be interpreted consistently therewith.

5.4.3 **Qualified Income Offset**. In the event any Member unexpectedly received any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), or Section 1.704-1(b)(2)(ii)(d)(6) of the Tax Regulations, items of Company income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Tax Regulations, the Adjusted Capital Account Deficient of the Member as quickly as possible, provided that an allocation pursuant to this Section 5.4.3 shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.4.3 were not in this Agreement.

5.4.4 **Gross Income Allocation**. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amounts such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections

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1.704-2(g)(1) and 1.704-2(i)(5) of the Tax Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.4.4 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article V have been made as if Section 5.4.3 and this Section 5.4.4 were not in this Agreement.

5.4.5 **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their Membership Interests.

5.4.6 **Partner Nonrecourse Deductions.** Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Tax Regulations.

5.4.7 **Mandatory Allocations Under Section 704(c) of the Code.** Notwithstanding the foregoing provisions of this Section 5.4, in the event Section 704(c) of the Code or Section 704(c) of the Code principles applicable under Section 1.704-1(b)(2)(iv) of the Tax Regulations require allocations of Profits or Losses in a manner different than that set forth above, the provisions of Section 704(c) of the Code and the Tax Regulations thereunder shall control such allocations among the Members. Any item of Company income, gain, loss and deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company or which has been revalued for Capital Account purposes pursuant to Section 1.704-1(b)(2)(iv) of the Tax Regulations) and which is required or permitted to be allocated to such member for income tax purposes under Section 704(c) of the Code so as to take

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into account the variation between the tax basis of such property and its fair market value at the time of its contribution shall be allocated solely for income tax purposes in the manner so required or permitted under Section 704(c) of the Code using the "traditional method" described in Section 1.704-3(b) of the Tax Regulations; provided, however, that curative allocations consisting of the special allocation of gain or loss upon the sale or other disposition of the contributed property shall be made in accordance with Section 1.704-3(c) of the Tax Regulations to the extent necessary to eliminate any disparity, to the extent possible, between the Members' book and tax Capital Accounts attributable to such property; further provided, however, that any other method allowable under applicable Tax Regulations may be used for any contribution of property as to which there is agreement between the contributing Member and the other Members.

5.5 **Negative Capital Accounts.** No Member shall be required to pay to the Company or to any Member any deficit in such Member's Capital Account, upon dissolution or otherwise.

ARTICLE 6

BOOKS, RECORDS, REPORTS AND ACCOUNTS

6.1 Books and Records. At all times during the continuance of the Company, the Managers shall keep or cause to be kept full and true books of account, in which shall be entered fully and accurately each transaction of the Company. The Company shall keep its books and records on the same method of accounting employed for tax purposes. The fiscal year of the Company shall be the calendar year. The Managers shall also cause to be prepared and filed all Federal, state and local tax returns required of the Company.

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6.2 Retention of Books and Records.

6.2.1 The Company shall continuously maintain at its principal place of business set forth in Section 1:

(A) A current list of the full name and last known business or residence address of each Member set forth in alphabetical order together with the contribution and the share in profits and losses of each Member;

(B) A copy of the Articles of Organization of the Company and all certificates of amendments thereto, together with executed copies of any powers of attorney pursuant to which any such certificate has been executed;

(C) Copies of the Company's Federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years;

(D) Copies of this Agreement and all amendments thereto;

(E) Financial statements of the Company for the six most recent fiscal years;

(F) The Company's books and records for at least the current and past six fiscal years;

(G) Such additional books and records as are necessary for the operation of the Company; and

(H) The designations of successor Managers described in Section 3.1.1(B).

6.2.2 Any records maintained by the Company in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable period of time.

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6.3 Member' Rights Regarding Books: Records. and Tax Information.

6.3.1 Each Member has the right upon reasonable request:

(A) To inspect and copy during normal business hours, at the Member's expense, any of the Company's records required to be kept by the Company.

(B) To obtain a copy, at the Member's expense, of the Company's Federal, state, and local income tax or information returns for each year.

6.3.2 The Managers shall send to each Member within ninety (90) days after the end of each taxable year such information as is necessary for each Member to complete Federal and state income tax or information returns.

6.3.3 The Member and the Member's representatives shall not divulge to any other person any, confidential or proprietary data, information or property or any trade secrets of the Company discovered in any inspection of the Company's books and records except as required by law or by lenders.

6.4 Bank Accounts. The Company shall establish and maintain accounts in financial institutions (including, without limitation, national or state banks, trust companies, or savings and loan institutions) in such amounts as the Managers may deem necessary from time to time. The funds of the Company shall be deposited in such accounts and shall not be commingled with the funds of the Managers or any affiliates thereof.

6.5 Goodwill. No value shall be placed for any purpose upon the Company' s name or the right to its use, or upon the goodwill of the Company or its business. Upon termination or dissolution of the Company, neither the Company's name, nor the right to its use, nor the goodwill of the Company, shall be considered as an asset of the Company.

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6.6 Election under Section 754 of the Code. In the event of any transaction described in section 743 (b) of the Code and permitted by the provisions of this Agreement, the Company shall, upon the timely written request of the Person succeeding to a Company interest in such transaction, make the election provided for in Section 754 of the Code.

6.7 "Tax Matters Partner". Tunnel is hereby designated to serve as "Tax Matters Partner" (as defined in Code Section 6231). The Tax Matters Partner is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including administrative and judicial proceedings.

ARTICLE 7

ASSIGNABILITY OR TRANSFER OF COMPANY INTERESTS

7.1 Sale Transfer or Assignment of Percentage Interests.

7.1.1 (A) The interest of a Member, whether of record or beneficial, shall not be assigned, conveyed, sold, or otherwise transferred or disposed of (collectively, a "Transfer") without the prior written consent of the Managers, which consent may be withheld or delayed in the Managers' sole discretion; provided, however, that any owner of a beneficial interest of a member of the Tunnel Group or Newco Group, i.e. the owner of Percentage Interests or the owner of an interest in an entity that owns the Percentage Interests in the Company, may transfer such beneficial ownership interest to a Permissible Transferee without the consent of the Managers, but with the consent of the Majority Group Manager of such group; provided, that, as a condition to any such transfer the Permissible Transferee shall execute an instrument pursuant to which such Permissible Transferee agrees to be bound

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by and to comply with the terms of this Agreement that bind, and obtains the rights and benefits that inure to, the transferor Member as though the Permissible Transferee were such transferor and, <u>further provided</u> that such Permissible Transferee irrevocably agree in writing that the Majority Group Manager of such group shall continue to represent the interests of the Permissible Transferee in the Company. As used in this Agreement, "Permissible Transferee" of a Member means: (a) in the case of a Member that is a natural person, but not an "Additional Member", a member of such person's Immediate Family; (b) in the case of a Member that is an entity, but not an "Additional Member", any Affiliate of such entity; (c) in the case of any Member, another member of his or its Majority Member Group, and with respect to Warren Diamond and/or John DelMonaco, (d) Murray Mruvka, [redacted]. Cannizzaro Family Limited Partnership I ("Cannizzaro"), [redacted], Alan Mruvka, Jack [redacted], David Brown, [redacted] Guttman and Grace DelMonaco (collectively, the "Additional Members"). Notwithstanding the foregoing, a Permissible Transferee shall not include any Person that is in receivership, bankruptcy, insolvency, dissolution, liquidation or any similar proceeding or any Person whose incompetence has been established pursuant to a judicial determination. "Affiliate" of any Person means any Person that directly or indirectly controls, is controlled by or is under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. "Immediate Family" of a Person means such Person's spouse, child (natural or adopted), grandchild, parent, and/or a trust for

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the benefit of any of the foregoing, and/or a partnership or other entity consisting of any of the foregoing but if any of the foregoing is less than 21 years of age at the time of such proposed transfer, then such transfer may only be made to a trustee of a valid trust for the benefit of such person, which trust shall not terminate prior to the beneficiary (or beneficiaries) thereof attaining the age of 21. "Person" means an individual, partnership, corporation, limited liability company, trust, unincorporated association, joint venture or other entity of whatever nature. The foregoing provisions of this Section 7.1.1 shall not be deemed to prohibit a Member from pledging its right to receive distributions of Net Cash Flow from the Company, provided however that no creditor of any Member shall have any right to become a substitute Member of the Company or exercise any rights of Members or Managers of the Company. Rather, the rights of any such creditor shall be limited strictly and solely to the right to receive the pledging Member's right to receive distributions of Net Cash Flow as and when determined by the Managers.

7.1.2 An assignee or transferee of any portion of the interest of the Member shall be entitled to receive allocations and distributions attributable to the interest acquired by reason of such assignment from and after the effective date of the assignment of such interest to such assignee; however, anything herein to the contrary notwithstanding, the Company and the Managers shall be entitled to treat the assignor of such interest as the Member and absolute owner of the assigned interest in all respects, and shall incur no liability for allocations of net income, net losses, or gain or loss on sale of Company property, or transmittal of reports and notices required to be given to Members hereunder which are made in good faith to such assignor until such time as the written assignment has been received by

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the Company, approved and recorded on its books, the effective date of the assignment has passed and such assignee or transferee has been admitted as a substitute Member.

7.1.3 Any assignment, sale, exchange, transfer or other disposition in contravention of any of the provisions of this Article 7 shall be void and ineffective, ab initio and shall not bind or be recognized by the Company.

7.1.4 The beneficial interests of each Member is currently owned as follows:

TUNNEL:	(i) Mitchell B. Rutter and/or his Permissible Transferees (collectively, "Rutter") and/or (ii) Jacob Frydman (and/or his Permissible Transferees (collectively, "Frydman"): 100%	
NEWCO:	Warren Diamond and/or John DelMonaco and/or their respective Permissible Transferees:	No less than 45%
	The "Additional Members" (including Cannizzaro, a current member of Newco)	No greater than 55%

The ownership restrictions of this Article 7 shall apply to the membership interests in each Member as though the membership interests constituted Percentage Interests in the Company. Any transfer by a Person of his percentage interest in such beneficial owner of an interest in the Company shall be deemed to include all of the Percentage Interests in the Company owned by such entity. Unless agreed to by all of the Managers, Warren Diamond and/or John DelMonaco shall be the manager of Newco and at all times shall be authorized

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to represent Newco's interests in the Company and Mitchell Rutter and/or Jacob Frydman shall at all times be managers of Tunnel Associates, LLC and shall be authorized to represent Tunnel's interests in the Company. Under no circumstances shall Warren Diamond and John DelMonaco and their respective Permissible Transferees, other than Additional Members, own less than 45% of Newco.

7.2 Reserved.

7.3. Reserved.

7.4 Admission of Substituted Members: Further Conditions.

7.4.1 No assignment or transfer of all or any part of the interest of a Member permitted to be made under this Agreement shall be binding upon the Company unless and until a duplicate original of such assignment or instrument of transfer, duly executed and acknowledged by the assignor and the transferee, has been delivered to the Company.

7.4.2 As a condition to the admission of any substitute Member, as provided in this Article, the person so to be admitted shall execute and acknowledge such instruments, in form and substance reasonable satisfactory to the Managers, as the Managers may deem necessary or desirable to effectuate such admission and to confirm the agreement of the person to be admitted as such Member to be bound by all of the covenants, terms and conditions of this Agreement, as the same may have been amended.

7.4.3 Any person to be admitted as a Member pursuant to the provisions of this Agreement shall, as a condition to such admission as a Member, pay all reasonable expenses in connection with such admission as a member, including, but not limited to, the cost of the preparation, filing and publication of any amendment to this Agreement and/or Articles of

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Organization of the Company which the Managers deems necessary or desirable in connection with such admission.

7.4.4 In the event of the dissolution, termination, or bankruptcy of a Member, the legal representative of such Member, or the successor in interest of such Member, shall succeed only to the right of such Member to receive allocations and distributions hereunder, and may be admitted to the Company as a Member in the place and stead of the dissolved, terminated, or bankrupt Member in accordance with this Article 7 upon the consent of all of the Managers, which consent may be withheld or delayed, but shall not be deemed to be a substitute Member unless so admitted.

7.4.5 Notwithstanding anything to the contrary contained in this Agreement, no sale or exchange of an interest in the Company may be made if the interest sought to be sold or exchanged, when added to the total of all other interests sold or exchanged within the period of twelve (12) consecutive months prior thereto, results in the termination of the Company under Section 708 of the Code, without the prior written consent of the Managers, which consent may be withheld or delayed in the Managers' sole discretion.

7.4.6 In the event of a permitted transfer of all or part of the interest of a Member, the Company shall, if requested, file an election in accordance with Section 751 of the Code or a similar provision enacted in lieu thereof, to adjust the basis of the Property of the Company. The Member requesting said election shall pay all costs and expenses incurred by the Company in connection therewith.

7.4.7 The foregoing provisions of this Section 7.4 shall not be deemed to limit the requirement that the consent of the Managers be obtained or that the assignor or transferor

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Member comply with the provisions of Section 7.1 hereof before and as a condition to any assignment or transfer of a Member's interest in the Company.

ARTICLE 8

DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

8.1 Dissolution. The Company shall be dissolved upon the happening of the first of the following to occur:

(a) On the date approved by all of the Members;

(b) Upon the withdrawal, retirement, bankruptcy, liquidation or dissolution of a Member, the Company shall be dissolved unless all the remaining Members agree within 180 days of such event to continue the Company. In such event, the Company shall continue its business pursuant to the terms and provisions of this Agreement;

(c) Upon the sale or other divestiture of all or substantially all of the Property of the Company; provided, however, that (i) if the Company receives a purchase money mortgage in connection with such sale, the Company shall continue until such mortgage is' paid in full or otherwise disposed of; and (ii) the Company shall continue if the Property of the Company is exchanged under Section 1031 of the Code; or

(d) Upon entry of a decree of judicial dissolution of the Company.

8.2 Liquidation.

8.2.1 Upon the dissolution of the Company as provided in Section 8.1, the Company shall be liquidated as set forth below. Each of the Members shall be furnished with

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a statement, reviewed by the Company's independent accountants, which shall set forth the assets and liabilities of the Company as of the date of the Company's dissolution. The Managers or, if there is no Managers, a liquidating agent selected by a majority in interest of the Members, shall as promptly as practicable liquidate the assets of the Company, close out all positions, pay or discharge all debts, liabilities and obligations of the Company, and retain such reserves as are deemed necessary for any unforeseen and contingent liabilities in accordance with Section 8.2.3. The Managers or such liquidating agent, as the case may be, shall then allocate and distribute the remaining proceeds in cash as follows:

(a) To the payment of the costs and expenses of the dissolution and liquidation;

(b) To the payment of the debts (including any due the Members) and liabilities of the Company in the order of priority, if any, as provided by law; and

(c) To each Member, pursuant to and in accordance with Sections 4.2 and 4.3

8.2.2 Upon dissolution and liquidation, each Member shall look solely to the assets of the Company for the return of his capital contribution, and shall be entitled only to a cash distribution from the Company in return thereof, unless otherwise allowed by the Managers or liquidating agent in accordance with Section 8.3. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contribution of each Member, such Member shall have no recourse against the Managers or any other Member.

8.2.3 Notwithstanding anything to the contrary the Managers may retain such amounts as it deems reasonably necessary as a reserve for any contingent liabilities or obligations of the Company, which amount shall be paid over to an attorney or a bank or trust

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company as escrow agent to be held by it for the discharge of liabilities of the Company and the distribution of the balance, if any, among the Members in the same manner and proportion as herein above provided for in this Section.

8.3 <u>Distribution in Kind or Sale.</u>

8.3.1 In the event that any asset of the Company is not sold within eighteen (18) months of the occurrence of the event effecting the dissolution, the Managers (if then existing) or liquidating agent shall promptly thereafter offer to the Members in satisfaction of such Members' rights to their liquidating distribution the option either to (1) acquire ownership of any asset then held by the Company by means of a distribution in kind; or (2) sell any asset then held by the Company to the Managers or any designee thereof (the "Buyer") for an amount equal to the appraised fair market value of such asset, such price to be payable to the Members pursuant to. a promissory note delivered by the Buyer to the Members on the terms forth below; (3) allow the Managers, as liquidating trustee, or liquidating agent to continue to wind up the affairs of the Company in accordance with the terms of this Agreement; or (4) any combination of the foregoing. The promissory note referred to in clause (2) above shall be nonnegotiable and shall bear interest on its outstanding principal balance equal to the "applicable Federal rate" set forth in Section 1274(d) of the Code and shall be without recourse to the Buyer and its principals, employees and agents, but shall be secured by a pledge of the asset acquired by Buyer for which the note was delivered. The note shall have a maturity of five (5) years and no payments of principal shall be due until maturity unless the asset securing said note is sold, in which case all principal and

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interest shall be due seven (7) days after the Buyer receives the proceeds of such sale. In addition, the note shall be prepayable without penalty at any time.

8.3.2 If the Managers or liquidating agent determines that a portion of the Company's assets should be distributed in kind to the Members, it shall obtain an independent appraisal of the fair market value of each such asset as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation with respect to any asset to be distributed in kind shall be allocated among the Members (in accordance with, the provisions of Article 5, and assuming that the assets were sold for the appraised value), and shall be taken into consideration in determining the balance in the Members' Capital Accounts as of the date of final liquidation in accordance with Section 4.3.2. Distribution of any such asset in kind to a Member shall be considered a distribution of an amount equal to the asset's fair market value for purposes of Section 8.2.

8.4 Termination. The Company shall not terminate until all Company property shall have been disposed of and the Company's assets, after payment of or due provisions for liabilities to the Company's creditors, shall have been distributed among the Members as provided in this Agreement and until the Articles shall have been cancelled. Notwithstanding the dissolution of the Company, prior to the, termination of the Company as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

8.5 Reconstitution. Nothing contained in this Agreement shall impair, restrict or limit the rights and powers of the Members under the laws of the State of New York and any other jurisdiction in which the Company is doing business to reform and reconstitute

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themselves as a limited liability company following dissolution of the Company either under provisions identical to those set forth herein or any others which they may deem appropriate.

8.6 Cancellation of the Articles of Organization. Upon the completion of the distribution of Company assets as provided in this Article 8 and the termination of the Company, the Managers or liquidating agent shall cause the Articles of Organization of the Company to be canceled.

ARTICLE 9

FURTHER DOCUMENTS

9.1 Execution by Members. At any time, upon the request of the Managers, each Member shall execute, acknowledge and swear to any certificate required by the Law, any amendment to or cancellation thereof required by law, and any certificate or affidavit of fictitious firm name, trade name or the like (and any amendments or cancellations thereof) required by law to carry out the purposes of, and which are consistent with, the purposes of this Agreement; and the Managers shall cause to he filed of record all such certificates and instruments as shall be required so to be filed.

ARTICLE 10

MISCELLANEOUS

10.1 Amendments. This Agreement may be amended, and any waiver, change, modification, consent or discharge shall be effective, only by the written agreement of the Managers and all of the Members.

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10.2 Choice of Law. This Agreement shall be governed any construied in accordance with the laws of the State of New York, applicable to agreements made and to be performed entirely within such State, without regard to principles of conflict of laws.

10.3 Choice of Forum. The parties agree that none shall commence any litigation against the other arising out of this Agreement or the termination thereof except in a court located in the State of New York. Each party consents to jurisdiction over it by and exclusive venue in such a court.

10.4 Notices. Any notice or other communication required or which may be given pursuant to this Agreement shall be in writing and shall be delivered personally, telegraphed, telexed or sent by facsimile with a copy sent contemporaneously by mail, or sent by certified, registered, or express mail, postage prepaid, to the relevant address set forth for in the heading to this Agreement. Any such notice or communication shall be deemed given when so delivered personally, telegraphed, telexed or faxed, or if mailed, on the earlier of the date of receipt or two days after the date of mailing.

10.5 Entire Agreement. This Agreement contains the entire understanding of the parties and supersedes and merges all prior and contemporaneous agreements and discussions between the parties. Any and all representations or agreements by any agent or representative of either party not contained in this Agreement shall be null, void and of no effect. This Agreement may not be changed in any way, except as provided in Section 10.1 of this Agreement.

10.6 Severability. If for any reason any provision of this Agreement, including but not limited to, any provision relating to termination of this Agreement, shall be deemed by

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a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it applies, the validity of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and, in its modified form, such provision shall then be enforceable and enforced.

10.7 Binding Agreement. This Agreement shall be binding upon the parties and shall inure to the benefit of the undersigned parties and, except to the extent provided to their respective heirs, executors, personal representatives, successors and lawful permitted assigns. Any reference in this instrument to any party or Member is made, such reference shall be deemed to include a reference to the successors and assigns of such party or Member.

10.8 Waiver of Action for Partition. Each of the parties to this Agreement irrevocably waives and forfeits during the term of the Company any and all right that it may have to institute or maintain any action for partition with respect to any property of the Company.

10.9 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa, as the context may require.

10.10 Captions. The captions of this Agreement arc for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor affect it in anyway.

10.11 Counterparts. This Agreement maybe executed through the use of separate signature pages or in any number of counterparts, and each of such signature pages or

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counterparts shall, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart.

10.12 Arbitration. The parties will submit any dispute under this Agreement to an arbitrator to be settled by arbitration in accordance with the Commercial Arbitration Rules or the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in New York County, and shall be conducted by a single arbitrator chosen by the America Arbitration Association. All costs and expenses of the arbitration, including actual attorneys' fees, will be allocated among the parties according to the arbitrator's discretion. The arbitrator's award resulting from such arbitration may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly. Further, the parties hereto expressly agree that proceeding to arbitration and obtaining an award thereunder will be a condition precedent to bringing or maintaining any action in any court with respect to any dispute arising under this Agreement, except for the institution of a civil action to maintain the status quo during the pendency of any arbitration proceeding and except for an action to enforce the right to payment of a sum certain.

10.13 No Third Party Beneficiary. No person or entity not a party to this Agreement shall have any rights hereunder including, without limitation, any rights under Article II

hereunder.

10.14 No Representations or Warranties. It is understood and agreed that all understandings and agreements heretofore had between the parties hereto concerning the

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Company, its operations, its assets or otherwise, whether oral or written, are merged into this Agreement, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement made by the other. The Members expressly acknowledge, warrant and represent that each has examined the Property and the buildings and improvements thereon on or about the date of this Agreement and each is fully familiar with the physical condition thereof and that it has been given full opportunity to conduct and that it has conducted such investigations of the affairs of the Company and the Property as each Member has considered appropriate including, without limitation, an examination of the leases. Each Member expressly acknowledges, warrants and represents to the other that no person has made any oral or written representations, warranties, promises or guarantees whatsoever to such Member, whether express or implied, and, in particular, but without limitation, no such representations, warranties, promises or guarantees have been made with respect to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or related to the Property, except as herein specifically set forth. Specifically, each Member acknowledges that the other Member makes no warranty or representation, express or implied, or arising by operation of law, with respect to, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Property or any portion thereof, or with respect to the economical, functional, environmental or physical condition of the Property. Each Member hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to or concerning; (i) the nature and condition of, as applicable, the Property or any part thereof, including, but not limited

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to, the suitability thereof, for any and all activities and uses which the Company may elect to conduct thereon, or any improvements the Company may elect to construct thereon, or any income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to the same; (ii) the absence or presence of asbestos or any environmentally toxic or hazardous substances on, in, above or under the Property or the building(s) and improvements located thereon, or on, in, above or under any property adjacent to or abutting the Property, including, without limitation, environmental pollution or contamination of the air, water, ground water or soil; (iii) the manner of construction or condition or state of repair or lack of repair of any improvements constituting part of or located within the Property; (iv) the condition of any personal property; (v) the nature or extent of any easement, restrictive covenant, right-of-way, license or reservation on any portion of the Property; (vi) the compliance of the Property or the operation of the Property, or portions thereof, with any laws, rules, ordinances, or regulations of any governmental or other body including, without limitation, those relating to access for the handicapped and environmental or zoning matters; or (vii) the compliance of the Property with any state, city or local law, rule or regulation or governmental order of any governmental authority.

ARTICLE 11

CERTAIN PERSONAL OBLIGATIONS

11.1 Personal Guaranty. Tunnel, on behalf of Rutter and Frydman, and Newco, on behalf of Diamond and DelMonaco, agree that each of Rutter, Frydman, Diamond and Del Monaco (each, a "Guarantor") shall execute and deliver, in their personal capacities, to any

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lender that lends money to the Company and requires same, (a) a guaranty to such lender of standard "carvouts" to non-recourse liability and (b) an environmental/hazardous substance indemnity agreement, each in the form as contained in the standard loan documents of such lender (collectively, the "Guaranty"). Although the Company shall request that such lender limit the exposure of Rutter to 25.5% of any claim, expense, liability or loss (including attorneys fees) incurred in connection with the Guaranty (collectively, a "Claim"), of Frydman to 25.5% of any Claim, of Diamond to 24.5% of any Claim and of Del Monaco to 24.5% of any Claim (each such portion a "Proportionate Share" of the liability), all Guarantors shall be required to execute and deliver the Guaranty if such lender refuses to so limit their respective liabilities and requires their liability to be joint and several.

11.2 Contribution. The Guarantors are not willing to execute and deliver the Guaranty unless the Members agree that in the event that the Guarantors incur a Claim pursuant to the Guaranty, each Member shall be deemed liable vis-a-vis the Guarantors and to each other for a portion of the Claim equal to the Percentage Interest of each Member, and to the extent any Guarantor incurs a Claim, each Guarantor may seek indemnity from the Members for their respective pro rata share of the Claim based on such Percentage Interests. Each Member hereby agrees to indemnify and hold harmless each Guarantor from and against any Claim, but such indemnity shall be limited to such indemnifying Member's Percentage Interest of such Claim. If and to the extent that a Member is liable for a portion of a Claim that is in excess of such Member's share of such Claim based on its Percentage Interest, such Member may seek contribution from the other Members for their respective share of such Claim based on such Member's Percentage Interest. Notwithstanding anything contained in this Agreement to the contrary, if and to the extent that a Member is not compensated by the other Members with respect to a Claim for which such Member paid more than its Percentage Interest of such Claim, the rights and obligations of the such Members pursuant to this Section 11.2 shall include the right to pursue remedies against the Guarantors.

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IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have executed this Agreement as of the day and year first above written.

TUNNEL ASSOCIATES, LLC

By: ___________________________, Manager

COREM CAPITAL PARTNERS, LLC

By: ___________________________, Manager

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF TUNNEL ASSOCIATES, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

Mitchell B. Rutter

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF TUNNEL ASSOCIATES, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

Jacob Frydman

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF NEWCO, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM CONTRIBUTION, AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

Warren Diamond

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF NEWCO, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

John DelMonaco

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PENDING DELIVERY OF A COUNTERPART OF THE GUARANTEE SIGNED BY JOHN DELMONACO, WARREN DIAMOND HAS GUARANTEED BOTH HIS AND JOHN DELMONACO'S OBLIGATIONS.

UPON DELIVERY OF EXECUTED GUARANTEE BY JOHN DELMONACO, PAGE WITH WARREN DIAMOND'S ADDITIONAL GUARANTEE WILL BE RETURNED TO IRWIN SIEGEL, ESQ.

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF TUNNEL ASSOCIATES, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

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Mitchell B. Rutter

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF TUNNEL ASSOCIATES, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

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Jacob Frydman

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF NEWCO, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

and John DelMonaco's

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Warren Diamond

BY HIS SIGNATURE BELOW, THE UNDERSIGNED GUARANTOR AGREES TO GUARANTY THE OBLIGATIONS OF NEWCO, LLC (i) PURSUANT TO SECTION 11.2 OF THE AGREEMENT SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF ANY CLAIM AND (ii) WITH RESPECT TO THE MANDATORY CONTRIBUTION, SOLELY TO THE EXTENT OF HIS PROPORTIONATE INTEREST OF THE MANDATORY CONTRIBUTION:

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John DelMonaco

EXHIBIT "A"

THE PROPERTY

ALL that certain plot, piece or parcel of land, together with the building and other improvements located thereon and all fixtures and equipment used in connection therewith, situate, lying and being in the Borough of Manhattan, City and State of New York, bounded and described as follows:

PARCEL A (503-19 10th Avenue; Block 710, Lot 29)

BEGINNING at the corner formed by the intersection of the southerly side of West Thirty-Ninth Street with the westerly side of Tenth Avenue;

RUNNING THENCE southerly along the said westerly side of Tenth Avenue, one hundred ninety-seven feet, six inches to the corner formed by the intersection of the said westerly side of Tenth Avenue with the Northerly side of West Thirty-Eighth Street;

THENCE westerly along the northerly side of West Thirty-Eighth Street, one hundred feet;

THENCE northerly and parallel with the said westerly side of Tenth Avenue, forty-six feet;

THENCE westerly parallel with said southerly side of Thirty-Ninth Street, fifty feet;

THENCE northerly again parallel with said westerly side of Tenth Avenue, fifty-two feet, nine inches to the center line of the block;

THENCE westerly along the center line of the block fifty feet to a point distant two hundred feet, westerly from the westerly side of Tenth Avenue;

THENCE northerly parallel with Tenth Avenue and part of the distance through a party wall, ninety-eight feet, nine inches to the southerly side of West Thirty-Ninth Street;

THENCE easterly along said southerly side of West Thirty-Ninth Street, two hundred feet to the point or place of BEGINNING.

PARCEL B (512 West 39th Street; Block 710, Lot 42)

BEGINNING at a point on the southerly side of West 39th Street, distant 200 feet northwesterly from the southwesterly corner of said street and Tenth Avenue;

RUNNING THENCE southwesterly parallel with said Tenth Avenue and part of the distance through a party wall, 98 feet 9 inches to the center line of said block;

THENCE northwesterly parallel with said 39th Street, 25 feet;

THENCE northeasterly again parallel with Tenth Avenue and part of the distance through a party wall, 98 feet 9 inches to the southerly side of said 39th Street;

THENCE southeasterly along the southerly side of said 39th Street, 25 feet to the point or place of BEGINNING.

PARCEL C (505-507 West 38th Street; Block 710 Lot 27)

BEGINNING at a point on the northerly side of 38th Street distant one hundred feet westerly from the corner formed by the intersection of the northerly side of 38th Street and the westerly side of 10th Avenue; thence northerly parallel with 10th Avenue, forty-six feet; thence westerly parallel with 38th street, fifty feet; thence southerly parallel with 10th Avenue, forty-six feet to the northerly side of 38th Street; thence easterly along the northerly side of 38th Street, fifty feet to the point or place of beginning.

ANNEX B

LIMITED LIABILITY COMPANY AGREEMENT OF COMPANY

(ATTACHED)

LIMITED LIABILITY COMPANY AGREEMENT
OF
500 LINCOLN OWNER LLC

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of 500 LINCOLN OWNER LLC (the "Company"), is entered into by 500 LINCOLN, LLC, a New York limited liability company, as the sole equity member (the "Member"), and EPHRAIM STERN, as the Independent Manager (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby forms the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101 et seq.), as amended from time to time (the "Act"), and this Agreement, and the Member and Ephraim Stern hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is 500 LINCOLN OWNER LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located c/o Essex Capital Partners, Ltd., 635 Madison Avenue, New York, New York 10022 or such other location as may hereafter be determined by the Member.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o VCorp Services, LLC, 1811 Silverside Road in the City of Wilmington, Delaware 19810.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are VCorp Services, LLC, 1811 Silverside Road in the City of Wilmington, Delaware 19810.

Section 5. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(d), the Member may act by written consent.

(c) Upon the occurrence of any event that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), each Person acting as an Independent Manager pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Manager pursuant to Section 10; provided, however, the Special Members shall automatically cease to be members of the Company upon the admission to the Company of a substitute Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, each Person acting as an Independent Manager pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each Person acting as an Independent Manager pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

Effie Stern, is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Mimi Sanik, is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Application for Authority of the Company with the Secretary of State of the State of New York. Upon the filing of the Certificate of Formation of the Company with the Secretary of State of the State of Delaware and the filing of Application for Authority with the Secretary of State of the State of New York, each of their powers as an "authorized person" ceased, and the Member thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in New York and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purpose.

(a) The purpose to be conducted or promoted by the Company is solely to engage in the following activities:

(i) the ownership, management and development of the real property located at 503-519 Tenth Avenue and 505-507 West 38th Street, City of New York, County of New York, New York (collectively, the "Property"), including without limitation, the leasing of the Property to DHL Express (USA), Inc., including its permitted successors and assigns (the "Tenant"), or any other tenant permitted under the Operative Agreements, and the financing of the Property through the issuance of the Note and any other financing after the repayment in full of the Note; and

(ii) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member or any Officer on behalf of the Company is hereby authorized to execute and deliver, the Operative Agreements (which are substantially in the same form authorized to be executed pursuant to this Agreement) and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Member or any Officer to enter into other agreements on behalf of the Company.

Section 8. Powers.

Subject to Section 9(d), the Company, and the Member and the Officers on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Section 9. Management.

(a) Subject to Section 9(d), the business and affairs of the Company shall be managed by or under the direction of the Member. Subject to Section 10, the Member may determine at any time in its sole and absolute discretion the number of Independent Managers. The initial number of Independent Managers shall be one. The initial Independent Manager designated by the Member is Ephraim Stern.

(b) Powers. Subject to Section 9(d), the Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Member has the authority to bind the Company.

(c) Member as Agent. To the extent of its powers set forth in this Agreement and subject to Section 9(d), the Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member taken in accordance with such powers set forth in this Agreement shall bind the Company.

(d) Limitations on the Company's Activities.

(i) This Section 9(d) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity.

(ii) The Member shall not, so long as any Obligation is outstanding, amend, alter, change or repeal the definition of "Independent Manager" or Sections 5(c), 7, 8, 9, 10, 16, 20, 21, 22, 23, 24, 25, 26 or 31 or Schedule A of this Agreement without the unanimous written consent of the Independent Manager(s). Subject to this Section 9(d), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31.

(iii) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Member or any Officer or any other Person, so long as any Obligation is outstanding, neither the Member nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the Member and the Independent Manager(s), to take any Material Action, provided, however, that, so long as any Obligation is outstanding, the Member may not authorize the taking of any Material Action, unless there is at least one Independent Manager then serving in such capacity.

(iv) The Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. The Member also shall cause the Company to:

(A) maintain books, records, bank accounts, accounting records and other entity documents separate from those of its partners, members, shareholders, trustees, beneficiaries, principals, Affiliates, and any other Person;

(B) at all times hold itself out to the public as a legal entity separate from the Member and any other Person;

(C) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;

(D) except as contemplated by the Operative Documents, not commingle its assets with assets of any other Person;

(E) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;

(F) maintain separate financial statements;

(G) pay its own liabilities only out of its own funds except to the extent set forth in the Indemnity and Guaranty Agreement and the Hazardous Material Indemnity Agreement; provided, however, the foregoing shall not require the Member to make any additional capital contributions to the Company;

(H) maintain an arm's length relationship with its Affiliates and the Member;

(I) not hold out its credit or assets as being available to satisfy the obligations of others;

(J) allocate fairly and reasonably any overhead for shared office space;

(K) use separate stationery, invoices and checks;

(L) except as contemplated by the Operative Agreements, not pledge its assets for the benefit of any other Person;

(M) correct any known misunderstanding regarding its separate identity; and

(N) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities, provided, however, the foregoing shall not require the Member to make any additional capital contributions to the Company.

Failure of the Company, or the Member on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.

(v) So long as any Obligation is outstanding, the Member shall not cause or permit the Company to:

(A) except as contemplated by the Operative Agreements, guarantee any obligation of any Person, including any Affiliate;

(B) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 7, the Operative Agreements or this Section 9(d);

(C) incur, create or assume any indebtedness other than as expressly permitted under the Operative Agreements;

(D) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Operative Agreements and may make any advance required or expressly permitted to be made pursuant to any provisions of the Operative Agreements and permit the same to remain outstanding in accordance with such provisions;

(E) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, asset sale or transfer of ownership interests other than such activities as are expressly permitted pursuant to any provision of the Operative Agreements and subject to obtaining any approvals required under this Agreement;

(F) except as contemplated or permitted by the Operative Agreements, form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other);

(G) have any employees;

(H) conduct the business of or act on behalf of any other Person (except as required by the Operative Agreements); or

(I) represent that any other Person owns an interest in the property of the Company.

Section 10. Independent Manager.

(a) As long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least one Independent Manager who will be appointed by the Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any duty otherwise existing at law or in equity, the Independent Manager(s) shall consider only the interests of the Company, including its creditors, in acting or otherwise voting on the matters referred to in Section 9(d)(ii) and 9(d)(iii). Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Manager(s) shall not have any fiduciary duties to the Member or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Manager shall not be liable to the Company, the Member or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Manager acted in bad faith or engaged in willful misconduct. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor shall have accepted his or her appointment as an Independent Manager by executing a counterpart to this Agreement. In the event of a vacancy in the position of Independent Manager, the Member shall, as soon as practicable, appoint a successor Independent Manager. Notwithstanding anything to the contrary contained in this Agreement, no Independent Manager shall be removed or replaced unless the Company provides the Lender with no less than two (2) business days' prior written notice of (a) any proposed removal of such Independent Manager, and (b) the identity of the proposed replacement Independent Manager, together with a certification that such replacement satisfies the requirements for a Independent Manager set forth in this Agreement. All right, power and authority of the Independent Manager(s) shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the second sentence of this Section 10, in exercising their rights and performing their duties under this Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. An Independent Manager is hereby designated as a "manager" within the meaning of Section 18-101(10) of the Act.

(b) The Independent Manager shall be given and entitled to receive all notices as and when given or to be given under this Agreement to any Manager or Member, and the Independent Manager shall be entitled to participate in all meetings or votes of the Members or Managers to the extent that the Independent Manager's vote would be required by Section 9(d) and shall be notified of all action on the part of the Managers and Members as to which the Independent Manager's votes are required in connection with such action.

Section 11. Officers.

The Member may, from time to time as it deems advisable, appoint officers of the Company (the "Officers") and assign in writing titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 11 may be revoked at any time by the Member. The initial Officers are listed on Schedule C attached hereto. The Member may revise Schedule C in its sole discretion at any time.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Members nor any Independent Manager shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Independent Manager of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed on Schedule B attached hereto. In accordance with Section 5(c), the Special Members shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise Schedule B of this Agreement. The provisions of this Agreement, including this Section 14, are intended to benefit the Member and the Special Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member and the Special Members shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member, which shall initially be on a monthly basis. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law or any Operative Agreement.

Section 17. Books and Records.

The Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Intentionally Omitted.

Section 19. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member, the Special Members and any Independent Manager and any Affiliate of the Member or the Special Members or the Independent Manager(s) may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, neither the Member nor the Special Members nor any Independent Manager nor any Officer nor any officer, director, employee, agent or Affiliate of the foregoing (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Members shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Operative Agreements.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

The Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Operative Agreements shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as permitted under the Operative Agreements and if the Rating Agency Condition is satisfied. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, however, that, notwithstanding the foregoing, so long as any Obligation remains outstanding, no additional Member may be admitted to the Company unless the Rating Agency Condition is satisfied.

Section 24. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause the Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member and the Independent Manager(s) hereby irrevocably waives any right or power that such Person might have to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons).

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 10, 20, 21, 22, 23, 24, 26, 29 and 31, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Manager(s), in accordance with its terms.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

Subject to Section 9(d), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless the Rating Agency Condition is satisfied except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Operative Agreements.

Section 32. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 34. Effectiveness.

Pursuant to Section 18-201(d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State on November 17, 2010.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 10 day of December, 2010.

MEMBER:

500 LINCOLN, LLC

By: TUNNEL ASSOCIATES, LLC, its Manager

By: ____________________
Name: Mitchell B. Rutter
Title: Manager

By: ____________________
Name: John DelMonaco
Title: Manager

INDEPENDENT MANAGER/SPECIAL MEMBER:

____
Name:

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 10 day of December, 2010.

MEMBER:

500 LINCOLN, LLC

By: TUNNEL ASSOCIATES, LLC, its Manager

By:____________________
Name: Mitchell B. Rutter
Title: Manager

By: ____________________
Name: John DelMonaco
Title: Manager

INDEPENDENT MANAGER/SPECIAL MEMBER:

____
Name: Ephraim Stern

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" has the same meaning as now defined in Section 101 of the Code and shall include all "insiders" (as such term is now defined in Code Section 101) with respect to the Company (as defined in Preamble hereof) and the Independent Manager, except that the percentage of direct or indirect legal or beneficial interest required to be held by the relevant entity for purposes hereof shall be ten percent (10%), not the twenty percent (20%) provided in Code Section 101.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on November 17, 2010, as amended or amended and restated from time to time.

"Code" means the United States Bankruptcy Code.

"Company" means 500 Lincoln Owner LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

"Covered Persons" has the meaning set forth in Section 20(a).

"Creditor" shall mean a Person (x) to whom the Company, the Independent Manager or any Affiliate thereof has, at any time from and after the date hereof, outstanding indebtedness in an amount equal to or greater than ten percent (10%) of the Company's, the Independent Manager's or such Affiliate's, as the case may be, total outstanding general unsecured indebtedness at such time, or (y) to whom total payments have been made by the Company, the Independent Manager or such Affiliate during the immediately preceding fiscal year which are equal to or greater than ten percent (10%) of the respective gross annual revenues of the Company, Independent Manager or such Affiliate for such immediately preceding fiscal year.

"Hazardous Material Indemnity Agreement" shall have the meaning given to such term in the Mortgage, as may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Indemnity and Guaranty Agreement" shall have the meaning given to such term in the Mortgage, as may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Independent Manager" shall mean an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by Corporation Service Company, CT Corporation, Lord Securities Corporation, National Registered Agents, Inc., Stewart Management Company, Wilmington Trust Company, VCorp Services, LLC, or, if none of those companies is then providing professional independent managers, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of the Company and that provides professional independent managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Manager and is not, and has never been, and will not while serving as Independent Manager be, any of the following:

(i) a member, partner, equityholder, manager, director, officer or employee of the Company, the Member, or any of their respective equityholders or Affiliates (other than as an Independent Manager of the Company or an Affiliate of the Company that is not in the direct chain of ownership of the Company and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Manager is employed by a company that routinely provides professional independent directors in the ordinary course of its business);

(ii) a Creditor or Supplier;

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Manager of a "special purpose entity" affiliated with the Company shall be qualified to serve as an Independent Manager of the Company, provided that the fees that such individual earns from serving as Independent Manager of affiliates of the Company in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. The same persons may not serve as Independent Managers of the Company and the Member.

"Lender" means Wells Fargo Bank Northwest, National Association.

"Material Action" means to (a) consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company; (b) change the ownership structure of the Company (other than in accordance with the provisions of this Agreement and the Operative Agreements); or (c) acquire all, or substantially all, of the assets or capital stock or other ownership interest of any corporation or other entity.

"Member" means 500 Lincoln, LLC, a New York limited liability company, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Members.

"Mortgage" shall mean that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated as of the date hereof from the Company for the benefit of the Noteholder.

"Note" means that certain Senior Secured Note in the principal amount not to exceed $96,666,818 executed by the Company pursuant to and in accordance with a certain Note Purchase Agreement between the Company and Lender, which is secured by, among other liens, mortgages and security interests, the Mortgage.

"Noteholder" means the current lawful owner and holder of the Note.

"Obligation" shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Basic Documents or any related document in effect as of any date of determination.

"Operative Agreements" shall have the meaning given to such term in the Mortgage.

"Officer" means an officer of the Company as described in Section 11.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Rating Agency" has the meaning assigned to that term in the Operative Agreements.

"Rating Agency Condition" means (i) with respect to any action taken at any time before the loan evidenced and secured by the Basic Documents has been sold or assigned to a securitization trust, that the lender thereunder has consented in writing to such action, and (ii) with respect to any action taken at any time after such loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction or withdrawal of the then current rating by such Rating Agency of any of securities issued by such securitization trust.

"Special Member" means, upon such person's admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Manager, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

"Supplier" shall mean a Person who provides or has provided goods or services (including provider of professional services, other than a nationally-recognized company that routinely provides professional independent managers and other corporate services to the Company or any of its equityholders or Affiliates in the ordinary course of its business) to the Company, the Independent Manager, and any Affiliate thereof such that the total payments received by or due to such Person by the Company, Independent Manager, and such Affiliate during such Person's immediately preceding fiscal year are equal to or greater than ten percent (10%) of such Person's total annual gross revenue for such Person's immediately preceding fiscal year.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

Name	Mailing Address	Agreed Value of Capital Contribution	Limited Liability Company Interest
500 Lincoln, LLC	c/o Essex Capital Partners, Ltd. 635 Madison Avenue New York, New York 10022	Property and Lease with Tenant worth $38,000,000	100%

SCHEDULE C

Officers

None.

ANNEX C

WRITTEN CONSENT OF THE MANAGERS OF THE SOLE MEMBER

(ATTACHED)

WRITTEN CONSENT TO ACTION WITHOUT MEETING
BY THE MANAGERS
OF
500 LINCOLN, LLC

DATED AS OF DECEMBER 10, 2010

The undersigned, being the managers of

500 LINCOLN, LLC

a New York limited liability company (the "*Sole Member*"), the sole member of 500 LINCOLN OWNER LLC, a Delaware limited liability company (the "*Company*"), pursuant to the applicable provisions of the New York Limited Liability Company Act, the provisions of the Delaware Limited Liability Company Act, the Limited Liability Company Agreement of the Company and the Amended and Restated Operating Agreement of the Sole Member, does hereby consent that the following resolutions be and they hereby are adopted as of the date first written above, and are and shall be of the same force and effect as if they were adopted at a special meeting of the managers of the Sole Member held in accordance with the Amended and Restated Operating Agreement of the Sole Member held pursuant to the Limited Liability Company Agreement of the Company and the laws of the States of New York and Delaware, to wit:

WHEREAS, the Sole Member has entered into a contract to acquire the Property (defined below) and that certain real property and improvements thereon located at 512 West 39th Street from Howard International Corp., a New York corporation (the "*Option Acquisition*").

WHEREAS, the Sole Member desires to contribute the Property to the Company and assign therewith to the Company all leases relating to the Property (the "*Contribution*").

WHEREAS, in order to provide funds to repay indebtedness of the Company and to provide permanent financing of property located at 503-519 10th Avenue and 505-507 W. 38th Street in New York, New York leased by DHL Express (USA), Inc. (the "*Property*"), authorized representatives of the Company have negotiated Wells Fargo Bank Northwest, National Association, as Trustee (the "*Purchaser*") for the issuance and sale to the Purchaser at par of the Company's 4.91% Senior Secured Consolidated, Amended and Restated Note, due March 15, 2026, in a principal amount not to exceed $96,450,315 (the "*Note*") to be issued under and sold pursuant to the Note Purchase Agreement hereinafter referred to, such Note to be dated the date of issue, to bear interest at the rate of 4.91% per annum prior to maturity and to be expressed to mature in monthly installments, each including principal and interest, as set forth on the amortization schedule attached to such Note and to have the other characteristics set forth in the Note Purchase Agreement hereinafter defined; and

WHEREAS, the mangers of the Sole Member have caused to be prepared and presented to the undersigned the following documents (collectively, the *"Operative Agreements"*):

(i) The form of the Note Purchase Agreement dated as of the date hereof (the *"Note Purchase Agreement"*) between the Company and the Purchaser;

(ii) The form of the Consolidated, Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement dated as of the date hereof from the Company for the benefit of the Wells Fargo Bank Northwest, National Association, as Trustee (the "*Trustee*") to be executed in respect of the Property;

(iii) The form of the Note to be issued and delivered to the Purchaser pursuant to the Note Purchase Agreement (the *"Note"*);

(iv) The form of Escrow and Servicing Agreement dated as of the date hereof among the Company, the Trustee and Wells Fargo Bank Northwest, National Association, as Escrow Agent;

(v) The form of Subordination, Non-Disturbance and Attornment Agreement dated as of December 10, 2010 among DHL Express (USA), Inc., the Company and the Trustee;

(vi) The form of Hazardous Material Indemnity Agreement dated as of the date hereof from the Company and the other parties thereto; and

(viii) The form of the Assignment of Leases and Rents dated as of the date hereof from the Company to the Security Trustee.

WHEREAS, it appears that each of the instruments referred to above is, or was at the time of execution, in appropriate form and is, or was at the time of execution, an appropriate instrument to be executed and delivered by the Company for the purpose intended; and

WHEREAS, in the judgment of the undersigned, it is advisable and in the best interest of the Company and its owners that the Sole Member of the Company (as set forth in the Limited Liability Company Agreement of the Company) be authorized to execute certain documents on behalf of the Company, that Sole Member close on the Option Acquisition and make the Contribution to the Company;

NOW, THEREFORE, Be It and It Is Hereby Resolved, as follows:

1. That the Sole Member is hereby authorized, empowered and directed for and on behalf of and in the name of the Company to execute the Note in a principal amount not to exceed $96,450,315 having the characteristics specified for said Note in the Note Purchase Agreement and in the form of the Note hereby approved.

2. That the Sole Member is hereby authorized, empowered and directed on its own behalf and on behalf of the Company to execute the Operative Agreements, such instruments, respectively, to be substantially in the forms of the Operative Agreements, hereby approved and/or with such additional, modified or revised terms as may be acceptable to the Sole Member, as evidenced by its execution thereof.

3. That the Sole Member hereby is authorized and directed to do all such things and acts (including the formation of the Company) and to make, execute and deliver all such other agreements, instruments and documents and to pay all such costs, expenses, insurance premiums and taxes on its own behalf and on its behalf in connection with the closing of the Option Acquisition and the Contribution to the Company and on behalf of the Company as may be necessary in order to carry out the purposes and intent of these resolutions, and all of the acts and doings of the officers, employees or owners of the Company which are consistent with the purposes and intent of these resolutions, including those actions taken prior to the date hereof (including, without limitation, the execution and delivery of any instruments or agreement in connection therewith, including, without limitation, the closing of the Option Acquisition and the Contribution of the Property and the Lease and other leases to the Company) shall be, and the same hereby are, in all respects ratified, approved and confirmed.

[Remainder of page intentionally left blank]

IN WITNESS Whereof, the undersigned, being the managers of the Sole Member of the Company, have each affixed his signature hereunto as of the date first written above, in acknowledgment of his consent to the adoption of the resolutions hereinabove set forth.

MANAGERS:

TUNNEL ASSOCIATES, LLC, as manager of 500 Lincoln, LLC

By:____________________
Name: Mitchell B. Rutter
Title: Manager

By: ____________________
Name: John DelMonaco
Title: Manager of 500 Lincoln, LLC

EXHIBIT B

ON OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

71

FILING RECEIPT

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Y NAME: COREM CAPITAL PARTNERS, LLC

ENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC) COUNTY: NEWY

E COMPANY: GERALD WEINBERG, P.C. SERVICE CODE: 13 *

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09/25/2002 DURATION:12/31/2052 CASH#:020925000748 FILM #:020925000723

SS FOR PROCESS

EXIST DATE

09/25/2002

LC
.E. FIFTH AVENUE
RATON, FL 33432

TERED AGENT

==

IEGEL & REINER, LLP
K AVENUE SOUTH
00
K, NY 10016

FEES	225.00	PAYMENTS	225.00
FILING	200.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	0.00	DRAWDOWN	225.00
HANDLING	25.00	BILLED	0.00
		REFUND	0.00

==

DOS-1025 (11/89)

17

State of New York } ss:
Department of State

I hereby certify, that COREM CAPITAL PARTNERS, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/25/2002, and that the Limited Liability Company is subsisting so far as shown by the records of the Department.

I further certify, that no other documents have been filed by such Limited Liability Company.

STATE OF NEW YORK ★ DEPARTMENT OF STATE ★ EXCELSIOR

***

Witness my hand and the official seal of the Department of State at the City of Albany, this 04th day of December two thousand and three.

Secretary of State

200312050440 * E6

75

COREM CAPITAL PARTNERS, LLC

500 Lincoln, LLC
c/o Essex Capital Partners, Ltd.
635 Madison Avenue
New York, New York 10022

Tunnel Associates
c/o Essex Capital Partners, Ltd.
635 Madison Avenue
New York, New York 10022

Re: **DESIGNATION OF SUCCESSOR MANAGER OF 500 LINCOLN, LLC**

Gentlemen:

Corem Capital Partners, LLC ("Corem"), a New York limited liability company is a "Majority Member Group" of 500 Lincoln, LLC (the "**Company**"), as such term is defined in the Amended and Restated Operating Agreement of the Company dated as of October 31, 2002 (as amended from time to time, the "**Operating Agreement**").

Pursuant to Section 3.1.1 (B) of the Operating Agreement, Corem hereby appoints John DelMonaco as successor Manager of the Company if and in the event that Warren Diamond cannot or will not serve as a Manager of the Company.

IN WITNESS WHEREOF, the undersigned executed this Designation of Successor Manager of 500 Lincoln, LLC as of the 18th day of December, 2003.

COREM CAPITAL PARTNERS, LLC

By: ______________________
Sal Cannizaro, Manager

By: ______________________
Warren Diamond, Manager

ARTICLES OF ORGANIZATION

OF

COREM CAPITAL PARTNERS, LLC

Filed by:

Agins, Siegel
& Reiner, LLP
386 Park Avenue South
Suite 1200
New York, New York 10016

ARTICLES OF ORGANIZATION
OF
COREM CAPITAL PARTNERS, LLC

Under Section 203 of the Limited Liability Company Law.

<u>FIRST:</u> The name of the limited liability company is **COREM CAPITAL PARTNERS, LLC.**

<u>SECOND:</u> The county within the state in which the office of the limited liability company is to be located is New York.

<u>THIRD:</u> The latest date on which the limited liability company is to dissolve is December 31, 2052.

<u>FOURTH:</u> The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

550 S.E. Fifth Avenue
Boca Raton, Florida 33432

<u>FIFTH:</u> The effective date of the Articles of Organization shall be the date of filing with the Secretary of State.

<u>SIXTH:</u> The limited liability company is to be managed by 1 or more members.

IN WITNESS WHEREOF, this certificate has been subscribed to this 25th day of September, 2002 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Lawrence A. Kirsch

Lawrence A. Kirsch, Attorney in Fact

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OPERATING AGREEMENT
OF
COREM CAPITAL PARTNERS, LLC

AGREEMENT made as of the 30th day of October, 2002, by and between **JOHN DELMONACO** ("DelMonaco") residing at 258 Navesink River Road, Middletwon, New Jersey, **CANNIZZARO FAMILY LIMITED PARTNERSHIP I** ("CFLP I"), residing at Union Beach Plaza, 1017 Route 36, Union Beach, New Jersey 07735 and **WARREN DIAMOND** ("Diamond") residing at 550 S.E. Fifth Avenue, Boca Raton, Florida 33432 (each referred to individually as a "Member" or collectively as the "Members").

WITNESSETH:

WHEREAS, Pursuant to Articles of Organization dated September 25, 2002, duly filed with the New York Secretary of State on September 25, 2002, the Members formed a limited liability company pursuant to and in accordance with the Limited Liability Company Law of the State of New York (as amended from time to time, the "Law").

NOW, THEREFORE, the Members agree as follows:

ARTICLE 1

MEMBERS, TERM, NAME, PURPOSE

AND PLACE OF BUSINESS

1.1 Formation of the Company. The parties hereto have agreed to form **COREM CAPITAL PARTNERS, LLC** under the Law. In the event of any inconsistency between any provision of the Law and the provisions of this Agreement, the provisions of this Agreement shall

1.2 Name. The name of the Company is **COREM CAPITAL PARTNERS, LLC.** The [business] of the Company shall be conducted solely under such name and title to all assets of the [Co]mpany shall be held in such name.

1.3 Purposes of the Company

1.3.1. Purposes. The purpose of the Company shall be:

1.3.1.1 To have a forty-nine (49%) percent percentage interest in 500 [Li]ncoln, LLC, the lessee of 503-519 Tenth Avenue, 505-507 West 38th Street and 512 West 39th [Str]eet, New York, New York; and

1.3.1.2 To engage in such other activities as may be permitted by

1.3.2 Single Purpose Entity. For so long as the Company is a party to any agreement that [re]quires the Company to conform to certain requirements in order to preserve its existence as a "[si]ngle purpose entity," the Members agree to use their good faith commercially reasonable efforts [to e]nsure that the company conforms to those requirements.

1.5 Place of Business. The principal place of business of the Company shall be located at [...] West 38th Street, New York, New York or at such other location as may be selected by the [Man]agers from time to time. The Managers shall give notice to the Members of any change in the [loca]tion of the principal place of business of the Company.

1.6 Term. The Company shall continue until dissolved and liquidated pursuant to the [provi]sions of Article 8 hereof.

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ARTICLE 2

CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS

2.1 Interests of Members.

2.1.1 Subject to Articles 7 and 8 hereof, the respective interests of the Members ("Percentage Interests") in the Company shall be as follows:

CFLP I:	50.0%
DelMonaco:	25.0%
Diamond:	25.0%
Total	100.0%

2.1.2 If the Percentage Interests of any Members are changed pursuant to the terms of this Agreement during any calendar year, then the amount of all items to be credited, charged, allocated or distributed to such Members for such entire calendar year in accordance with Percentage Interests in the Company shall be apportioned to the portion of such calendar year which precedes the date of such change and to the portion of such calendar year which occurs on and after the date of such change in proportion to the number of days in each such portion. The amounts of the items so allocated to each such portion shall be credited, charged, allocated or distributed to such Members in proportion to their Percentage Interests in the Company during each such portion of the calendar year in question.

2.2 Capital Contributions

2.2.1 Each Member or his assignor has contributed to the capital of the Company the cash or property shown on the books of the Company.

2.2.2 No Member may withdraw any capital from the Company without the consent of all of the Managers.

2.2.3 Except as otherwise provided herein, no Member shall have the right to demand or receive property, other than cash, in return for a capital contribution or have priority over another Member, either as to the return of capital contributions or as to profits, losses or distributions, or as to compensation by way of income.

2.2.4 No Member shall be entitled to interest of any kind on its capital contribution.

2.2.5 No Member shall be obligated to make any Capital Contributions other than as may be required of the Company in accordance with the terms of the Amended and Restated Operating Agreement of 500 Lincoln, LLC and the mandatory capital contribution thereunder shall be paid by Diamond and DelMonaco.

2.3.1 The Capital Account of each Member shall be credited with (i) an amount equal to such Member's cash capital contributions and the fair market value of property contributed to the Company (net of liabilities secured by such property), and (ii) such Member's share of the Company's Net Profit and any item of gain specially allocated to such Member in accordance with Article 5 hereof, but for this purpose including income and gain exempt from tax;

2.3.2 The Capital Account of each Member shall be debited by (i) the amount of cash distributions to such Member and the fair market value of property distributed to the Member (net of liabilities secured by such property), and (ii) such Member's share of the Company's Net Loss and any item of loss or expense specially allocated to such Member pursuant to Article 5 hereof, and of expenditures which are permitted to be neither capitalized nor deducted for tax purposes (including for this purpose losses or expenses which may not be deducted for tax purposes pursuant to either Section 267 (a)(1), Section 709 or Section 707 (b) of the Internal Revenue Code of 1986, as amended (the "Code")

2.3.3 Upon the transfer of an interest in the Company, the Capital Account of the transferor Member (as adjusted, if at all, as required by this Section 2.3.3) that is attributable to the transferred interest will be carried over to the transferee Member.

2.3.4 The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Treasury Regulations promulgated under Section 704 of the Code (the "Regulations"), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managers shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Managers may make such modification as they deem necessary.

2.4 Managers' Liability for Capital. The Managers shall have no personal liability for the return of any Capital Contributions to the Members or to compensate a negative balance in the Capital Account of any Member existing at any time.

ARTICLE 3

MANAGEMENT

3.1 Management Powers of the Managers.

3.1.1 (A) The management, operation and control of the Company and its day-to-day business and affairs shall vest initially and solely in two (2) Managers. The Managers need not be Members of the Company. John DelMonaco and Warren Diamond shall designate one (1) of the Managers ~~provided that they continue to own, together with any of their Permissible Transferees (herein defined), a forty-nine (49%) percent interest or more in the Company (a "Majority Member Group").~~ Sal Cannizzaro shall designate one (1) of the Managers ~~provided that he continues to own, together with any of his Permissible Transferees (herein defined), a forty-nine (49%) percent interest or more in the Company (a "Majority Member Group")~~. The initial Managers of the Company shall be Sal Cannizzaro and Warren Diamond, which shall each have a term of fifteen (15) years from the date hereof~~, and, subject to the next sentence, shall not be subject to removal or resignation during such term. In the event that the interest of a Majority Member Group shall decline below forty-nine (49%) percent, then any other Majority Member Group or the Member(s) holding fifty-two (52%) percent or more (either alone or combined with other Members) of the Percentage Interests in the Company shall have the right to remove the Manager previously appointed by the Members who are no longer a Majority Member Group. In such event and so long as there still remains a single Majority Member Group, the Company shall be managed by a single manager elected by the vote of the Majority Member Group, which may be by the sole remaining Majority Member Group. In the event there shall not be any Majority Member Group of the~~

Company~~, the Company shall be managed by two (2) managers, to be elected by a majority of~~ interest ~~of the Members, and each having a term of two (2) years from the date of such election~~.

(B) Each Majority Member Group shall designate one or more persons (which may include the other) who shall serve as a successor Manager of the Company in the place and stead of such person in the event that such person cannot or will not serve as a Manager of the Company. Such designation shall be made in writing and kept with the books and records of the Company as provided in Section 6.2. The designation may be changed at any time. Any vacancy occurring for any reason among the Managers, whether resulting from the death, resignation or removal of one or more Managers, failure of either of the Managers to appoint a successor, failure of the Members to approve such successor or otherwise, shall be filled by either (i) the designation by the Majority Member Group entitled to designate such Manager, or (ii) if such Majority Group Member cannot or does not designate its Manager, by a vote of a majority in Percentage Interests of the Members.

3.1.2 The Managers, acting unanimously, i.e., either jointly or separately with the written consent of the other Manager, shall have all necessary and appropriate powers to carry out the purposes of the Company, including, without limitation, the power:

(a) to negotiate, execute, deliver and perform on behalf and in the name of the Company any and all ground leases, contracts, deeds, assignments, deeds of trust, leases, subleases, promissory notes and other evidences of indebtedness, mortgages, bills of sale, financing statements, security agreements, easements, stock powers, and any and all other instruments necessary or incidental to the business of the Company and the financing thereof;

(b) to borrow money, without limit as to amount, and to secure the payment thereof by mortgage, pledge, or assignment of, or security interest in, all or any part of the assets then owned or thereafter acquired by the Company;

(c) to establish, maintain and draw upon checking and other accounts of the Company in such bank or banks as the Managers may from time to time select;

(d) to execute any notifications, statements, reports, returns or other filings that are necessary or desirable to be filed with any state or Federal agency, commission or authority;

(e) to employ a managing agent for the Property provided, however, that such managing agent expressly agree to provide cash flow statements to both Managers, on a monthly basis, in form satisfactory to the Managers and containing such additional information as may be required by the Managers;

(f) to execute, acknowledge and deliver any and all documents and instruments deemed appropriate to carry out any of the foregoing or the purposes and intent of this Agreement.

In the event at any time there shall be a single Manager of the Company, such Manager shall have all the authority provided for managers of limited liability companies under the Law.

3.1.3 The Manager(s) shall use ordinary care and reasonable diligence in carrying out the affairs of the Company. The Manager(s) shall not be liable to the Members for any mistake of judgment, any action or action omitted to be taken in good faith on behalf of the Company or for any loss due to the negligence, fraud or willful misconduct of any employee, broker or agent of the Company who was selected, engaged or employed by the Manager(s), provided that such employee, broker or agent was selected, engaged or retained by the Managers) with reasonable care and in

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accordance with the terms of this Agreement. The Manager(s) may consult with legal counsel selected by it or them on matters relating to the Company, and any action taken or omitted to be taken by it in good faith in reliance and in accordance with the opinion or advice of such counsel shall be full protection and justification to it with respect to the action taken or omitted to be taken. The liability of the Managers for damages for any breach of duty to the Company or the Members shall be limited to the maximum extent permitted to be limited by the Law.

3.1.4 The Manager(s) shall carry on, manage and conduct the Company business and shall devote so much of his time thereto as shall be reasonably necessary. The Manager(s) shall not be obligated to devote all of their time and effort to the Company and its affairs. The Manager(s) may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as the Manager(s) may from time to time designate. Such officers, agents, consultants and employees need not be Members of Manager(s), and shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Manager(s) and may be removed at any time, with or without cause, by the Manager(s).

3.1.5 All deeds, bills of sale, mortgages, leases, contracts of sale, bonds, notes, or other contracts, documents, agreements, instruments, or writings shall bind the Company and be effective for all uses and purposes if signed on behalf of the Company by both Managers acting together or by either Manager, acting alone but with the written consent of the other Manager.

3.1.6 In the event of a default hereunder by Diamond and/or DelMonaco which remains uncured following five (5) business days' written notice thereof, in addition to any and all other rights and remedies of an aggrieved party, Sal Cannizzaro (or such other person as may be designated by ~~CFLP I) shall, at the sole option of CFLP I, become the sole manager of the Company,~~ with all rights and promises formerly exercisable by both managers.

3.1.7 In the event of a default by CFLP I, which remains uncured following five (5) business days written notice thereof, in addition to any and all other rights and remedies of an aggrieved party, Warren Diamond and/or John DelMonaco (or such other person as may be designated by Warren Diamond and/or John DelMonaco) shall, at the sole option of Warren Diamond and/or John DelMonaco, become the sole managers of the Company, with all rights and promises formerly exercisable by both managers.

3.2 <u>The Members Have No Management Powers.</u>

3.2.1 The Members (other than the Managers) shall have no voice or participation in the management of the Company business, and no power to bind the Company or to act on behalf of the Company in any manner whatsoever, except as specially authorized by this Agreement.

3.3 <u>Compensation of the Managers; Reimbursement for Expenses.</u>

All costs and expenses actually incurred in connection with the organization of the Company and the ongoing operation or management of the business of the Company shall be borne by the Company. The Company shall reimburse the Managers for all actual and reasonable out-of-pocket costs and expenses incurred by the Managers in connection with the organization and business of the Company.

3.4 <u>Indemnification</u>. The Managers and the principals, members, managers, partners, officers, directors and shareholders of such Managers, shall be indemnified and held harmless by the Company (but not by any Member except to the extent of their capital contributions) to the fullest extent permitted by law from and against any and all claims, demands, liabilities, costs, damages and causes of action of any nature whatsoever arising out of or in connection with the transactions contemplated by this Agreement or the Managers' management of the Company's affairs; such indemnification shall not apply with respect to liabilities arising out of those acts for which the Managers may be held liable pursuant to Section 3.1.3 of this Agreement. The indemnification authorized by this Section shall include, without limitation, payment of (i) reasonable attorneys' fees or other expenses incurred in connection with settlement or in defense of any legal proceeding and (ii) the removal of any liens affecting the property of the indemnitee. Such attorneys' fees and expenses shall be paid by the Company as they are incurred upon receipt, in each case, of an undertaking by or on behalf of the indemnified person to repay such amounts if it is ultimately determined that such person is not entitled to indemnification with respect thereto. The indemnification rights contained in this section shall be cumulative of, and in addition to, any and all rights, remedies and resources to which the Managers, their employees, agents and affiliates may be entitled, whether pursuant to the provisions of this Agreement, at law or in equity. Indemnification hereunder shall be made from assets of the Company and no Member shall be personally liable to any indemnitee.

3.5 <u>Members May Engage in Other Activities</u>. The Members (including the Managers) and their affiliates shall have the right to engage in any other business (including, but not limited to, acting as a Member or Manager in any other Company formed for purposes similar to the purposes of the Company) and to compete directly or indirectly, with the business

C:\Documents and Settings\Irwin Siegel\My Documents\Coron OPERATING AG 1.wpd of the Company, and neither the Company nor any Members shall have any rights or claims as a result of such activities. The Members hereby waive any and all rights and claims which they may otherwise have against the other Members and their Affiliates as a result of such activities.

3.6 Reserve. The Company shall maintain reserves in an amount as determined from time to time, by the Managers in their sole and absolute discretion, for normal repairs, debt service replacements, technological upgrades of the Property, working capital, contingencies, and cash flow needs of the business.

3.7 Certain Tax Matters.

3.7.1 The Managers shall engage an accountant to prepare at the expense of the Company all tax returns and statements, if any, which must be filed by or on behalf of the Company.

3.7.2 The Managers agree to use their best efforts to meet all requirements of the Code and currently applicable regulations, rulings and other procedures of the Internal Revenue Service to ensure that the company will be classified for Federal Income tax purposes as a partnership and not as an association taxable as a corporation.

3.8 Meetings. Meetings of the Members shall not be held unless the Manager(s), in its or their sole discretion, decide to call a meeting of the Members for any purpose.

3. 9 Intentionally Omitted

3.10 Loans. No Member shall make a loan to the Company unless and until all Members have been given the opportunity to make a loan to the Company. If any Member makes a loan to the Company, such loan shall be repaid with interest at a rate of interest equal to the rate of

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interest publicly announced from time to time by JP Morgan Chase Bank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by JP Morgan Chase Bank, N.A. from time to time for the rate presently referred to as its "prime lending rate") and such loan shall, except as otherwise permitted by the lender, be repaid in full with interest prior to any payments to the Managers or any distributions being made to any of the Members as herein set forth. Each loan shall be repaid in sixty (60) equal installments of principal and interest. Notwithstanding the foregoing, the first payment of principal and interest on any loan from any Member other than CFLP I shall not commence until the Excess (as such term is defined in the Governing Agreement) shall have been reduced to zero in which event interest shall accrue on the outstanding balance of the loan until the commencement of the first payment of principal and interest.

ARTICLE 4

CASH DISTRIBUTIONS

4.1 <u>Net Cash Flow</u>. Subject to the provisions of Sections 4.3 and 8.2, and the Governing Agreement, the Managers shall use their best efforts to distribute or cause to be distributed to the Members, as and when determined by the Managers, but no less often than monthly, commencing no later than January 1, 2003, in accordance with Section 4.2, the excess, if any ("Net Cash Flow") of:

4.1.1 The aggregate amount of all income and receipts of all kinds received by the Company from all sources during a period, including, without limitation, operations, insurance proceeds, proceeds from Capital Transactions and the proceeds from loans or capital contributions.

Capital Transactions shall mean the sale, refinance or disposition of all or any substantial portion of the Company's property or any interest therein or any condemnation or casualty loss with respect thereto, plus any existing cash reserves which the Managers determine to be unnecessary and therefore may be released, over

4.1.2 All cash disbursements of the Company during that period, including those used to pay (A) costs and expenses from operations during such period, (B) the cost of any repairs, replacements or additions to the Company's business (whether or not capitalized for federal income tax purposes) and of any other capital expenditures paid for in cash during such period, (C) indebtedness of the Company and (D) amounts reserved in accordance with Section 3.6.

4.2 Allocation of Net Cash Flow. Net Cash Flow distributable in accordance with Section 4.1 shall be distributed first to CFLP I, in accordance with, and pursuant to, the Governing Agreement, and then to the Members in proportion to their Percentage Interests.

4.3 Limitation on Distributions. Notwithstanding Section 4.2, Net Cash Flow from a transaction which is a part of the liquidation of the Company in accordance with Section 8.2, together with other funds remaining to be distributed at such time, shall be distributed to the Members in accordance with Section 4.2 no later than the later of (a) the end of the taxable year of the Company in which such liquidation occurs or (b) within 90 days after the date of such liquidation event, after payment of all Company liabilities and expenses (or adequate provision therefor), except that in no event shall the distribution to a Member exceed the positive balance in such Member's Capital Account after giving effect to all allocations to such Member under Article 5 of Net Profits and Net Losses, so that liquidation proceeds shall be distributed in accordance with each Member's positive Capital Account balance (within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(b) as in effect on the date hereof).

ARTICLE 5

ALLOCATION OF TAXES; SPECIAL ALLOCATIONS

5.1 Definition of Net Profits and Net Losses. "Net Profits" or "Net Losses," as the case may be, shall mean, for any fiscal year of the Company, the net profit or net loss of the Company determined for Federal income tax purposes, but including as an item of income or gain any such item which is earned by the Company during such year and is exempt from Federal income tax, and deducting the amount of any expenditures incurred by the Company during such fiscal year that are described in Section 705 (a) (2) (B) of the Code or the corresponding provisions of any subsequent law and excluding any items that are specially allocated under Section 5.4 hereof.

5.2 Allocation of Net Profits. Subject to Section 5.4, for each fiscal year of the Company, Net Profits shall be allocated to the Members as follows:

5.2.1 First, to those Members having negative Capital Account balances, in the proportion of such negative balances until such balances are eliminated.

5.2.2 Next, to the Members in the proportions necessary to render positive Capital Account balances in the same proportion as the Membership Interests.

5.2.3 Lastly, to the Members in proportion to their Membership Interests.

5.3 Allocation of Net Losses. Subject to Section 5.4, for each fiscal year of the Company, Net Loss shall be allocated to the Members as follows:

5.3.1 First, to those Members having positive Capital Account balances, in the proportions necessary to render their respective Capital Account balances in the same proportion as their respective Membership Interests.

5.3.2 Next, to those Members having positive Capital Account balances, in the proportion of such balances until such balances are eliminated.

5.3.3 Next, to the Members in the proportions necessary to render negative Capital Accounts in the same proportion as the Membership Interests.

5.3.4 Lastly, to the Members in accordance with their Membership Interests.

5.3.5 Notwithstanding the foregoing, if the allocation of Net Loss to a Member would create or increase a Qualified Income Offset Amount (as defined in Section 5.4.4), there shall be allocated to such Member only that amount of Net Loss as will not create or increase a Qualified Income Offset Amount. In the event some but not all of the Members would have a Qualified Income Offset Amount as a consequence of an allocation of Net Loss, the limitation set forth in this Section 5.3.5 shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulation Section 1.704-1 (b) (2) (ii) (d).

5.4 <u>Special Allocations</u>. The following special allocations should be made in the following order:

5.4.1 <u>Minimum Gain Chargeback</u>. Except as otherwise provided in Section 1.704-2(f) of the Tax Regulations, notwithstanding any other provision of this Article V, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such member=s share of the net decrease in Partnership

Minimum Gain, determined in accordance with Section 1.704-2(g) of the Tax Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Tax Regulations. This Section 5.4.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Tax Regulations and shall be interpreted consistently therewith.

5.4.2 **Partner Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(I)(4) of the Tax Regulations, notwithstanding any other provision of this Article V, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Tax Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member=s share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Tax Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Tax Regulations. This Section 5.4.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Tax Regulations and shall be interpreted consistently therewith.

5.4.3 Qualified Income Offset. In the event any Member unexpectedly received any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), or Section 1.704-1(b)(2)(ii)(d)(6) of the Tax Regulations, items of Company income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Tax Regulations, the Adjusted Capital Account Deficient of the Member as quickly as possible, provided that an allocation pursuant to this Section 5.4.3 shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.4.3 were not in this Agreement.

5.4.4 Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amounts such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Tax Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.4.4 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article V have been made as if Section 5.4.3 and this Section 5.4.4 were not in this Agreement.

5.4.5 Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their Membership Interests.

5.4.6 Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Tax Regulations.

5.4.7 <u>Mandatory Allocations Under Section 704(c) of the Code.</u> Notwithstanding the foregoing provisions of this Section 5.4, in the event Section 704(c) of the Code or Section 704(c) of the Code principles applicable under Section 1.704-1(b)(2)(iv) of the Tax Regulations require allocations of Profits or Losses in a manner different than that set forth above, the provisions of Section 704(c) of the Code and the Tax Regulations thereunder shall control such allocations among the Members. Any item of Company income, gain, loss and deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company or which has been revalued for Capital Account purposes pursuant to Section 1.704-1(b)(2)(iv) of the Tax Regulations) and which is required or permitted to be allocated to such member for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such property and its fair market value at the time of its contribution shall be allocated solely for income tax purposes in the manner so required or permitted under Section 704(c) of the Code using the traditional method described in Section 1.704-3(b) of the Tax Regulations; <u>provided, however</u>, that curative allocations consisting of the special allocation of gain or loss upon the sale or other disposition of the contributed property shall be made in accordance with Section 1.704-3(c) of the Tax Regulations to the extent necessary to eliminate any disparity, to the extent possible, between the Members= book and tax Capital Accounts attributable to such property; <u>further provided, however</u>, that any other method allowable under applicable Tax

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Regulations may be used for any contribution of property as to which there is agreement between the contributing Member and the other Members.

5.5 Negative Capital Accounts. No Member shall be required to pay to the Company or to any Member any deficit in such Member's Capital Account, upon dissolution or otherwise.

ARTICLE 6

BOOKS, RECORDS, REPORTS AND ACCOUNTS

6.1 Books and Records. At all times during the continuance of the Company, the Managers shall keep or cause to be kept full and true books of account, in which shall be entered fully and accurately each transaction of the Company. The Company shall keep its books and records on the same method of accounting employed for tax purposes. The fiscal year of the Company shall be the calendar year. The Managers shall also cause to be prepared and filed all Federal, state and local tax returns required of the Company.

6.2 Retention of Books and Records.

6.2.1 The Company shall continuously maintain at its principal place of business set forth in Section 1:

(A) A current list of the full name and last known business or residence address of each Member set forth in alphabetical order together with the contribution and the share in profits and losses of each Member;

(B) A copy of the Articles of Organization of the Company and all certificates of amendments thereto, together with executed copies of any powers of attorney pursuant to which any such certificate has been executed;

(C) Copies of the Company's Federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years;

(D) Copies of this Agreement and all amendments thereto;

(E) Financial statements of the Company for the six most recent fiscal years;

(F) The Company's books and records for at least the current and past six fiscal years;

(G) Such additional books and records as are necessary for the operation of the Company; and

(H) The designations of successor Managers described in Section 3.1.1(B).

6.2.2 Any records maintained by the Company in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable period of time.

6.3 Member' Rights Regarding Books: Records, and Tax Information.

6.3.1 Each Member has the right upon reasonable request:

(A) To inspect and copy during normal business hours, at the Member's expense, any of the Company's records required to be kept by the Company.

(B) To obtain a copy, at the Member's expense, of the Company's Federal, state, and local income tax or information returns for each year.

6.3.2 The Managers shall send to each Member within ninety (90) days after the end of each taxable year such information as is necessary for each Member to complete Federal and state income tax or information returns.

6.3.3 The Member and the Member's representatives shall not divulge to any other person any, confidential or proprietary data, information or property or any trade secrets of the Company discovered in any inspection of the Company's books and records except as required by law or by lenders.

6.4 Bank Accounts. The Company shall establish and maintain accounts in financial institutions (including, without limitation, national or state banks, trust companies, or savings and loan institutions) in such amounts as the Managers may deem necessary from time to time. The funds of the Company shall be deposited in such accounts and shall not be commingled with the funds of the Managers or any affiliates thereof.

6.5 Goodwill. No value shall be placed for any purpose upon the Company' s name or the right to its use, or upon the goodwill of the Company or its business. Upon termination or dissolution of the Company, neither the Company's name, nor the right to its use, nor the goodwill of the Company, shall be considered as an asset of the Company.

6.6 Election under Section 754 of the Code. In the event of any transaction described in section 743 (b) of the Code and permitted by the provisions of this Agreement, the Company shall, upon the timely written request of the Person succeeding to a Company interest in such transaction, make the election provided for in Section 754 of the Code.

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6.7 "Tax Matters Partner." Warren Diamond is hereby designated to serve as "Tax Matters Partner" (as defined in Code Section 6231). The Tax Matters Partner is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including administrative and judicial proceedings.

ARTICLE 7

ASSIGNABILITY OR TRANSFER OF COMPANY INTERESTS

7.1 Sale Transfer or Assignment of Percentage Interests.

7.1.1 (A) The interest of a Member, whether of record or beneficial, shall not be assigned, conveyed, sold, or otherwise transferred or disposed of (collectively, a "Transfer") without the prior written consent of the Managers, which consent may be withheld or delayed in the Managers' sole discretion; provided, that, as a condition to any such transfer the Permissible Transferee shall execute an instrument pursuant to which such Permissible Transferee agrees to be bound by and to comply with the terms of this Agreement that bind, and obtains the rights and benefits that inure to, the transferor Member as though the Permissible Transferee were such transferor. As used in this Agreement, "Permissible Transferee" of a Member means: (a) in the case of a Member that is a natural person, but not an "Additional Member," a member of such person's Immediate Family; and (b) in the case of a Member that is an entity, but not an "Additional Member," any Affiliate of such entity. Notwithstanding the foregoing, a Permissible Transferee shall not include any Person that is in receivership, bankruptcy, insolvency, dissolution, liquidation or any similar proceeding or any Person whose incompetence has been established pursuant to a judicial determination. "Affiliate" of any Person means any Person that directly or indirectly controls, is controlled by or is under common control with such Person. For the purposes of this definition, control when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. "Immediate Family" of a Person means such Person's spouse, child (natural or adopted), grandchild, parent, nephew and/or a trust for the benefit of any of the foregoing, and/or a partnership or other entity consisting of any of the foregoing but if any of the foregoing is less than 21 years of age at the time of such proposed transfer, then such transfer may only be made to a trustee of a valid trust for the benefit of such person, which trust shall not terminate prior to the beneficiary (or beneficiaries) thereof attaining the age of 21. "Person" means an individual, partnership, corporation, limited liability company, trust, unincorporated association, joint venture or other entity of whatever nature. The foregoing provisions of this Section 7.1.1 shall not be deemed to prohibit a Member from pledging its right to receive distributions of Net Cash Flow from the Company, provided however that no creditor of any Member shall have any right to become a substitute Member of the Company or exercise any rights of Members or Managers of the Company. Rather, the rights of any such creditor shall be limited strictly and solely to the right to receive the pledging Member's right to receive

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distributions of Net Cash Flow as and when determined by the Managers.

7.1.2 An assignee or transferee of any portion of the interest of the Member shall be entitled to receive allocations and distributions attributable to the interest acquired by reason of such assignment from and after the effective date of the assignment of such interest to such assignee; however, anything herein to the contrary notwithstanding, the Company and the Managers shall be entitled to treat the assignor of such interest as the Member and absolute owner of the assigned interest in all respects, and shall incur no liability for allocations of net income, net losses, or gain or loss on sale of Company property, or transmittal of reports and notices required to be given to Members hereunder which are made in good faith to such assignor until such time as the written assignment has been received by the Company, approved and recorded on its books, the effective date of the assignment has passed and such assignee or transferee has been admitted as a substitute Member.

7.1.3 Any assignment, sale, exchange, transfer or other disposition in contravention of any of the provisions of this Article 7 shall be void and ineffective, ab initio and shall not bind or be recognized by the Company.

7.2 Intentionally Omitted

7.3. Intentionally Omitted

7.4 <u>Admission of Substituted Members: Further Conditions</u>.

7.4.1 No assignment or transfer of all or any part of the interest of a Member permitted to be made under this Agreement shall be binding upon the Company unless and until a duplicate original of such assignment or instrument of transfer, duly executed and acknowledged by the

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assignor and the transferee, has been delivered to the Company.

7.4.2 As a condition to the admission of any substitute Member, as provided in this Article, the person so to be admitted shall execute and acknowledge such instruments, in form and substance reasonable satisfactory to the Managers, as the Managers may deem necessary or desirable to effectuate such admission and to confirm the agreement of the person to be admitted as such Member to be bound by all of the covenants, terms and conditions of this Agreement, as the same may have been amended.

7.4.3 Any person to be admitted as a Member pursuant to the provisions of this Agreement shall, as a condition to such admission as a Member, pay all reasonable expenses in connection with such admission as a member, including, but not limited to, the cost of the preparation, filing and publication of any amendment to this Agreement and/or Articles of Organization of the Company which the Managers deems necessary or desirable in connection with such admission.

7.4.4 In the event of the dissolution, termination, or bankruptcy of a Member, the legal representative of such Member, or the successor in interest of such Member, shall succeed only to the right of such Member to receive allocations and distributions hereunder, and may be admitted to the Company as a Member in the place and stead of the dissolved, terminated, or bankrupt Member in accordance with this Article 7 upon the consent of all of the Managers, which consent may be withheld or delayed, but shall not be deemed to be a substitute Member unless so admitted.

7.4.5 Notwithstanding anything to the contrary contained in this Agreement, no sale or exchange of an interest in the Company may be made if the interest sought to be sold or

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exchanged, when added to the total of all other interests sold or exchanged within the period of twelve (12) consecutive months prior thereto, results in the termination of the Company under Section 708 of the Code, without the prior written consent of the Managers, which consent may be withheld or delayed in the Managers' sole discretion.

7.4.6 In the event of a permitted transfer of all or part of the interest of a Member, the Company shall, if requested, file an election in accordance with Section 751 of the Code or a similar provision enacted in lieu thereof, to adjust the basis of the Property of the Company. The Member requesting said election shall pay all costs and expenses incurred by the Company in connection therewith.

7.4.7 The foregoing provisions of this Section 7.4 shall not be deemed to limit the requirement that the consent of the Managers be obtained or that the assignor or transferor Member comply with the provisions of Section 7.1 hereof before and as a condition to any assignment or transfer of a Member's interest in the Company.

ARTICLE 8

DISSOLUTION, LIQUIDATION AND TERMINATION OF THE COMPANY

8.1 Dissolution. The Company shall be dissolved upon the happening of the first of the following to occur:

(a) On the date approved by all of the Members;

(b) Upon the withdrawal, retirement, bankruptcy, liquidation or dissolution of a Member, the Company shall be dissolved unless all the remaining Members agree within 180 days of such event to continue the Company. In such event, the Company shall continue its business pursuant to the terms and provisions of this Agreement;

(c) Upon the sale or other divestiture of all or substantially all of the Property of the Company; provided, however, that (i) if the Company receives a purchase money mortgage in connection with such sale, the Company shall continue until such mortgage is' paid in full or otherwise disposed of; and (ii) the Company shall continue if the Property of the Company is exchanged under Section 1031 of the Code; or

(d) Upon entry of a decree of judicial dissolution of the Company.

8.2 Liquidation.

8.2.1 Upon the dissolution of the Company as provided in Section 8.1, the Company shall be liquidated as set forth below. Each of the Members shall be furnished with a statement, reviewed by the Company's independent accountants, which shall set forth the assets and liabilities of the Company as of the date of the Company's dissolution. The Managers or, if there is no Managers, a liquidating agent selected by a majority in interest of the Members, shall as promptly as practicable liquidate the assets of the Company, close out all positions, pay or discharge all debts, liabilities and obligations of the Company, and retain such reserves as are deemed necessary for any unforeseen and contingent liabilities in accordance with Section 8.2.3. The Managers or such liquidating agent, as the case may be, shall then allocate and distribute the remaining proceeds in cash as follows:

(a) To the payment of the costs and expenses of the dissolution and liquidation;

(b) To the payment of the debts (including any due the Members) and liabilities of the Company in the order of priority, if any, as provided by law; and

(c) To each Member, pursuant to and in accordance with Sections 4.2 and 4.3

8.2.2 Upon dissolution and liquidation, each Member shall look solely to the assets of the Company for the return of his capital contribution, and shall be entitled only to a cash distribution from the Company in return thereof, unless otherwise allowed by the Managers or liquidating agent in accordance with Section 8.3. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contribution of each Member, such Member shall have no recourse against the Managers or any other Member.

8.2.3 Notwithstanding anything to the contrary the Managers may retain such amounts as it deems reasonably necessary as a reserve for any contingent liabilities or obligations of the Company, which amount shall be paid over to an attorney or a bank or trust company as escrow agent to be held by it for the discharge of liabilities of the Company and the distribution of the balance, if any, among the Members in the same manner and proportion as herein above provided for in this Section.

8.3 <u>Distribution in Kind or Sale</u>.

8.3.1 In the event that any asset of the Company is not sold within eighteen (18) months of the occurrence of the event effecting the dissolution, the Managers (if then existing) or liquidating agent shall promptly thereafter offer to the Members in satisfaction of such Members' rights to their liquidating distribution the option either to (1) acquire ownership of any asset then held by the Company by means of a distribution in kind; or (2) sell any asset then held by the

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Company to the Managers or any designee thereof (the "Buyer" for an amount equal to the appraised fair market value of such asset, such price to be payable to the Members pursuant to. a promissory note delivered by the Buyer to the Members on the terms forth below; (3) allow the Managers, as liquidating trustee, or liquidating agent to continue to wind up the affairs of the Company in accordance with the terms of this Agreement; or (4) any combination of the foregoing. The promissory note referred to in clause (2) above shall be nonnegotiable and shall bear interest on its outstanding principal balance equal to the "applicable Federal rate" set forth in Section 1274(d) of the Code and shall be without recourse to the Buyer and its principals, employees and agents, but shall be secured by a pledge of the asset acquired by Buyer for which the note was delivered. The note shall have a maturity of five (5) years and no payments of principal shall be due until maturity unless the asset securing said note is sold, in which case all principal and interest shall be due seven (7) days after the Buyer receives the proceeds of such sale. In addition, the note shall be prepayable without penalty at any time.

8.3.2 If the Managers or liquidating agent determines that a portion of the Company's assets should be distributed in kind to the Members, it shall obtain an independent appraisal of the fair market value of each such asset as of a date reasonably close to the date of liquidation. Any unrealized appreciation or depreciation with respect to any asset to be distributed in kind shall be allocated among the Members (in accordance with; the provisions of Article 5, and assuming that the assets were sold for the appraised value), and shall be taken into consideration in determining the balance in the Members' Capital Accounts as of the date of final liquidation in accordance with Section 4.3.2. Distribution of any such asset in kind to a Member shall be considered a distribution of an amount equal to the asset's fair market value for purposes of Section 8.2.

8.4 Termination. The Company shall not terminate until all Company property shall have been disposed of and the Company's assets, after payment of or due provisions for liabilities to the Company's creditors, shall have been distributed among the Members as provided in this Agreement and until the Articles shall have been canceled. Notwithstanding the dissolution of the Company, prior to the, termination of the Company as aforesaid, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

8.5 Reconstitution. Nothing contained in this Agreement shall impair, restrict or limit the rights and powers of the Members under the laws of the State of New York and any other jurisdiction in which the Company is doing business to reform and reconstitute themselves as a limited liability company following dissolution of the Company either under provisions identical to those set forth herein or any others which they may deem appropriate.

8.6 Cancellation of the Articles of Organization. Upon the completion of the distribution of Company assets as provided in this Article 8 and the termination of the Company, the Managers or liquidating agent shall cause the Articles of Organization of the Company to be canceled.

ARTICLE 9

FURTHER DOCUMENTS

9.1 Execution by Members. At any time, upon the request of the Managers, each Member shall execute, acknowledge and swear to any certificate required by the Law, any amendment to or cancellation thereof required by law, and any certificate or affidavit of fictitious firm name, trade name or the like (and any amendments or cancellations thereof) required by law to carry out the purposes of, and which are consistent with, the purposes of this Agreement; and the Managers shall cause to be filed of record all such certificates and instruments as shall be required so to be filed.

ARTICLE 10

MISCELLANEOUS

10.1 Amendments. This Agreement may be amended, and any waiver, change, modification, consent or discharge shall be effective, only by the written agreement of the Managers and all of the Members.

10.2 Choice of Law. This Agreement shall be governed any construed in accordance with the laws of the State of New York, applicable to agreements made and to be performed entirely within such State, without regard to principles of conflict of laws.

10.3 Choice of Forum. The parties agree that none shall commence any litigation against the other arising out of this Agreement or the termination thereof except in a court located in the State of New York. Each party consents to jurisdiction over it by and exclusive venue in such a court.

10.4 Notices. Any notice or other communication required or which may be given pursuant to this Agreement shall be in writing and shall be delivered personally, telegraphed, telexed or sent by facsimile with a copy sent contemporaneously by mail, or sent by certified, registered, or express mail, postage prepaid, to the relevant address set forth for in the heading to this Agreement. Any such notice or communication shall be deemed given when so delivered personally, telegraphed, telexed or faxed, or if mailed, on the earlier of the date of receipt or two days after the date of mailing.

10.5 Entire Agreement. This Agreement contains the entire understanding of the parties and supersedes and merges all prior and contemporaneous agreements and discussions between the parties. Any and all representations or agreements by any agent or representative of either party not contained in this Agreement shall be null, void and of no effect. This Agreement may not be changed in any way, except as provided in Section 10.1 of this Agreement.

10.6 Severability. If for any reason any provision of this Agreement, including but not limited to, any provision relating to termination of this Agreement, shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any jurisdiction to which it applies, the validity of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law, and, in its modified form, such provision shall then be enforceable and enforced.

10.7 Binding Agreement. This Agreement shall be binding upon the parties and shall inure to the benefit of the undersigned parties and, except to the extent provided to their respective heirs, executors, personal representatives, successors and lawful permitted assigns. Any reference in this instrument to any party or Member is made, such reference shall be deemed to include a reference to the successors and assigns of such party or Member.

10.8 Waiver of Action for Partition. Each of the parties to this Agreement irrevocably waives and forfeits during the term of the Company any and all right that it may have to institute or maintain any action for partition with respect to any property of the Company.

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10.9 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa, as the context may require.

10.10 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor affect it in anyway.

10.11 Counterparts. This Agreement maybe executed through the use of separate signature pages or in any number of counterparts, and each of such signature pages or counterparts shall, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart.

10.12 Arbitration. The parties will submit any dispute under this Agreement to an arbitrator to be settled by arbitration in accordance with the Commercial Arbitration Rules or the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in New York County, and shall be conducted by a single arbitrator chosen by the America Arbitration Association. All costs and expenses of the arbitration, including actual attorneys' fees, will be allocated among the parties according to the arbitrator's discretion. The arbitrator's award resulting from such arbitration may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly. Further, the parties hereto expressly agree that proceeding to arbitration and obtaining an award thereunder will be a condition precedent to bringing or maintaining any action in any court with respect to any dispute arising under this Agreement, except for the institution of a civil action to maintain the status quo during the pendency of any arbitration proceeding and

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except for an action to enforce the right to payment of a sum certain.

10.13 No Third Party Beneficiary. No person or entity not a party to this Agreement shall have any rights hereunder including, without limitation, any rights under Article II hereunder.

10.14 No Representations or Warranties. It is understood and agreed, that all understandings and agreements heretofore had between the parties hereto concerning the Company, its operations, its assets or otherwise, whether oral or written, are merged into this Agreement, (inclusive of the applicable provisions of the Governing Agreement), which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement made by the other. The Members expressly acknowledge, warrant and represent that each has examined the Property and the buildings and improvements thereon on or about the date of this Agreement and each is fully familiar with the physical condition thereof and that it has been given full opportunity to conduct and that it has conducted such investigations of the affairs of the Company and the Property as each Member has considered appropriate including, without limitation, an examination of the leases. Each Member expressly acknowledges, warrants and represents to the other that no person has made any oral or written representations, warranties, promises or guarantees whatsoever to such Member, whether express or implied, and, in particular, but without limitation, no such representations, warranties, promises or guarantees have been made with respect to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or related to the Property, except as herein specifically set forth. Specifically, each Member acknowledges that the other Member makes no warranty or representation, express or implied, or arising by operation of law, with respect to, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Property or any portion thereof, or with respect to the economical, functional, environmental condition of the Property. Each Member hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to or concerning; (i) the nature and condition of, as applicable, the Property or any part thereof, including, but not limited to, the suitability thereof, for any and all activities and uses which the Company may elect to conduct thereon, or any improvements the Company may elect to construct thereon, or any income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to the same; (ii) the absence or presence of asbestos or any environmentally toxic or hazardous substances on, in, above or under the Property or the building(s) and improvements located thereon, or on, in, above or under any property adjacent to or abutting the Property, including, without limitation, environmental pollution or contamination of the air, water, ground water or soil; (iii) the manner of construction or condition or state of repair or lack of repair of any improvements constituting part of or located within the Property; (iv) the condition of any personal property; (v) the nature or extent of any easement, restrictive covenant, right-of-way, license or reservation on any portion of the Property; (vi) the compliance of the Property or the operation of the Property, or portions thereof, with any laws, rules, ordinances, or regulations of any governmental or other body including, without limitation, those relating to access for the handicapped and environmental or zoning matters; or (vii) the compliance of the Property with any state, city or local law, rule or regulation or governmental order of any governmental authority.

10.15 The parties hereto are parties of that certain "Governing Agreement" of even date herewith, a true copy of which is annexed hereto, incorporated by reference herein, and made a part hereof. Any conflicts or inconsistencies between this Agreement, on the one hand, and the Governing Agreement, on the other, shall be resolved in each and every instance in favor of the Governing Agreement, and this Agreement shall be deemed amended if as and to the extent required, to conform to the Governing Agreement without further action by the partner hereto.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have executed this Agreement as of the day and year first above written.

CANNIZZARO FAMILY LIMITED PARTNERSHIP I

by: ______________________
authorized signatory

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John DelMonaco

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Warren Diamond

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into as of November 3, 2005, by and among (i) 500 LINCOLN, LLC ("500 Lincoln"), a New York limited liability company, (ii) TUNNEL ASSOCIATES, LLC ("Tunnel Associates"), a New York limited liability company, (iii) COREM CAPITAL PARTNERS, LLC ("Corem"), (iv) TUNNEL SELF STORAGE, LLC ("TSS"), a New York limited liability company, (v) TUNNEL STORAGE PARTNERS, LLC ("TSP"), a New York limited liability company, (vi) AMERICAN SELF STORAGE LINCOLN, LLC ("ASSL"), a New York limited liability company, (vii) AMERICAN SELF STORAGE MGMT. ASSOC. INC. ("ASSMA"), a Florida corporation, (viii) AMERICAN SELF STORAGE MGMT. ASSOC. LLC ("ASSMA-NJ"), a New Jersey limited liability company (ix) 636 ELEVENTH ASSOCIATES, LLC, a Delaware limited liability company, (x) 636 ELEVENTH MEZZANINE, LLC, a Delaware limited liability company, (xi) 636 EAR ASSOCIATES, LLC, a New York limited liability company, (xii) WOOD ELF PARTNERS, LLC a New York limited liability company, (xiii) WHITE ACRE CAPITAL, LLC ("White Acre"), a New York limited liability company, (xiv) TELCO ASSOCIATES, LLC ("Telco"), a New York limited liability company, (xv) WARREN DIAMOND ("Diamond"); (xvi) JACOB FRYDMAN ("Frydman"), (xvii) MITCHELL RUTTER ("Rutter"); (xviii) JOHN DELMONACO ("DelMonaco"); (xix) WARREN DIAMOND 2005 GRANTOR TRUST (the "Diamond Trust"; (xx) CANNIZZARO FAMILY LIMITED PARTNERSHIP I ("FLP"); (xxi) SAL CANNIZZARO ("Cannizzaro"); and (xxii) 500 TENTH AVENUE, LLC ("500 Tenth").

RECITALS

A. 500 Lincoln is the owner of a ground leasehold interest in the real property located at 503-519 500 Tenth Avenue (commonly known as 500 Tenth Avenue), 512 W. 39th Street, and 505-507 West 38th Street, New York, New York and the improvements thereon and the property interests ancillary thereto (collectively, the "500 Property").

B. 500 Tenth is the owner of an option to purchase the 500 Property.

C. The members of 500 Lincoln and 500 Tenth are: (i) Tunnel Associates, with a 51% interest and (ii) Corem, with a 49% interest. Tunnel Associates and Diamond are the co-managers of 500 Lincoln and 500 Tenth.

D. 500 Lincoln, as landlord, and TSS, as tenant, previously entered into a lease (the "Lease") for the 4th and 5th floors of 500 Tenth Avenue and the entire adjoining building known as 505-507 West 38th Street (collectively, the "Demised Premises"). The legal status, if any, of the Lease dated October 31, 2002 (as amended, if amended) is the subject of currently pending litigation that is being discontinued pursuant to this Agreement subject, however, to Section 2 hereof, and TSS remaining in occupancy of the Demised Premises.

E. The members of TSS are: (i) TSP, with a 49% interest; and (ii) ASSL, with a 51% interest. Diamond and Tunnel Associates are the co-managers of TSS.

F. White Acre, 636 Ear Associates, LLC, Wood Elf Partners, LLC (collectively, the "White Acre Parties") and Telco are all members of 636 Eleventh Mezzanine, LLC, the sole members of 636 Eleventh Associates, LLC, the former fee owner of the property known as 636 Eleventh Avenue, New York, New York (the "636 Property"). The managers of 636 Eleventh Mezzanine, LLC are 636 White, LLC and American Telcom Mgmt., LLC. Notwithstanding the fact that the 636 Property was sold to a third party purchaser in April 2005, litigations and an arbitration among the parties hereto concerning the 636 Property have continued and are still pending, but which are being discontinued pursuant to this Agreement subject, however, to Section 2 hereof.

G. In addition to the actions described immediately above, various combinations of the undersigned are parties to currently pending Actions (as defined below) and Arbitrations (as defined below).

H. As a result of, among other things, disagreements that have arisen between Tunnel Associates and Corem/Diamond regarding the development, operation and leasing of the 500 Property and other matters (including the Actions and Arbitrations), and disagreements that arose between the White Acre Parties and Telco/Diamond with respect to the development, operation and leasing of the 636 Property, and in the interest of fully and completely resolving and settling any and all pending disputes, claims and litigations by and between and among the various parties hereto, subject to Section 2 hereof:

(i) The parties hereto have agreed to discontinue each of the Actions and Arbitrations of this Agreement;

(ii) Diamond has agreed to assign 100% of (i) Diamond's role as a manager of 500 Lincoln, 500 Tenth, and American Telcom Mgmt., LLC to DelMonaco, (ii) Diamond's ownership interest in each such entity to the Diamond Trust, which Diamond represents and warrants is and shall remain a so-called "grantor's trust" having Scott Diamond as its trustee for so long as Scott Diamond is alive and able to perform his duties as its trustee, and Diamond as its beneficiary, (iii) any other direct or indirect management interests of Diamond in each such entity and Corem to DelMonaco or a limited liability company(ies) of which DelMonaco is and shall be the sole manager and of which DelMonaco and Grace DelMonaco shall be the owner of 100% of all of the direct and indirect ownership and beneficial interests of such manager entity of 500 Lincoln, 500 Tenth and Corem (DelMonaco or such entity, as the case may be, "JD"), and (iv) any other direct or indirect management interest of Diamond in each such entity, but subject to certain springing, limited consulting rights as hereinafter provided.

(iii) Corem, Diamond, DelMonaco, FLP and Tunnel Associates have agreed that the 500 Property shall continue to be managed and operated by Tunnel Associates and JD, or their successors permitted in accordance with the terms of the Amended and Restated Operating Agreement of 500 Lincoln (the "Operating Agreement") as modified herein and except as limited by Section 3 hereof and all lawful orders of the Court, except that the parties shall appoint a third-party property manager as hereinafter provided.

(iv) TSP and ASSL have agreed that the members of TSP shall sell to ASSL all of their ownership interest in TSS on the Effective Date (as hereinafter defined) for $1.00 and (B) that on or before the later to occur of (x) the one hundred twentieth (120th) day after the Effective Date or (y) February 27, 2006, TSS shall surrender the Demised Premises to 500 Lincoln;

(v) Tunnel Associates, Corem, DelMonaco and FLP desire to modify the terms of the Operating Agreement by this Agreement as hereinafter provided; and

(vi) the parties have agreed to execute and deliver on the date hereof, *inter alia*, stipulations discontinuing the Actions and the Arbitrations, with prejudice, mutual releases with respect to the 500 Property and the 636 Property, and a judgment of ejectment and a warrant of eviction with stay (to expedite the eviction of TSS in the event it fails to vacate the Demised Premises as and when required hereunder).

I. TSP is obligated to pay One Million Five Hundred Thousand Dollars ($1,500,000.00) plus applicable interest to FLP under that certain promissory note dated October 31, 2002 between TSS, as maker, and FLP, as payee (the "Note"), which shall be repaid in the manner described in Section 4(a) hereof.

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

1. Definitions.

(a) For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the defined terms used in this Agreement shall include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders, each if and to the extent the context so requires; (ii) accounting terms, if any, not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; (iii) references herein to "Articles," "Sections," "subsections," "paragraphs" and other subdivisions without reference to a document designate Articles, Sections, subsections, paragraphs and other subdivisions of this Agreement; (iv) reference to an exhibit without a further reference to the document to which the Exhibit is attached is a reference to an exhibit to this Agreement; (v) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and (vi) the word "including" means "including, but not limited to," as is the case with grammatical variants or equivalents as well.

(b) Supplementing the terms defined in the recitals above and elsewhere in this Agreement, the following terms used herein shall have the respective meanings set forth below:

"Actions" means the following legal actions and proceedings, each filed in and currently pending before the New York State Supreme Court, New York County:

(i) *Corem Capital Partners, LLC v. Tunnel Associates, LLC* (Index No.

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601350/04);

(ii) *500 Lincoln, LLC v. Tunnel Self Storage, LLC* (Index No. 404392/04; L&T No. 66504/04);

(iii) *Telco Associates, LLC v. White Acre Capital, LLC* (Index No. 601349/04);

(iv) *Tunnel Associates, LLC v. Diamond* (Index No. 109815/04);

(v) *White Acre Capital, LLC v. Telco Associates, LLC* (Index No. 109814/04);

(vi) *500 Lincoln v. Wachovia Bank, N.A.* (Index No. 107395/04); and

(vii) *Wachovia Bank, N.A. v. Tunnel Associates, LLC* (Index No. 590670/04).

"Agreement" means this Agreement in its present form or as it may be amended or restated from time to time.

"Arbitrations" means each of the following arbitration proceedings filed with the American Arbitration Association ("AAA"):

(i) *Corem Capital Partners, LLC v. Frydman et al.* (American Arbitration Association Case No. 13 115 02079 04); and

(ii) *Telco Associates, LLC v. Frydman et al.* (American Arbitration Association Case No. 13 115 02126 04).

"Business Day" means any day of the week other than Saturday, Sunday or a day on which banking institutions in New York City are obligated or authorized by law to close.

"Court" means the New York State Supreme Court, New York County.

"Document Holder" means Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

2. Conditions Precedent; Effective Date.

(a) Except with respect to provisions of this Agreement that expressly survive the termination of this Agreement, the effectiveness of this Agreement is expressly conditioned upon (i) the full execution and delivery of the Surrender and Termination Agreement between 500 Lincoln, as landlord, and Remco Maintenance, LLC, as tenant (together with the documents ancillary thereto, the "Remco Documents"), (ii) the full execution and delivery of the lease between 500 Lincoln, as landlord, and DHL Express (USA), Inc., as tenant (the "DHL Lease"), (iii) issuance by the Court of an order consenting to this Agreement, (iv) the "unfreezing" by Wachovia Bank, N. A. of all of the bank accounts currently "frozen" by Wachovia Bank in the name of 500 Lincoln, TSS, TSP, and 636 Eleventh Associates, LLC, (v) the receipt by FLP of $1,657,500.00 pursuant to Section 4(a)(iii) and (iv) delivery of a joint notice and instruction letter from a member of the Corem Group and a member of the Tunnel Associates Group (as such terms are hereinafter defined) notifying the Document Holder that the conditions set forth in clauses (i), (ii), (iii), (iv) and (v) immediately above have been satisfied and instructing the Document Holder to release the DH Documents from escrow and thereby cause the DH Documents to take full force and effect, which notice may be given by the respective parties' counsel. The date on which all of the following conditions are satisfied is referred to herein as the "Effective Date": (x) the conditions set forth in clauses (i), (ii), (iii), (iv), (v) and (vi) of this Section 2 are each satisfied, and (y) Document Holder has received from Corem and released to Tunnel Associates the funds described in Section 10(a). If the Effective Date has not occurred on or before November 4, 2005, this Agreement shall automatically terminate and be of no further force or effect, except with respect to any provisions that expressly survive the termination hereof, whereupon the Document Holder shall promptly return each of the DH Documents to the parties who delivered the same to Document Holder or destroy the same. See also Section 13 hereof and, specifically (but not by way of limitation) Section 13(c).

(b) Except with respect to provisions of this Agreement that expressly survive the termination of this Agreement: if the Effective Date does not occur and this Agreement terminates as provided above, then neither the existence of this Agreement nor anything contained herein nor any drafts, discussions or negotiations hereof prior thereto shall be admissible or divulged or used in any way in any Action, Arbitration or other dispute between or among any one or more of the parties hereto or their affiliates or any correspondence with third parties; the parties hereto hereby acknowledge that the negotiating of and entering into this Agreement was in furtherance of settlement purposes only.

3. Transfer of Diamond's Interests in 500 Lincoln.

(a) Diamond, DelMonaco, FLP and the Diamond Trust agree that on the Effective Date:

(i) JD shall replace Diamond as the manager of 500 Lincoln, 500 Tenth, and American Telcom Mgmt., LLC and the same shall automatically take effect, without the need for any additional documentation, on the Effective Date; and

(ii) Diamond shall transfer and assign to the Diamond Trust all of Diamond's right, title and membership interest in Corem and shall withdraw as a member of Corem and shall cede any and all power and control with respect to Corem; Diamond and the Diamond Trust are executing and delivering to Document Holder on the date hereof the Assignment of Membership Interests in the form attached hereto as Exhibit A (with all missing information properly filled in), to be released and delivered to the Diamond Trust (with copies to Diamond, DelMonaco, FLP, Rutter and Frydman) on the Effective Date.

(b) Tunnel Associates hereby consents to the replacement and assignments described in Section 3(a) above and agrees that the same are hereby permitted notwithstanding the ownership restrictions set forth in Section 7.1.4 of the Operating Agreement. Grace DelMonaco shall be successor manager of JD in the event of the death or physical or mental incapacity of DelMonaco. Notwithstanding the foregoing, Scott Diamond (Diamond's son) shall replace DelMonaco or Grace DelMonaco as the manager of JD upon the earliest of the following to occur: (x) the sixth anniversary of the Effective Date; (y) the death of both DelMonaco and Grace DelMonaco; or (z) the death of DelMonaco after the third anniversary of the Effective Date, but in no event whatsoever may Scott Diamond ever replace DelMonaco or Grace DelMoncao as the manager of JD or otherwise have any interest in JD prior to the first (1st) anniversary of the Effective Date.

(c) If and for so long as either Frydman or Rutter or any entity in which either of them or any of their immediate family members has a direct or indirect beneficial, equitable, ownership, management or other interest, then in no event may Diamond ever (i) be a manager of 500 Lincoln, 500 Tenth, 636 Eleventh Mezzanine LLC, 636 Eleventh Associates, LLC, JD or American Telcom Mgmt., LLC again or ever have any ownership, equitable, whether direct or indirect, in any such entities again from and after the Effective Date (other than as beneficiary of the Diamond Trust) or (ii) serve as the trustee of the Diamond Trust.

(d) For the avoidance of doubt, any and all obligations, approvals or consents that are imposed on or granted by Diamond or Corem pursuant to this Agreement shall be deemed accepted and agreed to by DelMonaco, FLP, JD and the Diamond Trust.

(e) If at any point in time any manager of 500 Lincoln or any member or principal of any member or manager of any member of 500 Lincoln or 500 Tenth or the trustee of the Diamond Trust or any party having direct or indirect control of such member or manager (i) has ever been convicted or indicted of a crime, other than a traffic violation, (ii) declared or declares bankruptcy or (iii) no longer desires or is able to serve as manager of 500 Lincoln or to retain its ownership interest in 500 Lincoln or a member of 500 Lincoln or to serve as trustee, as the case may be, then, such party shall be replaced, and the successor replacement manager and/or successor interest-holder must be a person who has never been convicted or indicted of any crime other than a traffic violation or declared bankruptcy and is reasonably acceptable to any lender or prospective lender on the 500 Property. DelMonaco, Rutter, Frydman and Scott Diamond each hereby represents and warrants that he has never been convicted or indicted of a crime other than a traffic violation and that he will promptly notify the others hereto if and when such representation is no longer true. From time to time and within five (5) business days after written request but not more often than four (4) times per calendar year unless required in connection with any then existing loan or potential institutional financing (as defined in Section 9 hereof) relating to the 500 Property, each manager of 500 Lincoln and 500 Tenth and the principals of each member of 500 Lincoln and 500 Tenth shall each certify that he has not ever been convicted or indicted of a crime. Nothing contained in this paragraph shall be deemed to limit the restrictions and consent rights set forth two paragraphs above.

(f) Without limiting any of the provisions set forth above limiting or restricting Diamond's direct and indirect ownership and management rights in 500 Lincoln, Corem, JD, etc., the parties agree that after the one (1) year anniversary of the Effective Date, Diamond may serve as a consultant and give advice to Corem, DelMonaco, Scott Diamond, Grace DelMonaco, JD and/or their successors and assigns regarding 500 Lincoln, 500 Tenth, Corem or any entity directly or indirectly involved in the ownership of the 500 Property. As a consultant and solely with respect to anything in any way relating directly or indirectly to 500 Lincoln or any of its affiliates or the 500 Property, Diamond is not authorized or permitted to sign checks on behalf

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of, or to serve as agent or as attorney-in-fact for: Corem; JD; DelMonaco; Grace DelMonaco; Cannizzaro; FLP; any other principal or manager of Corem or JD; 500 Lincoln; 500 Tenth; or American Telcom Mgmt., LLC; and for one (1) year following the Effective Date, Diamond shall not have any right to attend any meetings relating to 500 Lincoln or the 500 Property, except as regards TSS and its obligations required by this Settlement Agreement. Nothing contained in this Section 3(f) shall be deemed to prohibit Diamond from attending meetings relating to the 500 Property in his capacity as consultant (as aforesaid) after the one-year anniversary of the Effective Date, except and to the extent that the purpose of any such meeting is to take an action requiring the vote or consent of the members or the managers of 500 Lincoln or any affiliate of 500 Lincoln.

4. New Note; Note; Landlord Accounts; Operating Agreement Waterfall; Deal Fee.

(a) Each of the following shall occur contemporaneously (but in the order listed below) on the Effective Date, but a moment in time before the sale set forth in Section 5:

(i) Diamond shall lend 500 Lincoln Nine Hundred Seven Thousand Five Hundred Dollars ($907,500), and repayment terms shall be evidenced by a note (the "New Note") in such amount and in the form attached hereto as Exhibit G, which 500 Lincoln, as maker, shall deliver to Diamond contemporaneously with the funding of such loan proceeds.

(ii) Notwithstanding any other provision of this Agreement or the Operating Agreement to the contrary and prior to making any other distribution of capital, 500 Lincoln shall distribute One Million Six Hundred Fifty-Seven Thousand Five Hundred Dollars ($1,657,500) to Tunnel Associates, which shall be funded from the following sources:

(1) Nine Hundred Seven Thousand Five Hundred Dollars ($907,500) from the New Note proceeds; and

(2) Seven Hundred Fifty Thousand Dollars ($750,000) from the funds in 500 Lincoln's currently "frozen" accounts at Wachovia Bank, N.A. #s 2000012610622 and 2000011134589 (collectively, the "Landlord Accounts"); the parties have been advised by counsel for Wachovia Bank, N.A. that as of August 31, 2005, the aggregate amount in the account was $1,296,801.73 of which and that no deposits or withdrawals have been made since then or shall be made prior to the Effective Date.

(iii) Upon receipt of said One Million Six Hundred Fifty-Seven Thousand Five Hundred Dollar ($1,657,500) distribution, Tunnel Associates shall use $150,000 to repay its loan to TSP and distribute the remaining $1,507,500 to its members, which will then cause the members of TSP (i.e., Rutter and Frydman) each to then contribute Seven Hundred Thirty-Seven Thousand Seven Hundred Fifty Dollars ($753,750) to TSP in the form of a capital contribution.

(iv) TSP shall use the combined One Million Five Hundred Seven Thousand Five Hundred Dollars ($1,507,500) contributed by Rutter and Frydman and the $150,000 paid by Tunnel Associates pursuant to clause (iii) immediately above to repay the Note and one-half of the accrued and unpaid interest (i.e., $157,500) thereon in the aggregate amount

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of One Million Six Hundred Fifty-Seven Thousand Five Hundred Dollars ($1,657,500). Provided that the Note is repaid in the manner set forth above, FLP agrees to waive the remaining interest due under the Note, and upon such repayment shall return the Note to TSP marked "canceled" and, upon request shall deliver any other documentation reasonably requested by TSP confirming that the Note has been satisfied.

(b) The New Note shall be paid out of cash flow from 500 Lincoln after payment of expenses due to third-party obligees (as provided in Section 4(e) below).

(c) Notwithstanding anything contained in Section 4(d) below to the contrary, the balance remaining in the Landlord Accounts after payment to Diamond of the New Note shall be distributed as follows: Three Hundred Twenty-Five Thousand Dollars ($325,000) to Tunnel Associates and Two Hundred Twenty-Five Thousand Dollars ($225,000) to Corem, and any remaining balance shall be paid 50% to Tunnel Associates and 50% to Corem. Any other operating accounts of 500 Lincoln, including the account(s) held by the receiver for 500 Lincoln, shall be transferred to the new account described in Section 8(d) below.

(d) Section 4.2 of the Operating Agreement is hereby deleted in its entirety and replaced with the following (the references to the "Settlement Agreement" being to this Agreement):

> 4.2 Allocations of Net Cash Flow. Net Cash Flow distributable in accordance with Section 4.1 (i.e., after first paying the amounts payable by the Company to third-party obligees and thereafter the New Note) shall be distributed to the Members as follows:
>
> (i) first, 50% to Tunnel Associates and 50% to Corem, *pari passu*, until the Members have each received a return of their capital contributions to the Company made with respect to the items described on Schedules A, B and C of the Settlement Agreement; and
>
> (ii) then, 50% to Tunnel Associates and 50% to Corem, except that the first One Million Eight Hundred Thousand Dollars ($1,800,000) that is otherwise distributable to Corem under this Section 4.2(ii) shall be distributed to Tunnel Associates.

(e) For the avoidance of doubt (and without any intention confusing or minimizing or effect or effectiveness of Section 4(d) above), Corem hereby unconditionally waives any rights to, and irrevocably assigns to Tunnel Associates all of its right, title and interest in and to the One Million Eight Hundred Thousand Dollars ($1,800,000) of distributions that would have been payable to Corem if Section 4.2 of the Operating Agreement were not amended as provided in section 4(d) above. This paragraph shall be deemed a direction by Corem to distribute said One Million Eight Hundred Thousand Dollars ($1,800,000) to Tunnel Associates. Nothing in Section 4(d) above or elsewhere in this Agreement shall be deemed to affect the allocation of profits and losses between the members of 500 Lincoln as set forth in the Operating Agreement.

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(f) The parties agree that Sections 4(d) and 4(e) serve as an amendment to the Operating Agreement and that no further documentation is required to effect the modifications to the Operating Agreement set forth in Sections 4(d) and 4(e).

(g) The parties to this Agreement hereby appoint Document Holder as attorney-in-fact to effectuate any and all of the transfers required by Section 4(a).

5. Sale of TSP's Ownership Interests in TSS to ASSL.

(a) On the Effective Date and immediately after the consummation of the transactions referred to in Paragraph 4(a) above (including the repayment of the Note in full) and subject to the terms and conditions of this Agreement, (i) TSP shall sell, transfer and assign to ASSL all of its right, title and interest in and to TSS and shall withdraw as a member of TSS and shall cede any and all power and control with respect to TSS and (ii) ASSL shall pay to TSP \$1.00. TSP is executing and delivering to Document Holder on the date hereof the Assignment of Membership Interests in the form attached hereto as Exhibit A (with all missing information properly filled in), to be released and delivered to ASSL on the Effective Date (the documents provided for in this Agreement to be executed and delivered to Document Holder are hereinafter referred to collectively as the "DH Documents").

(b) Effective upon conveyance described in Section 5(a) above, TSP shall be released and discharged from all liability and obligation it may have with respect to the future operations of TSS.

(c) On the Effective Date but only after payment by TSS of the pro rated rent for the month of October 2005 (which rental shall be paid on the Effective Date, if not already paid by TSS' receiver), ASSL shall be entitled to retain all of the funds in the following TSS operating accounts: (i) the currently "frozen" Wachovia Bank, N.A. account #2000011314576 (the parties acknowledge that as of August 31, 2005, the parties were advised that the account balance was \$79,665.84 and to best of the parties knowledge no deposits or withdrawals have been made since then or shall be made prior to the Effective Date), which funds have since been transferred to the receiver for TSS, (ii) the currently "frozen" Wachovia Bank, N.A. account controlled by the receiver for TSS, and (iii) the JP Morgan Chase Bank, N.A. credit card deposit account and notwithstanding anything contained in the Operating Agreement of TSS to the contrary, TSP shall have no right thereto or interest therein;

(d) The sale described in this Section 5 shall not be construed to impair any rights of ASSMA to receive any management or other fees from TSS from and after the consummation of such sale.

(e) Corem, TSS and ASSL hereby jointly and severally indemnify Frydman, Rutter and their respective entities and affiliates against any and all loss, cost, expense or liability with respect to the obligations of TSS and/or its prior or future members and/or principals from and after the Effective Date.

(f) TSP and Tunnel Associates each represent and warrant that none of them have any creditors other than those arising out of this Agreement.

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6. <u>Occupancy and Surrender of Demised Premises by TSS</u>.

(a) As additional consideration for this Agreement, TSS shall have the right to occupy the Demised Premises until the later to occur of (i) the one hundred twentieth (120th) day after the Effective Date or (ii) February 27, 2006 (such date or, if earlier, the date TSS actually vacates and surrenders possession of the Demised Premises to 500 Lincoln in accordance herewith, the "Surrender Date"). TSS shall, and hereby expressly agrees to, vacate and surrender possession of the Demised Premises to 500 Lincoln, on or before the Surrender Date, TIME BEING OF THE ESSENCE.

(b) TSS agrees that as evidence of the fact that it has vacated and surrendered occupancy of the Demised Premises, TSS shall deliver a notice certifying that it has vacated and surrendered possession of the Demised Premises in the form attached hereto as Exhibit B by hand or by a national overnight courier to: Tunnel Associates, LLC, c/o White Acre Equities, LLC, 111 Fulton Street, New York, New York 10038, Attention: Jacob Frydman, with a simultaneous copy to Arent Fox PLLC, 1675 Broadway, New York, New York 10019, Attention: Karen F. Candreva, Esq., which must be received no later than the close of business on the second business day after the Surrender Date in order to be timely delivered. Timely delivery of said notice shall be valid evidence that TSS has vacated and surrender of occupancy of the Demised Premises.

(c) 500 Lincoln hereby agrees that there shall be no charge to TSS for TSS's right to occupancy the Demised Premises from the Effective Date through the Surrender Date and that all "Rental" as such term is defined in the lease between 500 Lincoln and TSS are abated from the Effective Date through the Surrender Date and that TSS has no outstanding Rental payable for any period prior to the date hereof, as evidenced by that certain Amendment to Lease being executed on the date hereof in the form attached hereto as Exhibit C hereof to be held by Document Holder and to be released from escrow on the Effective Date. If Rental has been paid for any period after the Effective Date, TSS shall be entitled to a refund for the portion of such monies such allocable to such period(s) after from the Effective Date, which refund shall be made promptly following the Effective Date. The parties acknowledge that the lease referenced in this Section 6(c) is the subject of litigation and the nothing contained in this Section 6(c) shall be construed whether or not that lease has been terminated.

(d) Upon the removal of the receiver for TSS or, if sooner, when legally permissible, ASSL shall cause TSS to notify its licensees and any other party to whom it has granted any rights in or to any portion of the Demised Premises as required by the license agreement and applicable law that the licensee must remove its property no later that the Surrender Date. TSS will either arrange for removal and relocation of their stored items or terminate their licenses. TSS will not accept any new licensees or renewals or extension of existing licenses from and after the Effective Date. ASSL further agrees to cause TSS to comply with all legal requirements in connection with such terminations and relocations, as the case may be. TSS and ASSL agree that neither of them nor their principals or affiliates shall take or direct any action that is in contravention of the provisions in the notices required to be delivered by this Section 6(d) or that otherwise circumvents the intention of this Agreement with respect to TSS's duty to timely vacate and surrender the Demised Premises. In the event of a breach of this Section 6(d), Corem, TSS, and ASSL shall jointly and severally indemnify 500 Lincoln against the actual amount of any and all rent that would otherwise have been payable by the tenant under the DHL Lease but for a breach by TSS or ASSL ("Lost Rent") under this Agreement and, if applicable, the Repair Costs (as defined in Section 6(g) below), which obligations shall be the sole remedy to 500 Lincoln in the event of a default under this Section 6(d). The acts of the receiver for TSS or the manager appointed by such receiver shall not trigger a default by TSS under this Section 6(d).

(e) Upon the occurrence of the Effective Date, TSS consents to the immediate entry of a Final Judgment of Ejectment (the "Judgment") and the immediate issuance of a Warrant of Eviction (the "Warrant") by the Clerk of the Supreme Court, County of New York in the forms attached hereto as Exhibit D, with the execution of the Warrant to be stayed until the Surrender Date. The Warrant and Judgment are to be held by the Document Holder until, and if, the Effective Date occurs. If the Effective Date has not occurred, the Document Holder shall destroy the Warrant and Judgment as provided for in Section 2(e).

(f) TSS hereby waives any right to seek an extension of the Surrender Date and agrees that it shall not make any application to any Court (*ex parte* or otherwise) modifying or vacating this Agreement and/or the subject matter thereof and shall not otherwise seek any delay of its eviction from the Demised Premises pursuant to the Warrant for any reason. TSS acknowledges that it does not object to the entry of the Judgment or the issuance of the Warrant as set forth herein, and it waives any and all rights of appeal. Furthermore, TSS waives the right to assert any and all defenses to the Judgment or Warrant and stipulates that it may not seek a stay of, or otherwise prevent the issuance or execution of, the Warrant.

(g) On or prior to the Surrender Date, TSS shall deliver the Demised Premises to 500 Lincoln in its then "as-is" condition with no removal, repair or restoration obligations, except that TSS shall be obligated to: (i) remove from the Demised Premises all of its personal property and the personal property of any and all of its licensees or other parties to whom TSS has granted any interest in or to the Demised Premises, including, any and all equipment, fixtures, storage lockers and so-called "cages," (ii) repair any material physical damage to the Demised Premises occurring from the date hereof through the Surrender Date (ordinary wear and tear excepted), and (iii) remove any and all signage at the Demised Premises or otherwise at the 500 Property placed by, on behalf of or through TSS or any agent of TSS (including the signage on the scaffolding and the signage at the 500 Property), failing which, Tunnel Associates shall have the unilateral right to remove the same on behalf of 500 Lincoln at TSS's expense. Notwithstanding to the foregoing, TSS's obligation under (i) and (ii) of this Section (g) shall be limited to (x) Lost Rent and (y) if applicable, repair costs (but only to the extent incurred in connection with 500 Lincoln's delivery obligations under the DHL Lease) (the "Repair Costs"), in either case arising out of the breach of TSS's obligations under (i) and (ii) of this Section (g). TSS hereby acknowledges that after the Surrender Date it has no further right whatsoever to place any signage at the 500 Property. Tunnel Associates acknowledges and agrees that TSS shall have full access to the elevators in connection with its move-out subject only to the rights of other tenants, including any rights of Remco under the Remco Documents.

(h) TSS represents, warrants and covenants that nothing has been or will hereafter be done or suffered whereby the Lease, or the term or estate thereby granted or the Demised Premises, or any part thereof (if any), or any alterations, installations, additions and improvements that remain in the Demised Premises following the Surrender Date, or any part thereof, if any, has been or will be encumbered in any way whatsoever by TSS as of the Surrender Date, and that with acknowledgement of but not regard to the litigation referenced in Recital D of this Agreement, TSS owns and will own the lessee's interest in the Lease (if any) and has and will have the right to surrender the same, and that no one other than TSS will have acquired through or under TSS any right, title or interest in or to the Demised Premises, or any part thereof, or in or to said alterations, installations, additions and/or improvements or any part thereof. TSP represents, warrants and covenants it has not independently encumbered the leasehold or its interest therein in other than in connection with the loan from the Cannizzaro Family Limited Partnership I and any transaction in which ASSL has had involvement.

(i) TSS confirms that it is owed no security deposit or interest on it from 500 Lincoln or any other party in connection with the Lease or TSS's occupancy of the Demised Premises. Upon the occurrence of the Effective Date (and only then), 500 Lincoln agrees that TSS has fully paid all of its obligations to 500 Lincoln arising out of its occupancy of the Demised Premises through September 30, 2005, and except (i) with respect to any amount due and unpaid from October 1, 2005 through the Effective Date and (ii) as otherwise set forth in this Agreement (e.g., Sections 6(j), 6(m) and 6(n)(iii)), TSS shall have no further obligations to 500 Lincoln provided it complies with the terms of this Agreement.

(j) If TSS fails to vacate the subject premises on the Surrender Date, 500 Lincoln may cause the Warrant to be executed upon service of a marshal's notice. 500 Lincoln may cause the marshal's notice to be pre-served prior to the Surrender Date. Furthermore, 500 Lincoln shall be entitled to Lost Rent occasioned TSS's failure to timely vacate and surrender of the Demises Premises. Corem, TSS and ASSL shall and hereby agree to jointly and severally indemnify 500 Lincoln against the amount of Lost Rent and, if applicable, Repair Costs, occasioned thereby.

(k) TSS shall give 500 Lincoln and/or its agent access to the Demised Premises on or prior to the Surrender Date for the purpose of inspection, and 500 Lincoln agrees that any such inspection shall be conducted in such manner so as to minimize any interference with TSS's operation and vacatur of the Demised Premises.

(l) In the event TSS leaves any personal property, fixtures or equipment in the Demised Premises following surrender of the Demised Premises, the same shall be deemed abandoned and 500 Lincoln may dispose of, or retain, same, and without liability on the part of 500 Lincoln or TSS for leaving same except as otherwise provided in this Agreement.

(m) TSS hereby acknowledges that: (i) effective as of the Surrender Date, TSS will have forever abandoned and surrendered any claim of possession of the Demised Premises; (ii) in the event that it remains in possession of the Demised Premises after the Surrender Date, TSS will be in breach of this Agreement and its liability shall be limited to Lost Rent; (iii) 500 Lincoln is entitled to immediate possession of the Demised Premises as of the Surrender Date; and TSS's liability for damages for such breach shall be limited to Lost Rent and, if applicable, Repair Costs, occasioned by TSS's failure to timely vacate and surrender of the Demises Premises in the condition required by Section 6(g) above.

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(n) TSS acknowledges that upon its failure to quit and vacate the Demised Premises on or before the Surrender Date in accordance with this Agreement:

(i) the stay of the execution of the Warrant shall immediately be vacated;

(ii) 500 Lincoln may, without further notice to TSS, proceed to execute forthwith on the Warrant on the first business day after the date on which TSS is required to vacate the Demised Premises (*i.e.*, the Surrender Date), or any day subsequent thereto;

(iii) TSS shall be liable to 500 Lincoln for the attorneys' fees, costs and disbursements of any legal actions or proceedings taken by 500 Lincoln to evict TSS from the Demised Premises;

(iv) In addition to serving or causing to be served the notice of execution of the Warrant, 500 Lincoln may apply, without notice to TSS, to the Court for any injunction or warrant necessary to compel TSS to vacate the Demised Premises immediately after the Surrender Date. TSS acknowledges that 500 Lincoln is without an adequate remedy at law and faces immediate and irreparable harm unless and until 500 Lincoln obtains possession of the Demised Premises. Nothing contained in this Section 6(n)(iv) shall be deemed to expand TSS's liability hereunder for failure to timely vacate and surrender the Demised Premises beyond the express provisions of this Agreement, including, without limitation, Sections 6(j), 6(m) and 6(n)(iii).

(o) TSS further represents that it has conducted such investigation and made such consultations as it deems necessary in connection with this Agreement and the subject matter hereof and further represents that it understands that, by entering into this Agreement, it shall permanently relinquish any further claim or right, if any, to remain in the Demised Premises and/or any other benefit (including but not limited to succession rights, sublet rights, rights of first refusal, and any other rights, if any) from and after the Surrender Date.

(p) Acceptance by 500 Lincoln of any payments from TSS whether pursuant to the Lease, the terms of this Agreement or otherwise, shall not be deemed a waiver of, and shall not in any way bar, limit, qualify or delay, 500 Lincoln's right to commence any legal actions or proceedings to obtain immediate possession of the Demised Premises upon expiration of the stay of execution of the Warrant. Neither a delay in the execution of the Warrant nor TSS's continued or extended occupancy of the Demised Premises with or without 500 Lincoln's consent shall be deemed a waiver of any kind of any of 500 Lincoln's rights or remedies under this Agreement or any other document entered into in connection with the transactions hereby contemplated.

(q) Notwithstanding anything contained in this Agreement, the Operating Agreement or any DH Document to the contrary, Tunnel Associates shall have the authority and power to act unilaterally on behalf of 500 Lincoln in connection with the enforcement of 500 Lincoln's rights and remedies in the event TSS fails to vacate and surrender the Demised Premises as and when required hereunder (e.g., Tunnel Associates shall not be required to obtain

Corem's consent prior to lifting the stay on the Warrant pursuant to this Agreement).

7. Discontinuance of Actions and Arbitrations.

(a) Each of the parties hereto agrees that effective upon the execution and delivery of this Agreement, it shall not take any other action in furtherance of the proceedings in the pending Actions and Arbitrations other than the execution and delivery of the following documents and except for any and all actions necessary to effectuate or enforce the terms of this Agreement (including entry of the judgment of ejectment and issuance of the warrant of eviction described above), each of which is being executed and delivered to the Document Holder in escrow contemporaneously herewith and shall be released from escrow and become escrow on the Effective Date:

(i) stipulations discontinuing all of the pending Actions, with prejudice;

(ii) stipulations discontinuing all of the pending Arbitrations, with prejudice;

(iii) mutual general releases with respect to the 500 Property and the 636 Property, excepting therefrom only the parties' respective rights and obligations under this Agreement and the substance of the side letter referenced in the last sentence of Section 32 hereof.

Any party hereto may submit the aforementioned stipulations to the Court or the AAA, as the case may be.

(b) Furthermore, as part of the discontinuation with prejudice of all of the pending Actions, including the Actions to which 500 Lincoln and TSS are parties, the parties acknowledge that notwithstanding the Court's Order, dated June 10, 2005, granting the motion of Tunnel Associates, 500 Lincoln and TSP for the appointment of a receiver for 500 Lincoln and TSS and the Court's order dated July 27, 2005 appointing separate receivers for 500 Lincoln and the business operations of TSS, the parties shall make joint application to the Court to discharge the receivers on and as of the Effective Date. In the event the receiver for TSS or his agent(s) or attorneys has received or is owed fees, Tunnel Associates shall on the Effective Date or immediately after such fees are invoiced and the Landlord Accounts have been "unfrozen," reimburse TSS for 50% of such fees paid or owed to such receiver, its agent(s) and his attorneys.

(c) It is the intention of the parties that they hereby, effective as of the Effective Date, release each other and their respective officers, members, managers, directors, agents and employees in all disputes arising between them that were commenced or could have been raised prior to the Effective Date, subject, however, to the side letter referenced in the last sentence of Section 32 hereof.

8. Management of the 500 Property; New Operating Account; Accountant.

(a) Corem and Tunnel Associates shall appoint either, Grubb & Ellis

Management Services Inc., Cushman & Wakefield, Inc. or CB Richard Ellis, Inc. at mutually agreed upon, commercially competitive rates to manage, operate and administer (including with respect to operating accounts and all other cash flow matters) the 500 Property effective on or about the Effective Date. The Corem Group members and Tunnel Associates acknowledge and agree that as of the Effective Date, no party other than the manager to be appointed pursuant to this Section 8(a) has any property management role with respect to 500 Lincoln or 500 Tenth or is entitled to any fees (past, current or future) in connection with any such property management for 500 Lincoln or 500 Tenth, including, without limitation, ASSL or ASSMA. In the event the Effective Date does not occur, nothing contained in the immediately preceding sentence shall be construed as any ratification or acknowledgement by Tunnel Associates that any such other management agreement ever previously existed.

(b) Corem and Tunnel Associates agree on a going-forward basis (i.e., with respect to tax returns for 2005 and beyond) to replace the existing accountant for 500 Lincoln with Deloitte & Touche LLP or another accountant that is mutually acceptable to Corem and Tunnel Associates. If, however, the existing accountant fails to prepare the tax returns for 2004 or earlier (if applicable), other than by the failure of the parties to agree as to the content of the tax returns or to provide the necessary documentation and information to the existing accountant to enable him to complete the returns, then Corem and Tunnel Associates each agrees to delegate that tax work to the new accountant. Notwithstanding the foregoing, the existing account shall not be replaced until the existing accountant has been paid outstanding fees in the amount of Eleven Thousand Eight Hundred Dollars ($11,800) for services it has provided to 500 Lincoln and 500 Tenth, the latter, if applicable.

(c) Rutter, Frydman, Tunnel Associates, Corem and Diamond (and if requested, JD and DelMonaco) expressly covenant and agree to execute the Remco Documents on behalf of 500 Lincoln if and when requested by one or more of the others.

(d) Corem and Tunnel Associates agree that on the Effective Date they shall open a new operating account for 500 Lincoln, which shall require co-signatures or DelMonaco and Rutter on behalf of Corem and Tunnel Associates, respectively for any withdrawals, transfers or other activity on the account, except and to the extent of the rights intended to be delegated to the new property manager to be appointed pursuant to Section 8(a) above.

9. Financing of the 500 Property. Corem and Tunnel Associates agree that 500 Lincoln and/or 500 Tenth (as appropriate) should maximize the full leverage potential of the 500 Property; neither party shall withhold their consent to any financing or financings of the 500 Property based on any assertion or belief that it is no longer in the best interest of 500 Lincoln and/or 500 Tenth (as appropriate) or any stakeholder therein to leverage the 500 Property for less than 100% of the maximum amount capable of being financed from the 500 Property through any one or more institutional financings. The parties also agree that such financing (i) shall be non-recourse to the members of 500 Lincoln and/or 500 Tenth (as appropriate), the principals, beneficial owners, managers and affiliates of the managers and members of 500 Lincoln and/or 500 Tenth (as appropriate) other than any so-called "bad-boy" guaranties, environmental carve-out indemnities or the like (and if the parties are jointly and severally liable under any such guaranty or indemnity, then they shall indemnify each other to the extent that such guaranty exceeds their ownership interest in 500 Lincoln and/or 500 Tenth (as appropriate)), (ii) may be

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interest only, (iii) shall be for a term of ten (10) years (or more or fewer), (iii) if it is a so-called "permanent" loan, it shall not have an interest rate in excess of 200 basis points for Treasury notes having a term equal to the term of the subject loan. For purposes of this Section 9 only, the term "500 Property" shall not include 500 Lincoln's and/or 500 Tenth's (as appropriate) interest in the property and improvements located at 512 W. 39th Street, New York, New York. The provisions of Section 9 shall only apply to financing strategy for, and any loan(s) entered into from, the Effective Date through the fifth (5th) anniversary of the Effective Date. As used herein, the term "institutional financing" shall have the meaning set forth on Exhibit E attached hereto and made a part hereof. The parties agree that the selection of any mortgage broker to assist in the financing of the 500 Property shall be made jointly by the managers of 500 Lincoln and 500 Tenth, except that Richard Stanton is agreed to be the mortgage broker with respect to financing from UBS. If UBS does not provide all of the financing, then the managers shall seek financing from Wachovia Bank, N.A. and/or Morgan Stanley, in which event the managers agrees the mortgage brokers shall be Milton Ciplit in the case of Wachovia Bank, N.A. and Arthur Kloc, in the case of Morgan Stanley.

10. Costs and Expenses.

(a) Upon receipt of notice from Document Holder that the conditions set forth in clause (x) of Section 2(a) hereof have been satisfied, Corem shall remit to Document Holder 50% of each of the costs and expenses listed on Schedule A attached hereto and made a part hereof, whereupon Document Holder shall retain such funds until Tunnel Associates has furnished evidence of payment of such expenses to Document Holder in the form of a vendor's invoice marked "paid" or cancelled checks or the like, and, provided that such expenses were incurred solely for the benefit of the 500 Property, Document Holder is thereupon irrevocably directed to release the same to Tunnel Associates. Tunnel Associates represents that such costs and expenses have previously been paid by or on behalf of Tunnel Associates for the benefit of 500 Lincoln and that with respect to any such payments made by check, such checks have cleared or are in the process of clearing. All of the costs and expenses listed on Schedule A shall be deemed capital contributions made 50% by Tunnel Associates and 50% by Corem.

(b) Diamond, Corem and Tunnel Associates hereby ratify on behalf of 500 Lincoln each of the costs and expenses listed on Schedule B attached hereto and made a part hereof (all of which costs have been incurred but are unpaid), provided that such expenses were incurred solely for the benefit of the 500 Property, and agree that Corem and Tunnel Associates shall each make capital contributions to 500 Lincoln in the amount of 50% of each such cost or expense promptly upon written demand by the other and that 500 Lincoln shall pay the same as and when each such cost or expense becomes due and payable.

(c) Diamond, Corem and Tunnel Associates hereby pre-approve on behalf of 500 Lincoln each of the costs and expenses listed on Schedule C attached hereto and made a part hereof (all of which have not yet been incurred), provided that such expenses were incurred solely for the benefit of the 500 Property, and agree that Corem and Tunnel Associates shall each make capital contributions to 500 Lincoln in the amount of 50% of each such cost or expense promptly upon written demand by the other and that 500 Lincoln shall pay the same as and wher each such cost or expense becomes due and payable.

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(d) For the avoidance of doubt, all expenses of 500 Lincoln set forth on Schedules A, B and C, as well as any other future costs or expenses incurred by 500 Lincoln shall be funded by Tunnel Associates and Corem as co-members of 500 Lincoln on a 50/50 basis and shall be repaid in the manner set forth in Section 4(e) hereof, specifically Sections 4.2.1(a) and 4.2.2(a) of the Operating Agreement as amended by Section 4(d) hereof.

11. Buy-Sell. From and after the latest to occur of (i) the second (2nd) anniversary of the Effective Date, (ii) full payment to Tunnel Associates of the Deal Fee, and (iii) acquisition by 500 Tenth (or its designee) of fee title to the 500 Property, Corem and Tunnel Associates shall each have the right, to be exercised in its sole and absolute discretion, to invoke the buy-sell procedure set forth below.

(a) The invoking Member (the "Offeror") must give written notice (hereinafter referred to as the "Offer Notice") to the other (the "Offeree") that the Offeror desires to sell its membership interest in both 500 Lincoln and 500 Tenth (but not only one or the other, unless one of those entities has since been dissolved) and the terms upon which the Offeror would be willing to sell, which terms shall include, at a minimum, the purchase price and a closing date that is not later than one hundred twenty (120) days or sooner than sixty (60) days after the date of the Offer Notice, which notice shall be accompanied by a non-refundable deposit in the form of a certified check made payable to Offeree in the amount of ten (10%) percent of the purchase price that would be payable by Offeror if Offeree were to accept said offer described in this subparagraph (which will be credited against the purchase price if the Offeror winds up being the buying party hereunder) (ii) below. Within fifteen (15) days after receipt of the Offer Notice and the aforesaid certified check (time being of the essence with respect thereto), Offeree shall elect by written notice to Offeror to proceed under either subparagraph (i) below or the subparagraph (ii) below (the "Response Notice"). Failure to timely respond shall be deemed an election under subparagraph (ii) below.

(i) Offeree may elect to purchase all of Offeror's membership interests in both 500 Lincoln and 500 Tenth (or, if one of those entities has since been dissolved, the entity that is the subject of the Offer Notice) at the price set forth in the Offer Notice and otherwise under the applicable terms and conditions contained in the Offer Notice (except that Offeree may adjust the Closing date by stating a new Closing date in the Response Notice provided such date remains not later than one hundred fifty (150) days or sooner than sixty (60) days after the date of the Offer Notice) in which event: (A) Offeree shall remit with the delivery of the Response Notice a non-refundable deposit in the form of a certified or bank check payable to the order of Offeror in an amount equal to ten (10%) percent of the purchase price stated in the Offer Notice (which will be credited against the purchase price payable by Offeree); (B) Offeree shall return with the delivery of the Response Notice the check proffered by Offeror with the Offer Notice; (C) at Closing (as hereinafter defined), Offeree shall pay the balance of the purchase price stated in the Offer Notice by certified or bank check payable to Offeror; (D) at Closing, Offeree shall cause any principals of Offeror to be released from all obligations under their guaranties, indemnities or the like delivered on behalf of the Offeror and/or 500 Lincoln and/or 500 Tenth (collectively, the "Guaranties"); if, however, Offeree cannot obtain a release for all or any part of the Guaranties after using good faith commercially reasonable efforts, then in lieu of delivering the same, Offeree shall be permitted to deliver an indemnity agreement pursuant to which Offeree and its principals (e.g., Diamond, DelMonaco and FLP on the one

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hand and Frydman and Rutter on the other hand) jointly and severally indemnify any such principal(s) against any and all liability, loss, cost or expense (including legal fees) thereafter arising for which releases were not obtained; and (E) at Closing, Offeror and Offeree (and the additional indemnities mentioned above, if applicable) shall exchange instruments evidencing the assignment of Offeror's membership interest in both 500 Lincoln and 500 Tenth (or, if one of those entities has since been dissolved, the then the entity that is the subject of the Offer Notice) to Offeree and such other documents, including, if applicable, the aforesaid indemnity, in form and substance reasonably satisfactory to the parties and their counsel, as are customarily exchanged at closings of membership interests in a limited liability company; or, instead,

(ii) Offeree may elect to sell all of its membership interests in 500 Lincoln and 500 Tenth (or, if one of those entities has since been dissolved, the entity that is the subject of the Offer Notice) to Offeror at the price per percentage ownership interest in 500 Lincoln set forth in the Offer Notice, in which event (A) Offeree shall be entitled to retain and deposit the check proffered by Offeror with the Offer Notice (which will be credited against the purchase price payable by Offeror); (B) at Closing, Offeror shall pay the balance of said purchase price by certified or bank check payable to the Offeree (time being of the essence); (C) at Closing, Offeror shall cause any principals of the Offeree to be released from all obligations under any Guaranties delivered on behalf of the Offeree and/or 500 Lincoln and/or 500 Tenth; if, however, Offeror cannot obtain a release for all or any part of the Guaranties, after using good faith commercially reasonable efforts, then in lieu of delivering the same, Offeror shall be permitted to deliver an indemnity agreement pursuant to which Offeror and its principals (i.e., Diamond, DelMonaco and FLP on the one hand and Frydman and Rutter on the other hand) indemnify any such principal(s) against any and all liability, loss, cost or expense (including legal fees) thereafter incurred by such principal under the Guaranties for which releases were not obtained; and (D) at Closing, Offeror and Offeree (and the additional indemnities mentioned above, if applicable) shall exchange instruments evidencing the assignment of Offeree's membership interest in 500 Lincoln and 500 Tenth (or, if one of those entities has since been dissolved, the then the entity that is the subject of the Offer Notice) to Offeror and such other documents, including, if applicable, the aforesaid indemnity, in form and substance reasonably satisfactory to the parties and their counsel, as are customarily exchanged at closings of membership interests in a limited liability company.

(b) The closing on the such purchase and sale of the subject membership interests (the "Closing") shall take place at the offices of the selling party (or its counsel), and funds and documents will be exchanged pursuant to the terms of the Offer Notice or the Response Notice, as the case may be. The selling party shall deliver title to its membership interests free and clear of all liens and encumbrances. The Closing shall be on a business day designated by the selling party upon not less than fifteen (15) business days' prior written notice to the buying party and in all events not later than one hundred twenty (120) days after the date of the Offer Notice, time being of the essence for such dates.

(c) If the buying party fails to deliver the balance of the purchase price at Closing as provided above, the selling party shall be entitled to retain the deposit as liquidated damages, it being agreed that actual damages would be difficult if not impossible to ascertain.

(d) The buying party and the selling party each agrees to take any and all actions at closing as are reasonably necessary to help the other to effectuate a like-kind exchange in connection with the buy-sell pursuant to Section 1031 of the Internal Revenue Code, including, but not limited to (i) entering into a like-kind exchange trust agreement authorized by a "qualified intermediary" acceptable to the parties to effectuate a like-kind exchange, which agreement shall be in the form and substance sufficient to allow such party's exchange of the 500 Property to qualify as a tax-free exchange under said Section 1031, and (ii) paying to the qualified intermediary the purchase price balance due at Closing in accordance with the instructions of the intermediary; provided, however, that (A) in no event shall the non-requesting party be required to take title to any other real property or to incur any additional expenses not reimbursed by the selling party or liability in order to effectuate the like-kind exchange, (B) the like-kind exchange shall not delay the Closing Date and (C) any change in ownership structure (e.g., conveyance by 500 Lincoln and/or 500 Tenth of its real property to the respective members as tenants-in-common) shall be effected no sooner than a moment in time before the buy-sell transaction is consummated. The requesting party, whether the seller or the buyer, agrees to indemnify, defend and hold the other party harmless from and against any and all costs, expenses, claims and other liabilities of any kind arising with regard to the effectuation of a tax free exchange as described herein. Notwithstanding anything to the contrary provided herein, the non-requesting party makes no representations or warranties as to the tax treatment for the transaction contemplated hereby or the ability of the transaction contemplated to qualify for like-kind exchange treatment pursuant to Section 1031 of the Code. In the event both parties desire to effectuate a like-kind exchange as described herein, each party shall pay any and all costs associated with their respective transactions, without any obligation of either party to reimburse the other.

(e) If the selling party fails to sell its membership interests or tenancy-in-common interest as required by Section 11(a), the buying party, notwithstanding Section 12, may commence an action for specific performance and damages in a court of competent jurisdiction.

(f) TIME IS OF THE ESSENCE with respect to each of the time periods set forth in this Section 11.

12. Dispute Resolution.

(a) All disputes between the parties hereto and/or under the Operating Agreement arising out of or relating in any way to this Agreement or the business of 500 Lincoln, 500 Tenth, 636 Eleventh Mezzanine, LLC, 636 Eleventh Associates, LLC or American Telco Mgmt., LLC after the Effective Date, (exclusive of any disputes expressly retained by Judge Cahn pursuant to the order approving this Agreement, "Disputes") shall be resolved exclusively pursuant to this Section 12. The parties hereto expressly waive their rights to seek resolution of Disputes in any other judicial or non-judicial forum. The purpose of this section is to ensure the speedy, efficient and inexpensive resolution of Disputes.

(b) Dispute resolution shall be commenced by the claimant (the "Claimant") serving by hand delivery, overnight delivery by a national courier or certified mail/return receipt requested at the address(es) set forth on Schedule D attached hereto a detailed, written notice of claim along with copies of all available supporting documentary evidence (a "Claim") upon the party (or parties) against whom the claim is asserted (the "Respondent").

(c) Within twenty (20) business days after receipt of a Claim, the Claimant and Respondent, if they agree, shall jointly designate a retired federal or New York state court judge or a litigator each of whom must have at least fourteen (14) years of commercial litigation experience and reasonable experience in real estate related transactions or disputes to act as the sole and binding arbitrator to resolve the Claim. If the parties cannot agree, the parties shall retain JAMS Endispute ("JAMS") within five business days. There shall be no ex parte communications with JAMS or the arbitrator without delivery of a copy of such communication to its adversary's counsel. The parties shall instruct JAMS to provide the parties forthwith with a list of all available JAMS arbitrators, who are either retired federal or state court judges or litigators each of whom must have fourteen (14) years or more commercial litigation experience and reasonable experience in real estate related transactions or disputes. Within ten (10) business days of receipt of the JAMS list, the parties shall, if they can, agree upon a single individual on the JAMS list to serve as the arbitrator. If the parties cannot agree, JAMS shall be instructed to appoint an arbitrator from its list, which appointment shall be made within ten (10) business days of the date of such instruction. The person designated under this Section 12(c) to serve as the arbitrator is referred to herein as the "Arbitrator."

(d) Pending a final decision by the Arbitrator, the parties shall be jointly responsible to advance the Arbitrator's fees and the incidental costs of the arbitration proceeding such as rentals, etc. Each party shall pay its pro rata share of such fees and costs within five (5) business days after submission of a bill for same from the Arbitrator or vendor.

(e) Within twenty (20) business days after the appointment of the Arbitrator, the Respondent shall serve by hand delivery its detailed answer to the Claim with all available supporting evidence (the "Answer"). General allegations and denials are not permitted.

(f) Within twenty (20) business days after service of the Answer, each party must serve its request for production of documents ("Document Request"). Document Requests must be as specific as is possible; they may not be designed to impose unnecessary burdens or expense on the opposing party. The requesting party may require the producing party to make available to the requesting party copies of all documents being produced by undertaking in its Document Request to pay the reasonable costs of copying such documents.

(g) Within twenty (20) business days of service, written responses to Document Requests (the "Document Response") must be served by hand delivery or overnight delivery by a national courier. Any objection made to a request category must be specific and must delineate clearly the reason for the objection. General, unspecific objections shall be deemed null and void, shall constitute a waiver of any objection, and shall require production of the requested documents.

(h) Within ten (10) business days after service of the Document Response, copies of all responsive documents to requests that are not objected to must be made available to the party requesting them for inspection and copying or, if the Document Request so specified, copies of such documents must be produced upon payment by the requesting party of the reasonable costs (including labor) of copying such documents.

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(i) All disputes concerning adequacy of document production and objections shall be submitted to the Arbitrator for final resolution. The party seeking to compel production shall serve by hand delivery or overnight delivery by a national courier and submit in writing a motion to compel, within fourteen (14) business days after the document production. The producing party shall serve by hand delivery or overnight delivery by a national courier and submit a written response within fourteen (14) business days of service of the motion. The Arbitrator shall rule within ten (10) business days after receipt of the response.

(j) The Arbitrator shall have final, binding authority to resolve all substantive and procedural disputes. The Arbitrator shall impose monetary and/or other sanctions on any party or counsel whom the Arbitrator finds to have acted in bad faith, for purpose of delay or with the intent to unduly burden or harass another party or counsel.

(k) All disputes regarding depositions shall be submitted immediately to the Arbitrator by conference telephone call. The Arbitrator shall rule on all deposition disputes five (5) business days of the dispute being submitted. All evidentiary objections at trial shall be resolved by the Arbitrator.

(l) The trial or hearing date set by the Arbitrator (the "Trial Date") shall be no later than six (6) months after the service of the Claim.

(m) Forty (40) business days before the Trial Date, the Claimant shall serve on the Respondent and submit to the Arbitrator a list of no more than five (5) witnesses it intends to call at the trial. For witnesses not subject to the Claimant's control, a statement of the witness' expected testimony shall be submitted by the Claimant. Thirty (30) business days before the Trial Date, the Respondent shall serve on the Claimant and submit to the Arbitrator a list of no more than five (5) witnesses it intends to call at the trial. For witnesses not subject to the Respondent's control, a statement of the witness' expected testimony shall be submitted by the Respondent. Either party may apply to the Arbitrator for leave to call more than five (5) witnesses. The Arbitrator shall grant such requests only for good cause shown. The preferred course is to limit each party to five (5) or fewer witnesses.

(n) The parties may take depositions from each witness identified by an opposing party. No deposition may last more than two (2) days. The parties shall cooperate in scheduling depositions. All depositions shall be scheduled to conclude by or before the fourteenth (14th) business day before trial. There shall be no priority afforded any party in the order of depositions. The sole grounds for objections at depositions shall be privilege and palpable harassment.

(o) If requested by the Arbitrator, each party shall serve and submit a trial brief in addition to the witness affidavits and statements. The trial briefs shall be no longer than thirty-five (35) double spaced pages and shall be served and submitted to the Arbitrator on the fifth (5^{th}) business day before the Trial Date.

(p) The trial shall be conducted in the most efficient and expeditious manner practical. The trial shall be held at a venue in New York City and at times determined by the Arbitrator. The trial shall be held each business day from Monday through Friday until completed. Each side shall be allocated forty (40) hours of trial time. Trial time shall be recorded by the Arbitrator. A party's trial time shall include the time when its counsel is questioning a witness whether on direct or cross examination. Oral argument by counsel shall also count towards that party's trial time. The Federal Rules of Evidence shall apply.

(q) Upon conclusion of the trial, the Arbitrator shall indicate whether he is prepared to rule without further briefing. If no further briefing is requested, the Arbitrator shall issue a written opinion within thirty (30) business days. If the Arbitrator requests further briefing, the parties shall simultaneously serve by hand delivery and submit post trial opening briefs of no more than fifty (50) double spaced pages within twenty (20) business days after the trial concludes. The parties shall serve by hand and submit post trial reply briefs within fifteen (15) business days after service of the opening briefs.

(r) If there is post trial briefing, the Arbitrator shall issue a written opinion within thirty (30) days after submission of the parties' reply briefs. The Arbitrator's decision shall be final, binding and non-appealable. The Arbitrator shall determine all issues of fact and law. The Arbitrator shall determine who is the prevailing party on each issue in the case. Different parties may be prevailing parties on different issues.

(s) Subject to the discretion of the Arbitrator, the Decision of the Arbitrator may be submitted to any court of competent jurisdiction to be enforced.

(t) The prevailing party shall be entitled to recover from the non-prevailing party its attorneys' fees and its costs and expenses of suit, including actual attorneys', consultants' fees and the portion of the arbitrator's fees it has paid. In the event that any party hereto secures a judgment in any proceeding brought to enforce or interpret this Agreement, then any cost of expense incurred in enforcing or in successfully appealing from such judgment, including, without limitation, actual attorneys' fees shall be paid by the party or parties against whom such judgment has been rendered or against whom an appeal is won, and shall be recoverable separately from and in addition to any other amount included in such judgment. This section is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgments.

13. Conditions Precedent to Parties' Obligations.

(a) Conditions Precedent to Corem's Obligations. Supplementing Section 2 hereof, Corem's obligation to consummate the transactions hereby contemplated is subject to the following conditions (all or any of which may be waived, in whole or in part, by Corem):

(i) The representations and warranties made herein by Tunnel Associates in this Agreement shall be true and correct in all material respects on and as of the Effective Date.

(ii) The other parties to this Agreement shall have performed all obligations required by this Agreement to be performed by them on or before the Effective Date or Surrender Date.

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(b) Conditions Precedent to Tunnel Associates's Obligation. Supplementing Section 2 hereof, Tunnel Associates's obligation to consummate the transactions hereby contemplated is subject to the following conditions (all or any of which may be waived, in whole or in part, by Tunnel Associates):

(i) The representations and warranties made by Corem in this Agreement shall be true and correct in all material respects on and as of the Effective Date.

(ii) The other parties to this Agreement shall have performed all obligations required by this Agreement to be performed by them on or before the Effective Date or Surrender Date.

(c) Conditions Precedent to All Parties' Obligations. An executed agreement with Wachovia Bank, N.A., to release ("unfreeze") all of the bank accounts currently "frozen" by Wachovia Bank in the name of 500 Lincoln, TSS, TSP, and 636 Eleventh Associates, LLC. Tunnel Associates and Corem (and their successors and affiliates, if and as applicable) hereby agree to file stipulation(s) with the Court to "unfreeze" the currently frozen bank accounts at Wachovia Bank, N.A. on the Effective Date.

(d) Conditions Precedent to Other Parties' Obligation to Close. The obligations of the other parties to consummate the transactions hereby contemplated is subject to the rest of parties to this Agreement (exclusive of parties that control, are controlled by or are under common control with such party) having performed all obligations required by this Agreement to be performed by them on or before the Surrender Date or Effective Date.

(e) No Impediment to Fulfill Obligations. Aside from the Actions and Arbitrations, all of which are intended to be resolved by this Agreement and the deliveries being made contemporaneously herewith to be released from escrow on the Effective Date, no party to this Agreement is aware of the inability of any other party, their principals, managers or the principals of their managers to fulfill any obligation(s) under this Agreement.

14. 636 Funds. To the extent not previously paid, then contemporaneously with the execution of this Agreement, the members of 636 Eleventh Associates, LLC shall cause the funds being held in any bank account belonging to or being held for the benefit of 636 Eleventh Associates, LLC to be disbursed to the members in 636 Eleventh Associates, LLC pro rata in proportion to their relative percentage interests in 636 Eleventh Associates, LLC, *pari passu*, after first making the following payments: (i) $7,908.20 to TSS; (ii) $23,093.10 to 500 Lincoln; and (iii) repayment of the $31,000 loan made by 500 Lincoln to 636 Eleventh Associates, LLC, if not yet then repaid. This Section 14 shall survive the termination of this Agreement.

15. Closing. The release of the DH Documents and the delivery of any other documents required to be delivered hereunder shall be made on the Effective Date (if not previously made), but in no event later than five (5) business days after the Effective Date and shall be coordinated at the offices of Arent Fox PLLC, 1675 Broadway, New York, New York 10019. Upon consummation of the transactions contemplated hereby, Document Holder shall release the DH Documents to the appropriate parties pursuant to the court order.

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16. Representations and Warranties of the Tunnel Associates Group Members. Unless otherwise specifically provided below, each of the members of the Tunnel Associates Group represents and warrants as follows:

(a) TSP represents and warrants that it owns its membership interest in TSS free and clear of all security interests, liens, pledges, hypothecation and encumbrances of any kind or nature whatsoever (except as may exist under or pursuant to the Operating Agreement of TSS), and, except as set forth in this Agreement, it has not assigned or transferred or agreed to have such interest assigned or transferred.

(b) Tunnel Associates, TSP, the White Acre Parties, Frydman and Rutter (collectively, the "Tunnel Associates Group") each represents and warrants that the elections to (i) sell Tunnel Associates's interest in TSS and (ii) to settle the Actions and Arbitrations and agree to the other transactions contemplated hereby are absolutely discretionary on its part (as applicable); it has made such elections of its own free will because it suits its business purposes; this Agreement has been negotiated on an arms'-length basis and that such party has had the benefit of counsel of its choice; and none such party has been coerced or otherwise compelled to participate in the transactions contemplated by this Agreement.

(c) None of the members of the Tunnel Associates Group has relied upon any statements made by, or information provided by, any of Corem, TSS, ASSL, ASSMA, Telco, DelMonaco, JD, the Diamond Trust or Diamond (collectively, the "Corem Group") or its professionals and agents, whether written or oral, express or implied, as to (i) the current or future value of 500 Lincoln or Corem's membership interest therein, TSS or TSP's membership interest therein, (ii) the business plans for the 500 Property or TSS, or (iii) any other matters pertaining to the decision to enter into this Agreement. The Tunnel Associates Group has conducted its own due diligence with respect to this Agreement, and is fully satisfied that there is full, fair and adequate consideration for the transactions set forth herein.

(d) Tunnel Associates, TSP and the White Acre Parties are each duly organized, validly existing and in good standing under the laws of the state in which each respectively was organized.

(e) Each member of the Tunnel Associates Group has the power to enter into this Agreement, and has been duly authorized by any and all necessary or proper action that may be required as a prerequisite to the execution and delivery of this Agreement.

(f) Other than the Actions and Arbitrations, there are no legal or administrative proceedings pending or, to the best of knowledge of any member of the Tunnel Associates Group, threatened against or affecting any member of the Tunnel Associates Group, that would adversely affect any member's legal authority or financial ability to perform its obligations under this Agreement.

(g) Each individual executing this Agreement on behalf of a member of the Tunnel Associates Group is authorized to do so.

17. Representations and Warranties of the Corem Group Members. Unless otherwise

specifically provided below, each of the members of the Corem Group represents and warrants as follows:

(a) Corem represents and warrants that owns its membership interest in 500 Lincoln free and clear of all security interests, liens, pledges, hypothecation and encumbrances of any kind or nature whatsoever (except as may exist under or pursuant to the Operating Agreement), and, except as set forth in this Agreement, it has not assigned or transferred or agreed to have such interest assigned or transferred.

(b) Each of the members of the Corem Group represents and warrants that the elections to (i) purchase TSP's interest in TSS and (ii) settle the Actions and Arbitrations and agree to the other transactions contemplated hereby are absolutely discretionary on its part (as applicable); it has made such elections of its own free will because it suits its business purposes; this Agreement has been negotiated on an arms'-length basis and that such party has had the benefit of counsel of its choice; and none such party has been coerced or otherwise compelled to participate in the transactions contemplated by this Agreement.

(c) None of the members of the Corem Group has relied upon any statements made by, or information provided by, any member of the Tunnel Associates Group or its professionals and agents, whether written or oral, express or implied, as to (i) the current or future value of 500 Lincoln or Corem's membership interest therein, TSS or TSP's membership interest therein, or the Management Agreement, (ii) the business plans for the 500 Property or TSS, or (iii) any other matters pertaining to the decision to enter into this Agreement. The Corem Group has conducted its own due diligence with respect to this Agreement, and is fully satisfied that there is full, fair and adequate consideration for the transactions set forth herein.

(d) Corem, ASSL, ASSMA and Telco are each duly organized, validly existing and in good standing under the laws of the state in which each respectively was organized.

(e) Each member of the Corem Group has the power to enter into this Agreement, and has been duly authorized by any and all necessary or proper action that may be required as a prerequisite to the execution and delivery of this Agreement.

(f) No member of the Corem Group is a debtor in or contemplates or anticipates being a debtor in any voluntary or involuntary proceeding under Title 11 of the United States Code or under any state laws relating to the protections of debtors or is the subject of any general assignment for the benefit of creditors, and each member of the Corem Group is solvent and able to pay its debts as they become due.

(g) Other than the Actions and Arbitrations, there are no legal or administrative proceedings pending or, to the best of knowledge of any member of the Corem Group, threatened against or affecting any member of the Corem Group, that would adversely affect any member's legal authority or financial ability to perform its obligations under this Agreement.

(h) Each individual executing this Agreement on behalf of a member of the Corem Group is authorized to do so.

18. Document Holder Provision. In addition to the other provisions contained herein regarding the DH Documents, the parties hereto hereby acknowledge and agree as follows:

(a) Document Holder shall not be or become liable in any way or to any person for its refusal to comply with any adverse claim or demand being made for the all or portion of the DH Documents. Document Holder shall not be responsible for any act or failure to act on its part nor shall it have any liability under this Agreement or in connection herewith except in the case of its own willful default or gross negligence. Upon Document Holder's delivery or deposit of the DH Documents in accordance with the provisions of this Agreement, Document Holder shall be automatically released from all obligation, responsibility and liability hereunder.

(b) It is expressly understood that Document Holder is acting hereunder for the convenience and accommodation of the parties hereto and as a depository only and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any instrument received by or deposited with it, or for the form of execution of such instruments, or for the identity, authority or right of any person executing or depositing the same, or for the terms and conditions of any instrument pursuant to which Document Holder may act.

(c) The duties of Document Holder are purely ministerial. Document Holder shall not have any duties or responsibilities except those set forth in this Agreement and the Court Order and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by Document Holder to be genuine, and Document Holder may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

(d) Document Holder shall not release any DH Document without prior written consent of both the Corem Group and the Tunnel Associates Group, which consent may be given by their respective Counsel. Document Holder may act or refrain from acting in respect of any matter referred to herein in full reliance upon and by and with the advice of counsel, which may be selected by it. Document Holder shall have the right to assign all of its obligations hereunder to a third party reasonably acceptable to Corem and Tunnel Associates provided (a) Document Holder delivers the DH Documents to such third party and (b) such third party assumes all of Document Holders obligations hereunder in writing.

(e) The parties hereto hereby jointly and severally agree to indemnify and save Document Holder harmless from and against any and all loss, damage, claim, liability, judgment and other cost and expense of every kind and nature which may be incurred by Document Holder by reason of its acceptance of, and its performance under, this Agreement (including, without limitation, reasonable attorneys' fees, disbursements and court costs), except in the case of Document Holder's own willful default or gross negligence.

(f) This Section 18 shall survive the Effective Date or the sooner termination of this Agreement.

19. Counterparts. This Agreement may be executed in counterparts, each of which will be an original as regards any party whose name appears thereon and all of which together will

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constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all parties reflected hereon as signatories.

20. Attorneys' Fees. Each party to this Agreement agrees that it shall bear its own costs and attorneys' fees incurred in connection with the negotiation and signing of this Agreement and in connection with the Actions and Arbitrations.

21. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof, all prior negotiations between the parties are merged by this Agreement and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them other than as herein set forth. This Agreement contains the full and complete understanding of the parties, and no statements or representations made prior to the execution of this Agreement, unless expressly contained herein, shall be binding upon the parties.

22. Benefit and Burden. All terms of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the respective personal representatives, heirs, successors and assigns of the parties hereto.

23. Governing Law. This Agreement is intended to be performed in the State of New York and shall be interpreted, construed and enforced in accordance with the laws of such jurisdiction, without giving effect to the conflict of laws provisions thereof. The venue of any action arising out of or relating to this Agreement, whether state or federal, shall be New York County.

24. Due Authorization. Each person executing this Agreement represents and warrants that he or she is duly authorized and empowered to enter into this Agreement and has the requisite authority and approval to bind the party so represented.

25. Representation by Counsel; No Construction Against Drafter. Each party represents and warrants that he, she or it has been represented by, and has consulted with, the counsel of his, her or its choice regarding the provisions, obligations, rights, risks and legal effects of this Agreement, and that all parties have had an opportunity to be involved in the negotiating and drafting of this Agreement. As such, the parties have participated, and have had an equal opportunity to participate, in the drafting of this Agreement. Accordingly, no negative inference shall be taken against any party as the drafter of this Agreement.

26. Amendment. This Agreement may not be modified, amended or terminated, in whole or in part, without the express written agreement of all of the parties to this Agreement.

27. Certain Transfer Taxes. The parties agree 500 Lincoln shall be responsible for any and all real property transfer taxes that may be payable in connection with TSS's surrender of the Demised Premises, the sale of the equity interests in TSP to ASSL (or its designee(s)) or the Note or New Note.

28. Jurisdiction. The Court shall retain jurisdiction over the Actions in order to effectuate

WP

and enforce the terms of this Agreement and shall have all of the powers and remedies available at law and in equity to do so.

29. Presentment to the Court. Both parties will present this Agreement to the Court for approval, including immediate filing by 500 Lincoln (without notice to TSS or any other party), in connection with entry of a judgment of ejectment and issuance of a warrant of eviction, subject to the stay of execution provided for herein.

30. Electronic Signatures. Facsimile signatures shall be deemed as originals for all purposes of this Agreement.

31. Notices. Any notice sent hereunder to any member of the Corem Group (or any of its affiliates or the affiliates of any such member) shall be sent to the addresses provided on Schedule D for the Corem Group; any notice sent hereunder to any member of the Tunnel Associates Group (or any of its affiliates or the affiliates of any such member) shall be sent to the addresses provided on Schedule D for the Tunnel Associates Group.

32. Miscellaneous Deliveries. If not already accomplished, Frydman and Diamond shall execute on behalf of 636 White, LLC and American Telcom Mgmt., LLC a joint instruction letter to Royal Abstract of New York, LLC directing payment of any remaining balance to the members of 636 Eleventh Associates, LLC pro rata in proportion to their relative percentage ownership interests. Frydman and Cannizzaro shall deliver a side letter relating to the repayment of $124,000 plus interest in the form attached hereto as Exhibit F.

33. Operating Agreement Conflict/Amendment. This Agreement serves as an amendment to the Operating Agreement, and the parties agree that no further documentation is required to effect the modifications to the Operating Agreement set forth herein; in the event of any conflict between the Operating Agreement and this Agreement, the terms of this Agreement shall prevail.

34. Remedy for Breach of Indemnity Obligation. If it is determined pursuant to Section 12 (or if the parties mutually agree that) any member of the Corem Group, on the one hand, or any member of the Tunnel Associates Group, on the other hand, breaches its indemnification obligations set forth in this Agreement, then without limiting those obligations or any other right or remedy the indemnitee(s), the indemnitee(s) shall automatically and without the need of any further documentation have a first priority lien any distributions or payments otherwise payable to any member of the defaulting group (i.e., the Corem Group or the Tunnel Associates Group, as the case may be) under or contemplated by this Agreement, and (not by way of limitation) if such distribution or payment is to be made by 500 Lincoln or 500 Tenth, then the same shall be paid to the indemnitee(s) (plus interest at twelve percent (12%) per annum) before any other distributions or payments of net cash flow are made to any member of such company or other party. Any amounts distributed or paid to the indemnitee(s) pursuant to this Section 34 shall for tax allocation and all other purposes be treated as if they had been distributed to the defaulting party rather than the indemnitee(s). The amount of any such indemnity (plus accrued interest) shall be immediately due and payable if and when any indemnitor or indemnitee who is a member of 500 Lincoln or 500 Tenth is no longer a Member.

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[The signature pages follow.]

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above stated.

500 LINCOLN, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name: MB Rutter
Title: Manager

By: Corem Capital Partners, LLC, member

By: ______________________
Warren Diamond
Title:

By: ______________________
Salvatore Cannizzaro
Title:

By: ______________________
Warren Diamond, manager

TUNNEL ASSOCIATES, LLC

By: ______________________
Name: MB Rutter
Title: Manager

COREM CAPITAL PARTNERS, LLC

By: ______________________
Name:
Title:

500 TENTH AVENUE, LLC
By Tunnel Associates, LLC,
member + manager
By ______________________
MB Rutter,
Manager

[Signatures continued on next page.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above stated.

500 LINCOLN, LLC

By: Tunnel Associates, LLC, member and manager

By: ____________________
Name:
Title:

By: Corem Capital Partners, LLC, member

By: ____________________
Warren Diamond
Title: MANAGER

By: ____________________
Salvatore Cannizzaro
Title:

By: ____________________
Warren Diamond, manager

TUNNEL ASSOCIATES, LLC

By: ____________________
Name:
Title:

COREM CAPITAL PARTNERS, LLC

By: X ____________________
Name:
Title:

[Signatures continued on next page.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above stated.

500 LINCOLN, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name:
Title:

By: Corem Capital Partners, LLC, member

By: ______________________
Warren Diamond
Title: member

By: ______________________
Salvatore Cannizzaro
Title:

By: ______________________
Warren Diamond, manager

TUNNEL ASSOCIATES, LLC

By: ______________________
Name:
Title:

COREM CAPITAL PARTNERS, LLC

By: ______________________
Name:
Title:

[Signatures continued on next page.]

[Signatures continued]

TUNNEL SELF STORAGE, LLC

By: Tunnel Storage Partners, LLC

By: ____________________
Name:
Title:

By: American Self Storage Lincoln, LLC

By: ____________________
Name: Warren Diamond
Title: manager

TUNNEL STORAGE PARTNERS, LLC

By: ____________________
Name:
Title:

AMERICAN SELF STORAGE LINCOLN, LLC

By: ____________________
Name: Warren Diamond
Title: manager

AMERICAN SELF STORAGE MGMT. ASSOC. INC.

By: ____________________
Name: Warren Diamond
Title: manager

AMERICAN SELF STORAGE MGMT. ASSOC. LLC

By: ____________________
Name: Warren Diamond
Title: manager

[Signatures continued on next page.]

[Signatures continued]

TUNNEL SELF STORAGE, LLC

By: Tunnel Storage Partners, LLC

X By: MB Rutter
Name: MB RUTTER
Title: MANAGER

By: American Self Storage Lincoln, LLC

By: ____________________
Name:
Title:

TUNNEL STORAGE PARTNERS, LLC

By: MB Rutter
Name: MB RUTTER
Title: MANAGER

AMERICAN SELF STORAGE LINCOLN, LLC

By: ____________________
Name:
Title:

AMERICAN SELF STORAGE MGMT. ASSOC. INC.

By: ____________________
Name:
Title:

AMERICAN SELF STORAGE MGMT. ASSOC. LLC

By: ____________________
Name:
Title:

[Signatures continued on next page.]

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[Signatures continued]

By: 636 White, LLC, co-manager

By:

Name:

Title:

By: American Telco Management, LLC, co-manager

By: ______________________

Name:

Title:

ELEVENTH MEZZANINE, LLC

By:

Name:

Title:

636 EAR ASSOCIATES, LLC

By: ______________________

Name:

Title:

WOOD ELF PARTNERS, LLC

By: ______________________

Name:

Title:

TELCO ASSOCIATES, LLC

By: ______________________

Name:

Title:

[Signatures continued on next page.]

____

WARREN DIAMOND

____

JACOB FRYDMAN

[Signatures continued]

WHITE ACRE CAPITAL, LLC

By: ______________________
Name:
Title:

636 ELEVENTH ASSOCIATES, LLC

By: 636 White, LLC, co-manager

By: ______________________
Name:
Title:

By: American Telco Management, LLC, co-manager

By: ______________________
Name:
Title:

ELEVENTH MEZZANINE, LLC

By: ______________________
Name:
Title:

636 EAR ASSOCIATES, LLC

By: ______________________
Name:
Title:

WOOD ELF PARTNERS, LLC

By: [signature] manager
Name:
Title: manager

TELCO ASSOCIATES, LLC

By: ______________________
Name:
Title:

[Signatures continued on next page.]

[Signatures continued]

WHITE ACRE CAPITAL, LLC

By: ______________________
Name:
Title:

636 ELEVENTH ASSOCIATES, LLC

By: 636 White, LLC, co-manager

By: ______________________
Name:
Title:

By: American Telco Management, LLC, co-manager

By: ______________________
Name: Warren Diamond
Title: manager

ELEVENTH MEZZANINE, LLC

By: ______________________
Name:
Title:

636 EAR ASSOCIATES, LLC

By: ______________________
Name:
Title:

WOOD ELF PARTNERS, LLC

By: ______________________
Name:
Title:

TELCO ASSOCIATES, LLC

By: ______________________
Name: Warren Diamond
Title: manager

[Signatures continued on next page.]

[Signatures continued]

WHITE ACRE CAPITAL, LLC

By: ____________________
Name:
Title:

636 ELEVENTH ASSOCIATES, LLC

By: 636 White, LLC, co-manager

By: ____________________
Name:
Title:

By: American Telco Management, LLC, co-manager

By: ____________________
Name:
Title:

ELEVENTH MEZZANINE, LLC

By: ____________________
Name:
Title:

636 EAR ASSOCIATES, LLC

By: ____________________
Name: M B RUTTER
Title: MANAGER

WOOD ELF PARTNERS, LLC

By: ____________________
Name:
Title:

TELCO ASSOCIATES, LLC

By: ____________________
Name:
Title:

[Signatures continued on next page.]

[Signatures continued]

WARREN DIAMOND

JACOB FRYDMAN

MITCHELL RUTTER

JOHN DELMONACO

SAL CANNIZZARO

WARREN DIAMOND 2005 GRANTOR TRUST

By:

Scott Diamond, as trustee

CANNIZZARO FAMILY LIMITED PARTNERSHIP I

By:

Name:

Title:

GRACE DELMONACO

AS TO DOCUMENT HOLDER PROVISION ONLY:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

By:

Lawrence Mandelker, Esq.

Authorized Signatory

[Signatures continued]

WARREN DIAMOND

JACOB FRYDMAN

MITCHELL RUTTER

JOHN DELMONACO

Sal Cannizzaro

SAL CANNIZZARO

WARREN DIAMOND 2005 GRANTOR TRUST

By: ______________________
Scott Diamond, as trustee

CANNIZZARO FAMILY LIMITED PARTNERSHIP I

By: Sal Cannizzaro
Name:
Title:

GRACE DELMONACO

[Signatures continued on next page.]

[Signatures continued]

WARREN DIAMOND

JACOB FRYDMAN

MITCHELL RUTTER

JOHN DELMONACO

SAL CANNIZZARO

WARREN DIAMOND 2005 GRANTOR TRUST

By:
Scott Diamond, as trustee

CANNIZZARO FAMILY LIMITED PARTNERSHIP I

By:
Name:
Title:

GRACE DELMONACO

AS TO DOCUMENT HOLDER PROVISION ONLY:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

By:
Lawrence Mandelker, Esq.
Authorized Signatory

[Signatures continued]

WARREN DIAMOND

JACOB FRYDMAN

MITCHELL RUTTER

JOHN DELMONACO

SAL CANNIZZARO

WARREN DIAMOND 2005 GRANTOR TRUST

By: ______________________
Scott Diamond, as trustee

CANNIZZARO FAMILY LIMITED PARTNERSHIP I

By: ______________________
Name:
Title:

GRACE DELMONACO

AS TO DOCUMENT HOLDER PROVISION ONLY:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

By: ______________________
Lawrence Mandelker, Esq.
Authorized Signatory

[Signatures continued]

500 TENTH AVENUE, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name:
Title:

By: Corem Capital Partners, LLC, member

By: ______________________
Warren Diamond
Title:

By: ______________________
Salvatore Cannizzaro
Title:

AS TO DOCUMENT HOLDER PROVISION ONLY:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

By: ______________________
Lawrence Mandelker, Esq.
Authorized Signatory

500 TENTH AVENUE, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name:
Title:

By: Corem Capital Partners, LLC, member

By: ______________________
Warren Diamond
Title: CO - MANAGER

By: ______________________
Salvatore Cannizzaro
Title:

...HOLDER PROVISION ONLY:

... W... Mandelker & Kass, P.C.

... Mandelker, Esq.

EXHIBIT A

Form of Assignment and Assumption of Membership Interest Agreement
ASSIGNMENT OF MEMBERSHIP INTERESTS AND AMENDMENT TO [OPERATING AGREEMENT] OF

____

This Assignment of Membership Interests and Amendment to [Operating Agreement] of ________________________, dated as of ______________, 200__ (this **Assignment**), is entered into by and among ________________________ (the **Withdrawing Members**) and ____________________ (the **Incoming Member[s]**) and ________________ (the **Withdrawing Manager**).

WITNESSETH:

WHEREAS, ____________________ (the **Company**) has been formed as a limited liability company under the ________________________ Act (the **Act**), pursuant to a ____________________, as filed in the office of the Secretary of State of the State of _______ on ______ __, ____ and an [Operating Agreement], dated as of ______ __, ____ (the **Operating Agreement**); and

WHEREAS, the undersigned constitute the sole members of the Company and the sole manager of the Company appointed by or affiliated with any Withdrawing Member; and

WHEREAS, each of the Withdrawing Member desires to assign, transfer and convey its interest in the Company as a member (singularly, the **Interest** and collectively, the **Interests**) described on Exhibit A hereto, each consisting of its entire membership interest in the Company, to the Incoming Member[s]; and

WHEREAS, each Incoming Member desires to purchase the Interest presently held by each of the Withdrawing Members and to be admitted to the Company as substitute members of the Company; and

WHEREAS, all of the members of the Company desire to consent to the assignment of the Interests to the Incoming Members, to accomplish the foregoing; and

WHEREAS, all of the members of the Company and the Withdrawing Manager desire that the Withdrawing manager cease being a manager of the Company effective herewith.

NOW, THEREFORE, the undersigned, in consideration of the covenants and agreement contained herein, do hereby agree as follows:

1. *Assignment.* Notwithstanding any provision in the Operating Agreement to the contrary, for value received, the receipt and sufficiency of which are hereby acknowledged, upon the execution of this Assignment by the parties hereto, each of the Withdrawing Members does hereby assign, transfer and convey its Interest to the Incoming Member[s].

2. *Admission.* Notwithstanding any provision in the Operating Agreement to the contrary, contemporaneously with the assignment of the Interests, the Incoming Member[s] shall be admitted to the Company as the substitute member of the Company.

3. *Withdrawal.* Notwithstanding any provision in the Operating Agreement to the contrary, immediately following the admission of Incoming Members as the substitute members of the Company, (i) each of the Withdrawing Members shall and does hereby withdraw from the Company as a member of the Company, and shall thereupon cease to be a member of the Company, and shall thereupon cease to have or exercise any right or power as a member of the Company and (ii) the Withdrawing Manager shall and does hereby withdraw from the Company as a manager of the Company, and shall thereupon cease to be a manager of the Company, and shall thereupon cease to have or exercise any right or power as a manager of the Company..

4. *Continuation of the Company.* The parties hereto agree that the assignment of the Interests, the admission of the Incoming Members as a substitute member of the Company and the withdrawal of each of the Withdrawing Member as a member of the Company and the withdrawal of the Withdrawing Manager as a manager of the Company shall not dissolve the Company and that the business of the Company shall continue.

5. *Books and Records.* Each party hereto is authorized to take all actions necessary under the Act and the Operating Agreement, including causing the amendment and restatement of the Operating Agreement, to evidence the withdrawal of the Withdrawing Members from the Company, the withdrawal of the Withdrawing Manager as a manager of the Company and the admission of Incoming Members to the Company as a member of the Company.

6. *Future Cooperation.* Each of the parties hereto agrees to cooperate at all times from and after the date hereof with respect to all of the matters described herein, and to execute such further assignments, releases, assumptions, amendments of the Operating Agreement, notifications and other documents as may be reasonably requested for the purpose of giving effect to, or evidencing or giving notice of, the transaction contemplated by this Assignment.

7. *Consideration.* As consideration for the assignment of the Interests, the Withdrawing Members and the Withdrawing Manager have received adequate consideration, the receipt and sufficiency are hereby acknowledged.

8. *Binding Effect.* This Assignment shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9. *Execution in Counterparts.* This Assignment may be (a) executed in counterparts, each of which shall be deemed an original, but all which shall constitute one and the same instrument and (b) by telecopy or other facsimile signature (which shall be deemed an original for all purposes).

10. *Agreement in Effect.* Except as hereby amended, the Operating Agreement shall remain in full force and effect.

11. *Governing Law.* This Assignment shall be governed by, and construed under, the laws of the State of ________, all rights and remedies being governed by said laws, without regard to principles of conflict of law.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first above written.

WITHDRAWING MEMBERS:

WITHDRAWING MANAGER:

ADMITTED MEMBERS:

EXHIBIT B

Form Occupancy Surrender Certificate

OCCUPANCY AND SURRENDER CERTIFICATE

The undersigned, being (i) a duly authorized officer of American Self Storage Lincoln, LLC, which is the owner of a 51% membership interest in Tunnel Self Storage, LLC ("TSS") and (ii) a co-manager of TSS, hereby certifies to 500 Lincoln, LLC ("500 Lincoln") and Tunnel Associates, LLC ("Tunnel Associates") as follows:

1. TSS has vacated the Demised Premises (as defined in that certain Settlement Agreement dated as of September __, 2005 by and between TSS, Tunnel Associates, 500 Lincoln, American Self Storage Management, LLC, Warren Diamond, Jacob Frydman, Mitchell Rutter, etal.).

2. TSS hereby surrenders occupancy and abandons possession of the Demised Premises, and acknowledges that it has no further right to remain in possession of the Demised Premises.

Dated: ________________, 2005

Tunnel Self Storage, LLC

By: American Self Storage Lincoln, LLC

By: ____________________
Warren Diamond
Title:

By: ____________________
Warren Diamond
Manager

EXHIBIT C

Amendment of Lease

This Amendment of Lease is entered into as of December 1, 2003 between 500 Lincoln, LLC and Tunnel Self-Storage, LLC.

WHEREAS, whereas the parties have entered into an agreement of lease, dated October 31, 2002 (the "Lease"), and whereas the parties wish to amend the Lease, as of January 1, 2004,

NOW, therefore, in consideration of mutual promises and other good and valuable consideration, it is hereby agreed as follows:

1. The following Section 1.6 is added to the Lease: "Section 1.6. Notwithstanding anything to the contrary set forth within this Lease, tenant shall not be obligated to pay the Fixed Rent, Escalation Rent and all other items of Rental for the period from January 1, 2004 through and including December 31, 2004."

2. Except for the foregoing, all other terms and conditions of the Lease shall remain as set forth therein.

500 LINCOLN, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name:
Title:

By: Corem Capital Partners, LLC, member

By: ______________________
Warren Diamond
Title:

By: ______________________
Salvatore Cannizzaro
Title:

[Signatures are continued on the next page.]

TUNNEL SELF STORAGE, LLC

By: Tunnel Storage Partners, LLC

By: ______________________________
Name:
Title:

By: American Self Storage Lincoln, LLC

By: ______________________________
Name:
Title:

EXHIBIT D

Warrant and Judgment

See attached.

EXHIBIT E

The phrase "institutional financing" means a loan from an institutional lender, which is defined as follows:

a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity that is listed on the New York Stock Exchange, American Stock Exchange or other regional exchange (or their respective successors), a federal, state or municipal or secular employees' welfare, benefit, pension or retirement fund, a religious, educational or eleemosynary institution, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment, or similar organization, or any combination of the foregoing.

EXHIBIT F

Form of Side Letter

Jacob Frydman
111 Fulton Street
New York, New York 10018

October __, 2005

Mr. Sal Cannizzaro a/k/a Salvatore Cannizzaro
Union Beach Plaza
1017 Route 36
Union Beach, New Jersey 07735

Dear Mr. Cannizzaro:

Notwithstanding (A) releases by and between the following parties: (i) 500 Lincoln, LLC, (ii) Tunnel Associates, LLC, (iii) Corem Capital Partners, LLC, (iv) American Self Storage, LLC, (v) Tunnel Storage Partners, LLC, (vi) American Self Storage Lincoln, LLC, (vii) American Self Storage Mgmt. Assoc. Inc., (viii) 636 Eleventh Associates, LLC, (ix) 636 Eleventh Mezzanine, LLC, (x) 636 Ear Associates, LLC, (xi) Wood Elf Partners, LLC, (xii) White Acre Capital, LLC, (xiii) Telco Associates, LLC (xiv) Warren Diamond, (xv) Jacob Frydman, (xvi) Mitchell Rutter, (xvii) John DelMonaco, (xviii) Cannizzaro Family Limited Partnership I and (xix) Sal Cannizzaro, et al. and (B) the Settlement Agreement dated as of this day among the aforementioned parties and others (collectively, the "Settlement Documents"), you and I hereby agree as follows:

1. You have asserted a claim in the maximum amount of One Hundred Twenty-Four Thousand Dollars ($124,000) against me and/or certain affiliates of mine, and I and/or my affiliates may possess certain counterclaims related to your claim, which counterclaims shall not exceed One Hundred Twenty-Four Thousand Dollars ($124,000) in the aggregate (collectively, the "Unreleased Claims").

2. The Unreleased Claims are not released by any of the Settlement Documents.

3. Either of us may initiated an arbitration proceeding in accordance with the arbitration procedures set forth in Section 12 of the aforesaid Settlement Agreement, which terms are hereby incorporated by reference. If neither party commences such an arbitration proceeding within thirty (30) days of the date hereof, then the Unreleased Claims shall be deemed to have been released in accordance with the Settlement Documents.

Very truly yours,

Jacob Frydman

Accepted and agreed to:

____
Sal Cannizzaro a/k/a Salvatore Cannizzaro

EXHIBIT G

Form of New Note

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT – THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

PROMISSORY NOTE

$ 907,500.00 [City], [State] **2005**

FOR VALUE RECEIVED, the

[Borrower]

promises to pay to

[Lender]

or order, at **[Lender's address]**

or at such other place as may be designated in writing by the holder of this note, the principal sum of

Nine Hundred Seven Thousand Five Hundred ($907,500.00) dollars

with interest thereon to be computed from the date hereof, at the rate of seven percent **(7%)** per centum per annum and to be paid as follows:

Prior to the distribution of Net Cash Flow to the Members as defined in the Amended and Restated Operating Agreement of Borrower, as modified by Section 4(e) of the Settlement Agreement dated October __, 2005 by and among Borrower, Tunnel Associates, LLC, Corem Capital Partners, LLC, Tunnel Self Storage, LLC, Tunnel Storage Partners, LLC, American Self Storage Lincoln, LLC, et al., copies of which documents have been previously delivered to Lender. The maturity date is January 5, 2026.

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum secured by this note shall become due at the option of the holder thereof on the happening of any default under the terms of this note.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

The obligations of the maker shall be binding upon its successors and/or assigns.

I.N.

This note may not be changed or terminated orally.

____

STATE OF ________, COUNTY OF

____

On the day of 20 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that (s)he executed the same.

____

Notary Public

My commission expires ____________

WD

SCHEDULE A

Remco payment	6/29/05	$100,000.00
	7/18/05	$200,000.00
Penta Restoration Wall Construction	5/16/05	$17,162.76
Lender and related report fees	5/31/05	$200,000.00
Skadden Arps DHL Lease	5/10/05	$10,000.00
	5/11/05	$10,000.00
	8/01/05	$25,000.00
	8/10/05	$25,000.00
	10/17/05	$50,000.00
	10/17/05	$50,000.00
Signage income to F. Howard	5/12/05	$22,000.00
Meister Seelig & Fein LLP		$ 1,137.50
Howard International signage rent catch up	9/20/05	$34,250.00
JAM Consultants	9/14/05 J76993	$ 340.00
	9/14/05 J79994	$ 1,018.00
	9/14/05 J76995	$ 810.00
Langen	9/13/05	$ 891.46
Agins, Siegel & Reiner, L.L.P. – only for REMCO lease termination and review of DHL lease		$27,000.00

AW.

SCHEDULE B

Arent Fox Remco bankruptcy and buyout	$ 85,961.49[1]
Skadden Arps	$ 55,797.00
Eastern Environmental	$ 216.75
Langan Engineering	$ 6,952.25
Fischbein Badillo	$ 7,167.82
Steven Stoltzenberg	$ 11,800.00

[1] Current through August 31, 2005 (other than Skadden Arps).

W

SCHEDULE C

Any and all costs and expenses incurred by 500 Lincoln or 500 Tenth or the members or managers thereof on behalf of either such entity in order to effect the transactions contemplated by and described in the Settlement Agreement to which this Schedule C is attached, all of which will be paid by 500 Lincoln or 500 Tenth, as the case may be, as and when each such cost or expense is incurred, including, without limitation, the following[1]:

500 Lincoln receiver's fees and his agents' fee	
TSS receiver fees and his agents' fees	
Remco buy-out payment	$4,500,000.00
Landlord security deposits under DHL lease	$1,000,000.00
Landlord TI contributions under DHL lease	$ 979,175.00 $ 200,000.00 $ 30,000.00
Commission to Studley for DHL lease	$4,500,000.00
Commission to Newmark for DHL lease	$ 850,000.00
On-going legal representation by Skadden Arps (including with respect to financing)	
On-going legal representation by Arent Fox (re Remco buyout and eviction)	
UBS related expenses (including its counsel fees)	
The items described in Schedule D to the DHL lease	
Reimbursement to DHL (if not included on Schedule D to the DHL Lease)	$200,000.00

[1] Pre-determined fixed dollar amounts are disclosed for information purposes; the absence of dollar amounts for the other line items is intentional.

lli

SCHEDULE D

Addresses for Notice Purposes

Tunnel Associates Group:

c/o White Acre Equities, LLC
111 Fulton Street
New York, New York 10038
Attention: Jacob Frydman
Telephone No.: (212) 732-3900

and

c/o Essex Capital Partners Limited
635 Madison Avenue Suite 1300
New York, NY 10022
Attention: Mitchell Rutter
Telephone No.: (212) 888-0800

with a copy to

Arent Fox PLLC
1675 Broadway
New York, New York 10019
Attention: Karen F. Candreva, Esq.
Telephone No.: (212) 484-3953

Corem Group:

Agins, Siegel & Reiner, L.L.P.
386 Park Avenue South
New York, New York 10016-8804
Attention: Irwin Siegel, Esq.
Telephone No.: (212) 447-5599 ext. 306

Document Holder:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.
51 East 42nd Street
New York, New York
Attn.: Lawrence Mandelker, Esq.
Telephone No.: 212-682-8383

WD

SETTLEMENT AGREEMENT AMENDMENT

THIS AMENDMENT TO SETTLEMENT AGREEMENT is made and entered into as of November 14, 2005, by and among (i) 500 LINCOLN, LLC ("500 Lincoln"), a New York limited liability company, (ii) TUNNEL ASSOCIATES, LLC ("Tunnel Associates"), a New York limited liability company, (iii) COREM CAPITAL PARTNERS, LLC ("Corem"), (iv) TUNNEL SELF STORAGE, LLC ("TSS"), a New York limited liability company, (v) TUNNEL STORAGE PARTNERS, LLC ("TSP"), a New York limited liability company, (vi) AMERICAN SELF STORAGE LINCOLN, LLC ("ASSL"), a New York limited liability company, (vii) AMERICAN SELF STORAGE MGMT. ASSOC. INC. ("ASSMA"), a Florida corporation, (viii) AMERICAN SELF STORAGE MGMT. ASSOC. LLC ("ASSMA-NJ"), a New Jersey limited liability company (ix) 636 ELEVENTH ASSOCIATES, LLC, a Delaware limited liability company, (x) 636 ELEVENTH MEZZANINE, LLC, a Delaware limited liability company, (xi) 636 EAR ASSOCIATES, LLC, a New York limited liability company, (xii) WOOD ELF PARTNERS, LLC a New York limited liability company, (xiii) WHITE ACRE CAPITAL, LLC ("White Acre"), a New York limited liability company, (xiv) TELCO ASSOCIATES, LLC ("Telco"), a New York limited liability company, (xv) WARREN DIAMOND ("Diamond"), (xvi) JACOB FRYDMAN ("Frydman"), (xvii) MITCHELL RUTTER ("Rutter"); (xviii) JOHN DELMONACO ("DelMonaco"); (xix) WARREN DIAMOND 2005 GRANTOR TRUST (the "Diamond Trust"; (xx) CANNIZZARO FAMILY LIMITED PARTNERSHIP I ("FLP"); and (xi) SAL CANNIZZARO ("Cannizzaro").

WHEREAS, the parties have entered into a Settlement Agreement (the "Agreement") as of November 3, 2005; and

AND, WHEREAS, the parties wish to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration, it is hereby agreed as follows:

1. Section 2(a) of the Agreement is amended by substituting the date *November 14, 2005* for *November 4, 2005*.

2. The following Section 4(h) is added to the Agreement: *(h) Tunnel Associates shall be solely responsible for expenses of both Wachovia Bank, N.A. and those of its attorneys in connection with the following two legal actions: 500 Lincoln LLC v. Wachovia, N.A. (index no. 107395/04) and Wachovia Bank, N.A. v. Tunnel Associates, LLC et al. (index no. 590670/04 (the "Wachovia Expenses")). Upon execution of this Settlement Agreement Amendment, Tunnel Associates shall deposit with the DH Ninety-five Thousand ($95,000.00) Dollars to be utilized by the DH to pay the Wachovia Expenses simultaneously with the receipt by DH of the "frozen" Wachovia, N.A. accounts relating to the 500 Property. In the event the Wachovia Expenses are less than Ninety-Five Thousand ($95,000.00) Dollars, the DH holder shall immediately remit such excess to Tunnel Associates. In the event the Wachovia Expenses are more than Ninety-Five Thousand ($95,000.00) Dollars, Tunnel Associates shall immediately remit the shortfall to the DH in order to pay the Wachovia Expense.*

3. The following Section 4(i) is added to the Agreement: *4(i) The parties hereby authorize DH to deliver $1,657,500.00 directly to FLP as complying with the requirements of Sections 4(a)(iii) and (iv). Notwithstanding the direct payment to FLP, the parties shall reflect on each of their books of account, the transactions contemplated by Sections 4(a)(iii) and (iv).*

4. DH is authorized to release the REMCO Documents and DHL Lease, notwithstanding that FLP has not received $1,657,500.00 as required by Section 2(a)(v) of the Agreement. DH is authorized and directed to immediately release the $907,500.00, which it is currently holding in escrow, to FLP at c/o FLP's attorneys, Bauman Katz & Grill LLP. Bauman Katz & Grill LLP shall, automatically and unconditionally, release said $907,500.00 to FLP without any further notice.

Corem and Tunnel Associates have authorized Wachovia Bank, N.A., to release the Landlord Accounts to DH. Upon receipt of the Landlord Account, DH shall immediately deliver by wire $750,000.00 to FLP and disburse the balance in accordance with the terms of the Agreement. The parties hereto agree that the foregoing shall constitute the parties irrevocable letter of direction to DH to deliver and disburse the $750,000.00 to FLP. The parties may not, under any circumstances, direct: (i) Wachovia to stop the wire of $1,182,232.75 to DH; or (ii) direct DH to forbear from delivering the $750,000.00 to FLP as specifically provided hereunder. By signing this Amendment, DH acknowledges and represents that upon receipt of the $1,182,232.75 from Wachovia Bank, N.A. as provided herein, he will immediately wire the $750,000.00 to FLP. Further, DH acknowledges and represents that he will wire the $750,000.00 to FLP notwithstanding any direction to the contrary by any person, entity or party hereto. DH represents it has received $95,000.00 from Tunnel Associates as required by Section 2 of this Settlement Agreement Amendment.

500 Lincoln, and all of its members and its members' members, by affixing their authorized signatures to this agreement, hereby waive any right to prevent DH from notifying, delaying or preventing DH from remitting all or a part of the $1,657,500.00 to FLP or making any application to any court (*ex parte* or otherwise) nor otherwise seek, delay or prevent the distribution of the $1,657,500.00 to FLP or its designee.

The parties hereby acknowledge that all of the Conditions Precedent to the effectiveness of the Settlement Agreement as set forth in Section 2 of the Settlement Agreement have been met or are waived solely to the extent necessary to deem the Settlement Agreement effective. Notwithstanding the foregoing, the parties and DH shall be, are and remain obligated to perform their respective obligations as set forth in this paragraph, including, but not limited to the delivery of the $907,500.00 and $750,000.00 sums to FLP. No party shall have the right to claim that the Effective Date has not occurred for the purpose of deeming the Settlement Agreement null and void.

The parties hereby acknowledge that all of the Conditions Precedent to the effectiveness of the Settlement Agreement as set forth in Section 13 of the Settlement Agreement have been met or are waived solely to the extent necessary to deem the Settlement Agreement effective. Notwithstanding the foregoing, the parties and DH shall be, are and remain obligated to perform their respective obligations under the Settlement Agreement, including, but not limited to the delivery of the $907,500.00 and $750,000.00 sums to FLP. No party shall have the right to claim that the conditions precedent to the effectiveness of the Settlement Agreement, as amended, has not occurred and that the Settlement Agreement, as amended, is therefore null and void.

Section 6(a)(ii) is modified by substituting the words and date *March 15, 2006* for the words and date *February 27, 2006*.

5. The first paragraph of Section 11 of the Agreement is deleted in its entirety and the following substituted in its place and stead: *From and after the latest to occur of the (i) full payment to Tunnel Associates of its One Million Eight Hundred Thousand ($1,800,000.00) Dollars otherwise payable to Corem pursuant to Section 4(d) of the Settlement Agreement and (ii) second (2nd) anniversary of the Effective Date, Corem and Tunnel Associates shall each have the right, to be exercised in either of their sole and absolute discretion, to invoke the buy-sell procedure set forth below.*

6. The words *or Surrender Date* are deleted from Sections 13(a)(ii) and 13(b)(ii), and the words *Surrender Date or* from Section 13(d).

7. All capitalized terms or words used in this Settlement Agreement Amendment, unless otherwise defined herein, shall have the same terms as set forth in the Agreement.

8. The attorneys for the parties hereby represent that they are permitted to execute this Settlement Agreement Amendment on behalf of their clients.

9. Except for the foregoing change, all other terms and conditions of the Agreement shall remain set forth therein.

10. This Settlement Agreement Amendment may be executed in counterparts, each of which will be an original as regards any party whose name appears thereon and all of which together will constitute one and the same instrument. This Settlement Agreement Amendment will become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all the attorneys reflected hereon as signatories.

500 LINCOLN, LLC

By: Tunnel Associates, LLC, member and manager

By: ______________________
Name: Manager
Title:

By: Corem Capital Partners, LLC, member

By: ______________________
Name: Warren Oxton
Title: Manager

By: ______________________ MANAGER.
Warren Diamond, manager

TUNNEL ASSOCIATES, LLC

By: ______________________
Name: MANAGER
Title:

COREM CAPITAL PARTNERS, LLC

By: ______________________
Name: WARREN DIAMOND
Title: MANAGER.

TUNNEL SELF STORAGE, LLC

By: Tunnel Storage Partners, LLC

By: ______________________
Name: MANAGER
Title:

By: American Self Storage Lincoln, LLC

By: ______________________
Name: WARREN DIAMOND
Title: MANAGER,

TUNNEL STORAGE PARTNERS, LLC

By: ____________________

Name: MANAGER

Title:

AMERICAN SELF STORAGE LINCOLN, LLC

By: ____________________

Name: WARREN DIAMOND

Title: MANAGER

AMERICAN SELF STORAGE MGMT. ASSOC., INC.

By: ____________________

Name: WARREN DIAMOND

Title: MANAGER

WHITE ACRE CAPITAL, LLC

By: ____________________, Manager

Name:

Title:

636 ELEVENTH ASSOCIATES, LLC

By: 636 White, LLC, co-manager

By: ____________________, Manager

Name:

Title:

By: American Telco Management, LLC, co-manager

By: ____________________

Name: WARREN DIAMOND

Title: MANAGER

American Self Storage MGMT ASSOC LLC

____ manager.

ELEVENTH MEZZANINE, LLC

By: ______________, Manager
Name:
Title:

Salvatore Cannizzaro

636 EAR ASSOCIATES, LLC

By: ______________
Name: MANAGER —
Title:

WOOD ELF PARTNERS, LLC

By: ______________, agent
Name:
Title:

Cannizzaro Family
Limited Partnership I

By: ______________
Pres. of G.P.

TELCO ASSOCIATES, LLC

By: ______________
Name: Warren Diamond
Title: manager

____
WARREN DIAMOND

____
JACOB FRYDMAN

____
MITCHELL RUTTER

AS TO DOCUMENT HOLDER PROVISION ONLY:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.

By: ______________
Lawrence Mandelker, Esq.

At IAS Part 49 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 60 Centre Street, New York, New York, on the ___ day of November, 2005.

PRESENT:

HON. HERMAN CAHN
Justice

COREM CAPITAL PARTNERS, LLC, Individually and as Member of and on behalf of 500 LINCOLN, LLC,

Plaintiff,

-against-

TUNNEL ASSOCIATES, LLC., as Member of 500 LINCOLN, LLC,

Defendant,

and WARREN DIAMOND f/k/a WARREN WEISSMAN,

Additional Defendant on the Counterclaims.

Index No. 601350/04
(Cahn, J.)

(Declaratory Judgment Action)

FINAL JUDGMENT OF EJECTMENT

---

500 LINCOLN, LLC,

Petitioner-Landlord,

-against-

TUNNEL SELF STORAGE, LLC,

Respondent-Tenant.

Index No. 404392/04

(Summary Holdover Proceeding)

Upon the application of Petitioner-Landlord 500 Lincoln, LLC ("500 Lincoln" or "Petitioner"), and the Settlement Agreement, dated November 3, 2005 (the "Settlement

Agreement"), whereby respondent-tenant Tunnel Self Storage, LLC ("TSS" or "Respondent"), among other things, consented to the immediate entry of a Final Judgment of Ejectment, and the immediate issuance of a Warrant of Eviction with Stay,

NOW, on motion of Warshaw Burstein Cohen Schlesinger & Kuh, LLP, attorneys for 500 Lincoln, it is

ORDERED, ADJUDGED AND DECREED that 500 Lincoln is the ground lessee of the property known as, and located at 503-519 Tenth Avenue (a/k/a 500 Tenth Avenue) ("500 Tenth Avenue") and 505-507 West 38th Street ("505-507 West 38th Street"), New York, New York (collectively, the "Property"); and it is further

ORDERED, ADJUDGED AND DECREED that 500 Lincoln is entitled to the possession of the Property described above, and that TSS has agreed to voluntarily surrender and give possession of the premises occupied by TSS on the fourth and fifth floors of 500 Tenth Avenue, and the entirety of 505-507 West 38th Street (collectively, the "Demised Premises"), no sooner than March 1[illegible], 2006 (the "Surrender Date"); and it is further

ORDERED, ADJUDGED AND DECREED that TSS will be in wrongful possession of the Demised Premises as a hold-over tenant if it remains in possession of the Demised Premises after the Surrender Date; and it is further

ORDERED, ADJUDGED AND DECREED that a warrant issue (the "Warrant") for the immediate eviction, removal and ejectment of TSS and its parent companies, subsidiaries, successors, assigns, affiliates, members, officers, representatives, agents, servants, employees and all persons acting in concert or participation with TSS from the Demised Premises, with a stay, the effective date of such Warrant not to be sooner than, and execution of the Warrant not to occur, following service of a Sheriff's notice, before the Surrender Date; and it is further

ORDERED, ADJUDGED AND DECREED that 500 Lincoln have leave to apply to this Court for any further relief as may be necessary to effectuate the terms of this judgment.

ENTER:

____
J.S.C.

____
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

COREM CAPITAL PARTNERS, LLC, Individually and as Member of and on behalf of 500 LINCOLN, LLC,

Plaintiff,

-against-

TUNNEL ASSOCIATES, LLC., as Member of 500 LINCOLN, LLC,

Defendant,

and WARREN DIAMOND f/k/a WARREN WEISSMAN,

Additional Defendant on the Counterclaims.

---X

Index No. 601350/04
(Cahn, J.)

(Declaratory Judgment Action)

WARRANT OF
<u>EVICTION WITH STAY</u>

---X

500 LINCOLN, LLC,

Petitioner-Landlord,

-against-

TUNNEL SELF STORAGE, LLC,

Respondent-Tenant.

---X

Index No. 404392/04

(Summary Holdover Proceeding)

TO THE SHERIFF OF THE COUNTY OF NEW YORK, STATE OF NEW YORK:

GREETINGS:

An application in this action having been made to this Court on behalf of 500 Lincoln, LLC ("500 Lincoln" or "Petitioner"), the Petitioner-Landlord of the premises listed below, for, among other things, a Final Judgment of Ejectment against Tunnel Self Storage, LLC ("TSS" or "Respondent"), Respondent-Tenant with respect to such premises, and for a warrant removing and ejecting TSS from the fourth and fifth floors of the premises known as 503-519 Tenth Avenue, also known as 500 Tenth Avenue, New York, New York, and the entire building known as, and located at, 505-507 West 38th Street, New York, New York (collectively, the "Demised Premises"), on the "Surrender Date," as that term is defined in the Settlement Agreement, dated November 3, 2005 (the "Settlement Agreement"), whereby TSS, among other things, consented to vacate and surrender possession of the Demised Premises on the Surrender Date, i.e., March 15, 2006; and TSS having consented to the entry of a Final Judgment of Ejectment and the issuance of this Warrant of Eviction.

NOW, THEREFORE, in the name of the People of the State of New York, the Sheriff of New York County is directed and commanded to remove TSS, its parent companies, subsidiaries, successors, assigns, affiliates, members, officers, representatives, agents, servants, employees and all persons acting in concert or participation with TSS, and all other persons and/or entities from the Demised Premises, and put 500 Lincoln in full possession of said Demised Premises, following service of a Sheriff's notice, no sooner than the Surrender Date.

WITNESS, Honorable Herman Cahn, Justice of the Supreme Court of the State of New York at 60 Centre Street on the __ day of __________, 2005.

ENTER:

____
J.S.C.

EXHIBIT E

The phrase "institutional financing" means a loan from an institutional lender, which is defined as follows:

a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust, a trustee or issuer of collateralized mortgage obligations, a loan conduit or other similar investment entity that is listed on the New York Stock Exchange, American Stock Exchange or other regional exchange (or their respective successors), a federal, state or municipal or secular employees' welfare, benefit, pension or retirement fund, a religious, educational or eleemosynary institution, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment, or similar organization, or any combination of the foregoing.

EXHIBIT F

Form of Side Letter

Jacob Frydman
111 Fulton Street
New York, New York 10018

October __, 2005

Mr. Sal Cannizzaro a/k/a Salvatore Cannizzaro
Union Beach Plaza
1017 Route 36
Union Beach, New Jersey 07735

Dear Mr. Cannizzaro:

Notwithstanding (A) releases by and between the following parties: (i) 500 Lincoln, LLC, (ii) Tunnel Associates, LLC, (iii) Corem Capital Partners, LLC, (iv) American Self Storage, LLC, (v) Tunnel Storage Partners, LLC, (vi) American Self Storage Lincoln, LLC, (vii) American Self Storage Mgmt. Assoc. Inc., (viii) 636 Eleventh Associates, LLC, (ix) 636 Eleventh Mezzanine, LLC, (x) 636 Ear Associates, LLC, (xi) Wood Elf Partners, LLC, (xii) White Acre Capital, LLC, (xiii) Telco Associates, LLC (xiv) Warren Diamond, (xv) Jacob Frydman, (xvi) Mitchell Rutter, (xvii) John DelMonaco, (xviii) Cannizzaro Family Limited Partnership I and (xix) Sal Cannizzaro, et al. and (B) the Settlement Agreement dated as of this day among the aforementioned parties and others (collectively, the "Settlement Documents"), you and I hereby agree as follows:

1. You have asserted a claim in the maximum amount of One Hundred Twenty-Four Thousand Dollars ($124,000) against me and/or certain affiliates of mine, and I and/or my affiliates may possess certain counterclaims related to your claim, which counterclaims shall not exceed One Hundred Twenty-Four Thousand Dollars ($124,000) in the aggregate (collectively, the "Unreleased Claims").

2. The Unreleased Claims are not released by any of the Settlement Documents.

3. Either of us may initiated an arbitration proceeding in accordance with the arbitration procedures set forth in Section 12 of the aforesaid Settlement Agreement, which terms are hereby incorporated by reference. If neither party commences such an arbitration proceeding within thirty (30) days of the date hereof, then the Unreleased Claims shall be deemed to have been released in accordance with the Settlement Documents.

Very truly yours,

Jacob Frydman

Accepted and agreed to:

____
Sal Cannizzaro a/k/a Salvatore Cannizzaro

NYC/221646.32

EXHIBIT G

Form of New Note

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT – THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

PROMISSORY NOTE

$ 907,500.00 [City], [State] **2005**

FOR VALUE RECEIVED, the

[Borrower]

promises to pay to

[Lender]

or order, at **[Lender's address]**

or at such other place as may be designated in writing by the holder of this note, the principal sum of

Nine Hundred Seven Thousand Five Hundred ($907,500.00) dollars

with interest thereon to be computed from the date hereof, at the rate of **seven percent (7%)** per centum per annum and to be paid as follows:

Prior to the distribution of Net Cash Flow to the Members as defined in the Amended and Restated Operating Agreement of Borrower, as modified by Section 4(e) of the Settlement Agreement dated October __, 2005 by and among Borrower, Tunnel Associates, LLC, Corem Capital Partners, LLC, Tunnel Self Storage, LLC, Tunnel Storage Partners, LLC, American Self Storage Lincoln, LLC, et al., copies of which documents have been previously delivered to Lender. The maturity date is January 5, 2026.

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum secured by this note shall become due at the option of the holder thereof on the happening of any default under the terms of this note.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

The obligations of the maker shall be binding upon its successors and/or assigns.

This note may not be changed or terminated orally.

____

STATE OF ________, COUNTY OF

____

On the day of 20 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that (s)he executed the same.

____
Notary Public

My commission expires ____________

SCHEDULE A

Remco payment	6/29/05	$100,000.00
	7/18/05	$200,000.00
Penta Restoration Wall Construction	5/16/05	$17,162.76
Lender and related report fees	5/31/05	$200,000.00
Skadden Arps DHL Lease	5/10/05	$10,000.00
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Howard International signage rent catch up	9/20/05	$34,250.00
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	9/14/05 J76995	$ 810.00
Langen	9/13/05	$ 891.46
Agins, Siegel & Reiner, L.L.P. – only for REMCO lease termination and review of DHL lease		$27,000.00

SCHEDULE B

Arent Fox Remco bankruptcy and buyout	$ 85,961.49[1]
Skadden Arps	$ 55,797.00
Eastern Environmental	$ 216.75
Langan Engineering	$ 6,952.25
Fischbein Badillo	$ 7,167.82
Steven Stoltzenberg	$ 11,800.00

[1] Current through August 31, 2005 (other than Skadden Arps).

SCHEDULE C

Any and all costs and expenses incurred by 500 Lincoln or 500 Tenth or the members or managers thereof on behalf of either such entity in order to effect the transactions contemplated by and described in the Settlement Agreement to which this Schedule C is attached, all of which will be paid by 500 Lincoln or 500 Tenth, as the case may be, as and when each such cost or expense is incurred, including, without limitation, the following[1]:

500 Lincoln receiver's fees and his agents' fee	
TSS receiver fees and his agents' fees	
Remco buy-out payment	$4,500,000.00
Landlord security deposits under DHL lease	$1,000,000.00
Landlord TI contributions under DHL lease	$ 979,175.00 $ 200,000.00 $ 30,000.00
Commission to Studley for DHL lease	$4,500,000.00
Commission to Newmark for DHL lease	$ 850,000.00
On-going legal representation by Skadden Arps (including with respect to financing)	
On-going legal representation by Arent Fox (re Remco buyout and eviction)	
UBS related expenses (including its counsel fees)	
The items described in Schedule D to the DHL lease	
Reimbursement to DHL (if not included on Schedule D to the DHL Lease)	$200,000.00

[1] Pre-determined fixed dollar amounts are disclosed for information purposes; the absence of dollar amounts for the other line items is intentional.

NYC/221646.32

SCHEDULE D

Addresses for Notice Purposes

Tunnel Associates Group:

c/o White Acre Equities, LLC
111 Fulton Street
New York, New York 10038
Attention: Jacob Frydman
Telephone No.: (212) 732-3900

and

c/o Essex Capital Partners Limited
635 Madison Avenue Suite 1300
New York, NY 10022
Attention: Mitchell Rutter
Telephone No.: (212) 888-0800

with a copy to

Arent Fox PLLC
1675 Broadway
New York, New York 10019
Attention: Karen F. Candreva, Esq.
Telephone No.: (212) 484-3953

Corem Group:

Agins, Siegel & Reiner, L.L.P.
386 Park Avenue South
New York, New York 10016-8804
Attention: Irwin Siegel, Esq.
Telephone No.: (212) 447-5599 ext. 306

Document Holder:

Kantor, Davidoff, Wolfe, Mandelker & Kass, P.C.
51 East 42nd Street
New York, New York
Attn.: Lawrence Mandelker, Esq.
Telephone No.: 212-682-8383

EXHIBIT D

AGREEMENT

This "Agreement" is made and entered into as of this 12 day of December, 2012, by and between (i) TUNNEL ASSOCIATES, LLC ("Tunnel"), a New York limited liability company, (ii) SLD 500, LLC, a New York limited liability company ("SLD 500 LLC"), (iii) Scott Diamond, (iv) Mitchell Rutter ("Rutter"), (v) Jacob Frydman ("Frydman") and (vi) Warren Diamond.

RECITALS

WHEREAS, Tunnel and Corem Capital Partners, LLC ("Corem") are the sole members of 500 Lincoln, LLC ("500 Lincoln") and Parties to the Amended and Restated Operating Agreement of 500 Lincoln dated as of October 31, 2002 as thereafter amended from time to time (the "Operating Agreement");

WHEREAS, Lincoln is the sole member of 500 Lincoln Owner, LLC ("500 Owner");

WHEREAS, Tunnel and Corem are the sole members of 500 Tenth, LLC ("500 Tenth") and Parties to the Amended and Restated Operating Agreement of 500 Tenth, LLC dated as of October 31, 2002 as thereafter amended from time to time (the "Tenth Operating Agreement"; together with the Lincoln Operating Agreement and the 500 Owner Operating Agreement, the "Operating Agreements");

WHEREAS, Tunnel, Corem, 500 Lincoln and 500 Tenth, as well as Tunnel Self Storage, LLC, Tunnel Storage Partners, LLC, American Self Storage Lincoln, LLC, American Self Storage Mgmt. Assoc., Inc., 636 Eleventh Associates, LLC, 636 Eleventh Mezzanine, LLC, 636 EAR Associates, LLC, Wood Elf Partners, LLC, White Acre Capital, LLC, Telco Associates, LLC, Warren Diamond, Frydman, Rutter, John DelMonaco, Warren Diamond 2005 Grantor Trust, Sal Cannizzaro, and American Self Storage Mgmt. Assoc., LLC were the Parties set forth in the preamble to a certain Settlement Agreement dated as of November 3, 2005 (the "2005 Settlement Agreement");

WHEREAS, Tunnel, Corem, 500 Lincoln and 500 Tenth were also Parties to a certain Agreement dated as of April 27, 2009 (the "2009 Settlement Agreement"; together with the 2005 Settlement Agreement, the "Settlement Agreements");

WHEREAS, pursuant to section 11 of the 2005 Settlement Agreement Tunnel and Corem each have the unilateral right to invoke a buy-sell procedure, to be exercised in each of their absolute discretion, which, if invoked would result in one or the other of Tunnel or Corem purchasing the interest of the other in 500 Lincoln (the "Buy-Sell Agreement");

WHEREAS, 500 Owner is the owner in fee simple of certain real property located in New York NY (the "Property") which Property includes the building commonly known as 500 10th Avenue, New York New York which is leased to DHL USA, Inc. pursuant to the DHL Lease (as hereinafter defined) as well as a property located at 512 W. 39th Street, New York, NY, which is not encumbered by any mortgage and which in which is not part of the premises leased to DHL USA, Inc. pursuant to the DHL Lease (the "39th Street Property");

WHEREAS, certain disputes have arisen among Tunnel on the one hand, and Scott Diamond and Warren Diamond with respect to their respective rights and obligations pursuant to the Lincoln Operating Agreement and the Settlement Agreements;

WHEREAS, Scott Diamond has commenced a suit in the Supreme Court, New York County, entitled *Scott Diamond v. Tunnel Associates, LLC, et al.*, Index No. 156620/2012 (the "New Diamond Action"), seeking, among other relief, a declaration that he is a co-manager of 500 Lincoln; and

WHEREAS, the Parties have agreed to settle their disputes as hereinafter set forth;

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

1. **Defined Terms:** All defined terms used herein shall have the meaning ascribed thereto in the Operating Agreements and the Settlement Agreements unless otherwise defined herein.

2. **Management of 500 Lincoln and 500 Tenth:**

(a) The Parties agree and acknowledge that SLD 500 LLC, an entity wholly owned by Scott Diamond and of which Scott Diamond is the sole control person, shall replace the co-manager of 500 Lincoln previously designated by Corem to act as co-manager of 500 Lincoln and 500 Tenth, except as otherwise set forth herein, and from this date forward the two co-managers of 500 Lincoln and 500 Tenth are Tunnel and SLD 500 LLC. The same shall automatically take effect, without the need for any additional documentation.

(b) Scott Diamond hereby represents and warrants and agrees and covenants to Tunnel, Frydman and Rutter that: (i) SLD 500 LLC was formed by him solely to act as a co-manager of 500 Lincoln and 500 Tenth (and, if acceptable to Corem, Corem) and for no other purpose; (ii) that on the date hereof Scott Diamond in his individual capacity is a co-manager of Corem; (iii) that Scott Diamond owns 100% of the membership or other ownership interests in SLD 500 LLC; (iii) that Scott Diamond is the sole manager or sole managing member of SLD 500 LLC; (iv) that so long as 500 Owner, 500 Lincoln or 500 Tenth or any other entity in which Tunnel, Frydman or Rutter have any direct or indirect interest, owns the Property or any interest in the Property, Scott Diamond shall not: (a) sell SLD 500 LLC or any interests therein; (b) permit any other person to own any membership or other interest in SLD 500 LLC; (c) except as set forth herein, permit any other person to be a manager or managing member of SLD 500 LLC or otherwise have the ability to control or take any

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action on behalf of or otherwise cause SLD 500 LLC to act or refrain from acting on any matter whatsoever.

(c) In the event that Scott Diamond in his individual capacity (or SLD 500 LLC, if it has become a substitute manager of Corem) shall cease to be a manager of Corem, then such event shall be deemed the automatic resignation of SLD 500 LLC as co-manager of 500 Lincoln and 500 Tenth.

(d) Provided that Scott Diamond or his heirs continue to own 100% of the membership interests in SLD 500 LLC; Scott Diamond and/or his successor in interest, may designate his successor as manager of SLD 500 LLC, to act as co-manager of 500 Lincoln and 500 Tenth, such designation to take effect only upon the death, permanent disability or incapacity of Scott Diamond, by making such designation in writing and by providing written notice to Tunnel, Frydman and Rutter, provided, however, that so long as Rutter or Frydman or any of their Affiliates have a direct or indirect interest in Tunnel, 500 Tenth, 500 Lincoln, and/or 500 Owner, Warren Diamond shall not be designated as a successor manager of SLD 500 LLC.

(e) The Parties herein acknowledge that the Property shall, going forward, be self-managed by the two co-managers of 500 Lincoln pursuant to the terms of this Agreement, unless otherwise agreed in writing, and any prior agreement to cause the Property to be managed by a third party manager is hereby waived.

3. **<u>Automatic Monthly Distribution of Balance Existing Cash Reserves: Distributions</u>**

(a) The Parties agree that except as otherwise set forth herein, and except for such proceeds which have been directed by 500 Owner, 500 Lincoln, and/or 500 Tenth to be paid into a lockbox or other account pursuant to a separate agreement, all proceeds of every nature whatsoever due to or received by 500 Owner, 500 Lincoln and/or 500 Tenth from any source whatsoever shall be deposited into 500 Lincoln's account at Citibank N.A. Branch #735, Account # 59211304 (the "Lincoln Citi Account").

(b) Each of Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally cause any sums due 500 Owner, 500 Lincoln and/or 500 Tenth from any source whatsoever to be collected and deposited into the Lincoln Citi Account.

(c) To the extent that any of the Parties to this Agreement (whether directly, or through their employees, agents or other representatives) receives any sums which belong to, are due to, or are payable to 500 Owner, 500 Lincoln and/or 500 Tenth which are not promptly deposited into the Lincoln Citi Account, such sums shall be deemed to be held by such recipient in trust for 500 Lincoln, and be deposited by such recipient into the Lincoln Citi Account within three (3) business days after receipt of same. In the event that any of the Parties hereto (whether directly, or through their employees, agents or other representatives) shall have received any such sums (the "Original Receipts"), and shall have failed to deposit the Original Receipts into the Lincoln Citi Account within said ten (10) business days after receipt of same, such Party shall be liable for and required to deposit an additional amount out of their own funds, equal to ten percent (10%) of the Original Receipts for each business day beyond the ten (10) business days (the "Additional Amounts"), until all of such sums (the Original Receipts and the Additional Amounts) have been deposited into the Lincoln Citi Account. The Parties acknowledge and agree that the Additional Amounts which a Party may be required to pay does not constitute a penalty, but rather represents liquidated damages as any damages resulting from the failure to make a timely deposit of the Original Receipts is difficult or impossible to ascertain.

(d) As a material inducement to entering into this agreement, each of the Parties hereto agree that except as otherwise provided herein, and except as may be determined in a subsequent written agreement signed and notarized by Frydman (or his successors as manager of Tunnel) and Rutter (or his successors as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC, or his successors, as manager of SLD 500 LLC) 500 Lincoln shall make automatic monthly distributions from the Lincoln Citi Account of ***all sums*** then in the Lincoln Citi Account in excess of fifty thousand Dollars ($50,000) as follows: A) the first distribution of funds following the signing of this Agreement, shall be done by the Managers: $100,000 thereof to Morrison Cohen LLP; $100,000 thereof to Brief Carmen & Kleiman, LLP; $150,000 thereof to Tunnel, $150,000 thereof to Corem; and $113,000 thereof to the 500 Lincoln Lockbox Account. Additionally, $40,000 shall be immediately moved from the 500 Lincoln Money Market Account to the 500 Lincoln Checking/Operating Account; B) all distributions thereafter, through automatic electronic disbursements through the Automated Clearing House ("ACH") to the beneficial owners of Tunnel and Corem, proportionately as follows: (i) twenty five percent (25%) as directed by Frydman (or his successors); (ii) twenty five percent (25%) as directed by Rutter (or his successors); (iii) twenty five percent (25%) as directed by Sal Cannizzaro (or his successors); (iv) twelve and one-half percent (12.5%) as directed by Grace and/or John DelMonaco (or their successors); and (v) twelve and one-half percent (12.5%) as directed by Scott Diamond (or his successors as trustee of the Warren Diamond Trust).

(e) simultaneously with the execution of this Agreement Frydman, Rutter and Scott Diamond shall execute an original of the joint written instructions to Citibank in the form attached hereto as Exhibit A, which joint written instructions shall be immediately delivered to Citibank by any of the Parties hereto. The Parties hereto expressly agree that except with respect to the possible delivery of the joint instructions in the form of Exhibit B if the conditions therefore have occurred, without the express prior written consent of Frydman (or his successor as manager of Tunnel) and Rutter (or his successor as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) no Party shall directly or indirectly take any act whatsoever, or cause any of their employees, agents and/or representatives to take any act whatsoever, which does, or is intended to, in any way stop, curtail, amend or modify the joint written instructions which have been delivered to Citibank or otherwise provide Citibank with any instructions to the contrary, or challenge or otherwise make any claim to Citibank that the distributions being made pursuant said joint written instructions are to be stopped, modified, curtailed or otherwise challenged.

(f) The Parties shall also execute joint written instructions in the form of Exhibit C hereto to TIAA including specific instructions concerning financial arrangements.

4. **Authorization to Pay Certain Expenses.**

(a) The Parties agree that except for the automatic distributions which are to be made out of the Lincoln Citi Account pursuant to the joint instructions provided in accordance with section 3 hereof, and the payment of certain expenses which are authorized pursuant to section 4(b), section 8 and section 12 hereof, no payments or withdrawals of any type or nature shall be made out of the Lincoln Citi Account, or out of any other account now or hereafter maintained by 500 Owner, 500 Lincoln, and/or 500 Tenth, without the express prior written and notarized agreement of Frydman (or his successors as manager of Tunnel) and Rutter (or his successors as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC, or his as manager of SLD 500 LLC) or by the joint signatures of Frydman (or his successor as manager of Tunnel) and Rutter (or his successors as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC, or his successors as manager of SLD 500 LLC) on any check, wire instruction or other instrument.

(b) Either Frydman (or his successors as manager of Tunnel), or Rutter (or his successors as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successors as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally cause certain payments for legitimate Property expenditures to be made by causing the issuance of a check or check by phone, or ACH or similar transaction, but only if (i) same is a legitimate Property expenditure which is not the obligation of a tenant or subtenant of the Property, being paid for a legitimate purpose; (ii) no portion of such payment, and no other compensation or expectation of compensation, directly or indirectly is paid or is expected to be paid to, or on behalf of the Party authorizing such payment (or a person Affiliated with such Party) as a result of the making of such payment; (iii) such payment is for the payment of utilities (including, without limitation, electric, gas, water, sewer and the like, but excluding any capital improvements with respect to such utilities); real property taxes, governmental levies, fees, fines, penalties or assessments; insurance; payments to DHL for reimbursement of an overpayment or a landlord obligation under the DHL Lease; payment to complete the roof work, but not more than $10,500 in the aggregate to Vanguard Roofing; payment to the Company's accountants for preparation of annual tax returns, but not in excess of $20,000 per annum; payment to Anthony Cuomo, Esq. or such other real estate tax consultant as may be hired in substitution of Anthony Cuomo in connection with a tax grievance on a contingency basis so long as same conforms to the requirements of section 6 herein; payment for an emergency repair (but in no event in excess of $10,000 per incident); payment for the purchase of a bond to bond-off on a lien encumbering the Property provided that the cost of such bond is not in excess of two percent (2%) of the amount necessary to bond to remove said lien (and in connection with same to execute the bond on behalf of the owner of the Property); payment of principal or interest due to an institutional lender who holds a valid mortgage loan secured by the Property and which payments of interest and principal are not being paid from an independent source or lockbox arrangement; and payments of Installments (as hereinafter defined) in connection with an executed Acceptable Ground Lease (as hereinafter defined).

(c) By virtue of authorizing any payment permitted under subsection 4(b) hereof, the Party authorizing said payment is deemed to have represented and warranted to each of the other Parties hereto that such payment conforms in each and every respect to the requirements of subsection 4(b) (i), (ii) and (iii) and meets all of the conditions thereof.

(d) In the event that a payment made pursuant to section 4(b) hereof was mistakenly made or is otherwise an overpayment to the payee, either Frydman (or his successors as manager of Tunnel), or Rutter (or his successors as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC, or his successors as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally seek to collect same for the benefit of and at the expense of 500 Lincoln, and upon collection, cause same to be deposited into the Lincoln Citi Account.

(e) Notwithstanding the foregoing, the parties hereto shall alternate, in two year cycles, the determination as to who shall provide insurance for 500 Lincoln. Thus, Scott Diamond (or his successors as managers of SLD 500 LLC) shall have the right to choose the insurance company providing insurance for all assets of 500 Lincoln for the two year period beginning in 2013. Rutter and Frydman (or their respective successors as managers of Tunnel) shall have the right to choose the insurance company providing insurance for all assets of 500 Lincoln for the two year period beginning in 2015. This arrangement in which the parties alternate the decision in two year cycles shall continue until the Property is sold.

5. **Lease Termination.**

(a) Upon (i) termination of the DHL Lease, or in the event DHL shall fail to timely issue its notice of election to renew its lease at the end of a prior term as provided for in the lease executed by and between 500 Owner or 500 Lincoln as landlord and DHL Express (USA), Inc. as tenant dated November 14, 2005, as modified from time to time (the "DHL Lease") of the Property; or (ii) termination of an Acceptable Ground Lease (should same be entered into), or in the event the tenant under an Acceptable Ground Lease shall fail to timely issue its notice of election to renew its lease at the end of a prior term as provided for in an Acceptable Ground Lease, if any, the Parties agree as follows:

(i) **Issuance of Joint Instruction.** Provided that the conditions set forth in section 5(a) have been met, either Frydman (or his successors as manager of Tunnel), or Rutter (or his successors as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successors as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally deliver to Citibank the joint instruction in the form attached hereto as Exhibit B and which shall be executed in triplicate simultaneously with the execution of this Agreement (with one original delivered to each of Frydman, Rutter and Scott Diamond).

(ii) **Marketing of the Property for Lease/Sale.** Provided that the conditions set forth in section 5(a) have been met, either Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successors as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally (but shall not be obligated to) cause 500 Owner to enter into an exclusive listing agreement to ground lease the Property on an exclusive basis for up to six (6) months with the First Available Broker (as said term is hereafter defined) solely for the purpose of marketing an Acceptable Ground Lease (as said term is hereafter defined) for the Property. In the event that an offer for an Acceptable Ground Lease is not obtained within six months, or in the event that an offer for an Acceptable Ground Lease is obtained, but an Acceptable Ground Lease is not executed by a ground lessee within ninety (90) days after the end of said six month period, then the Property shall thereafter continue to be listed for an addition six (6) months for the purpose of sourcing an Acceptable Sale (as said term is hereafter defined) of the fee simple interest in the Property with the First

Available Broker with whom the Property was previously listed for the purpose of marketing an Acceptable Ground Lease.

For purposes hereof the following terms shall have the following definitions:

"First Available Broker" means the first licensed real estate broker (or licensed real estate agent properly affiliated with a licensed real estate broker) chosen in the order of priority established hereafter, willing to enter into an exclusive listing agreement as described in section 5(a) (ii) above, for a commission equal to one and one-half percent (1.5%) of the net present value of the lease payments over the initial 49 year term of an Acceptable Ground Lease discounted at the Prime Rate published by the Wall Street Journal on the date of execution of an Acceptable Ground Lease and payable in Installments (as said term is defined herein), or one percent (1%) of the sale price in the event of an Acceptable Sale paid in cash at closing. The Party acting on behalf of 500 Owner shall contact the following real estate broker (or licensed real estate agent properly affiliated with a licensed real estate broker) in the following order of priority, meet with such person and explain the opportunity, and await a response as to their interest (for up to two weeks) before pursuing the next person in order of priority as follows:

FIRST: The two persons at Eastdil Realty with the two highest average dollar volume of closed commercial real estate sales for each of the prior two years ;

SECOND: Darcy Stacom;

THIRD: Richard Baxter and/or Yoram Cohen;

FOURTH: Steven Kohn;

FIFTH: The two persons at Jones Lang Lasalle with the two highest average dollar volume of closed commercial real estate sales for each of the prior two years..

"Acceptable Ground Lease" means a forty nine (49) year ground lease on terms at least as favorable to the landlord as are set forth in this section, entered into by and among 500 Owner as landlord and the highest bidder as tenant, which highest bidder has been obtained through a widely disseminated offering process undertaken by the broker with whom an exclusive listing agreement has been executed to market such ground lease. The ground lease shall lease the Property together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining thereto, including all air-rights and development rights (provided, however, that Tenant may not transfer or sell any such air-rights and development rights to a third Party), subject to the state of title and the terms and conditions of the lease, with up with to two (2) extension terms of ten (10) years each upon

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tenant giving notice to landlord of such extension at least twelve (12) months prior to the expiration of the then current term, with base rent being not less than Sixteen Million Five Hundred Thousand Dollars ($16,500,000) per annum in the first year, with each subsequent year's base rent increasing annually by the Consumer Price Index, and with the base rent for each of the first years of each renewal term being at Fair Market Value, but in no event less than 110% of the last base rent payable in the last year of the prior term, with tenant responsible to pay all Impositions (as hereinafter defined) and all rents being absolutely net to landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever (except as otherwise expressly provided in the lease) so that the lease shall yield, net, to landlord, the base rent in each year during the term and that tenant shall pay all costs, expenses and charges of every kind and nature relating to the Property, which may arise or become due or payable during or after (but attributable to a period falling within) the term except that tenant shall not be required to pay (a) any principal, interest or other sum due on any fee mortgage then or thereafter in effect or (b) any amounts necessary to discharge any lien or encumbrance on the interest of landlord in the Property created by landlord. "Impositions" shall mean (a) taxes, (b) real property general and special assessments, (c) personal property taxes, (d) occupancy and rent taxes, (e) water, water meter and sewer rents, rates and charges, (f) excises, (g) levies, (h) license and permit fees, (i) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply, if any, (j) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto, and (k) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the term are (i) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Property, or any document to which tenant is a Party creating or transferring an interest or estate in the Property, or the use and occupancy thereof by tenant, or (ii) encumbrances or liens on (1) the Property, or (2) the sidewalks or streets in front of or adjoining the Property, or (3) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (4) any other appurtenances of the Property, or (5) any personal property (except personal property which is not owned by or leased to tenant or a subtenant or other occupant of the Property), equipment or other facility used in the operation thereof, or (6) the rents (or any portion thereof) payable by tenant under the lease. The lease shall also provide for a security deposit of at least six months base rent (which may be released to tenant if there are no defaults upon the fifth anniversary of commencement of the lease). The lease shall also provide that Tenant shall maintain at its cost, and name the Landlord as additional insured on a policy insuring: (a) the buildings located on the Property insured under an "All Risk of Physical Loss" form of policy, including, without limitation, coverage for loss or damage by water (including sprinkler leakage), flood, collapse, subsidence and earthquake and, when and to the extent obtainable from the United States government or any agency thereof, war risks; such insurance to be written on an "Agreed Amount" basis, with full replacement cost valuation, in an amount equal to not less than one hundred (100%) percent of the full replacement cost of the Building (determined without regard to depreciation of the Building and exclusive of foundations and footings); (b) commercial general liability insurance against liability for bodily injury, death and property damage, it being agreed that such insurance shall be in an amount of not less than [Twenty Five Million ($25,000,000)] Dollars (as such sum shall be adjusted for inflation upon each fifth year anniversary of the lease commencement date) combined single limit inclusive of primary, umbrella and excess policies for liability for bodily injury, death and property damage. Tenant shall be responsible to use the proceeds of insurance to restore any damage to the buildings on the Property except in the last 5 years of the lease, in which case, the tenant may terminate the lease if it pays over the proceeds of insurance first to the leasehold mortgagee(s) which hold liens on tenant's interest in the lease, so much of the insurance proceeds as shall equal the unpaid principal indebtedness secured by such leasehold mortgage with interest thereon at the rate specified therein to the date of payment (such payments to be made in order of lien priority and pari passu to leasehold mortgagees with liens of the same priority); and landlord shall receive the balance, if any, of the insurance proceeds. In the event during the term (excluding a taking of the fee interest in the premises, if after such taking, tenant's rights under the lease are not affected) there is a taking of all or substantially all of the Property for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain the lease shall terminate and the award, awards or damages in respect thereof shall be paid as follows: (i) first to the extent, if any, of the necessary, reasonable and proper expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by landlord, tenant any fee mortgagee and any leasehold mortgagee in the collection of such award; (ii) there shall next be paid to landlord so much of the award equal to the value of land and the value of landlord's reversionary interest in the buildings as burdened and benefitted by the lease; (iii) there shall next be paid to the leasehold mortgagee(s) which hold liens on tenant's interest in the lease, so much of the balance of such award as shall equal the unpaid principal indebtedness secured by such leasehold mortgage with interest thereon at the rate specified therein to the date of payment (such payments to be made in order of lien priority and pari passu to leasehold mortgagees with liens of the same priority); and (iv) subject to rights of any leasehold mortgagees, tenant shall receive the balance, if any, of the award. If there shall be any dispute as to which portion of the award is attributable to the land and which portion is attributable to the building, or as to the value of landlord's reversionary interest in the building and/or the value of land as burdened and benefitted by the lease, such dispute shall be resolved by binding arbitration. Tenant shall have the right, at any time and from time to time, to grant one or more leasehold mortgages to any institutional lender to secure any indebtedness incurred by tenant including, without limitation, any indebtedness relating to the conversion of the building on the Property or the demolition of the existing building and construction of a new building on the Property. All leasehold mortgagees shall give landlord prompt notice of such leasehold mortgage and furnish landlord with a copy of same, and shall give landlord prompt notice of any default by tenant, and grant Landlord an additional thirty (30) day period of time beyond tenant's time to cure, to cure such default or remedying the default, or causing the same to be remedied, or causing action to remedy a default to be commenced. Landlord shall accept performance by a leasehold mortgagee of any covenant, condition or agreement on tenant's part to be performed by tenant. Any leasehold mortgagee may initiate and complete any foreclosure of its leasehold mortgage and may exercise any other rights and remedies against tenant and landlord will consent that any person who is the transferee of tenant's interest in the lease as a result of the foreclosure of a leasehold mortgage, and such person's successors and assigns, may assign the lease without obtaining landlord's prior consent. The landlord may place one or more fee mortgages on the Property, but no fee mortgage shall encumber or attach to the lease or tenant's or any leasehold mortgagee's rights under the lease or any leasehold mortgage unless such leasehold mortgagee consents otherwise. In the event tenant shall undertake any construction on the Property it shall do so in accordance with all laws, and tenant shall submit to Landlord for its review and for informational purposes only, prior to filing, copies of all plans and applications to be filed for approval with any governmental agency, and any subsequent changes or modifications thereto. Prior to commencing any demolition or construction, and until construction is substantially completed and tenant has obtained a temporary certificate of occupancy, tenant will provide, or cause to be provided, and thereafter shall keep in full force and effect, insurance coverage of the following types and minimum limits: (i) general liability insurance, naming contractor or construction manager as named insured and, as additional named insureds, tenant, landlord, each fee mortgagee and each leasehold mortgagee, such insurance to insure against

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liability for bodily injury and death and for property damage in an amount comparable with the amounts carried by persons undertaking similar work in the New York City Area, but not less than [Twenty Five Million ($25,000,000)] Dollars combined single limit, such insurance to include operations-premises liability, contractor's protective liability on the operations of all subcontractors, completed operations, broad form contractual liability, a broad form comprehensive general liability endorsement providing blanket automatic contractual coverage including bodily injury to employees or others assumed by the insured under contract and, if the contractor is undertaking foundation, excavation or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted; (ii) workers' compensation insurance providing statutory New York State benefits for all persons employed in connection with the construction at the Property and employer's liability insurance in an amount not less than that required by New York State law, with coverage to be listed in the underlying schedule of any umbrella or following form excess policy; (iii) special form builder's risk insurance (standard "all-risk" or equivalent coverage), including, without limitation, coverage for any so-called "soft cost" value sums and for loss or damage by water (including sprinkler leakage), flood, collapse, subsidence and earthquake (excluding, at tenant's option, from such coverage normal settling only) and, when and to the extent obtainable from the United States government or any agency thereof, war risks, written on a one hundred (100%) percent of completed value (non-reporting) basis naming, to the extent of their respective insurable interests in the Property, tenant as named insured, and, as additional named insureds, landlord, any contractor or construction manager engaged by tenant and each mortgagee under a standard mortgagee clause. In addition, such insurance (1) shall contain an acknowledgment by the insurance company that its rights of subrogation have been waived with respect to landlord and any fee mortgagee and an endorsement stating that "permission is granted to complete and occupy" and endorsements for coverage of increased construction costs due to changes in legal requirements and so-called "soft costs", (2) if any storage location situated off the Property is used, shall include coverage for the full insurable value of all materials and equipment on or about any such storage location intended for use with respect to the Premises, and (3) if materials, equipment, machinery or supplies to be used in connection with construction are shipped to the job site, and the all-risk builders risk insurance will provide transit coverage. All proceeds received pursuant to the insurance coverages shall be payable, in trust, to Tenant (or if more than $5 million, to an escrow agent which is a depository institution to be released to tenant in tranches as construction or restoration is being completed) for application to the cost of completion of construction of the building(s). Prior to the commencement of construction Tenant shall furnish to Landlord: (a) a construction bond from one or more bonding companies licensed in New York in an amount equal to at least eighty percent (80%) of (i) the total construction budget from tenant's general contractor or (ii) the aggregate budget from Tenant's prime sub-contractors in form and substance reasonably acceptable to landlord; (b) a contract or construction management agreement in form (the "Building Construction Agreement") assignable to landlord (subject to any prior assignment to any leasehold mortgagee), made with a reputable and responsible contractor or construction manager approved by landlord, which approval shall not be unreasonably withheld providing for substantial completion of the building (s) free and clear of all liens, encumbrances, security agreements, interests and financing statements; (c) a guaranty of completion of construction from tenant (if tenant is a credit tenant) or from tenant's principals if tenant is not a credit tenant, in such form as the Parties' Lawyers (as said term is hereinafter defined) shall deem appropriate; and (d) An assignment to landlord (subject to any prior assignment to any leasehold mortgagee) of the building construction agreement with a contractor or construction manager, such assignment to be duly executed and acknowledged by tenant and by its terms to be effective only upon any termination of the lease or upon landlord's re-entry upon the Property or following any event of default prior to the completion of the building, such assignment also to include the benefit of all payments made on account of the building construction agreement, including payments made prior to the effective date of such assignment. The lease shall provide that all rental payments and any other sums payable by tenant to landlord shall be deposited directly by tenant into the Lincoln Citi Account. And otherwise be on such terms as are customary for ground leases of this type for similar properties in New York City, as same shall be determined by the Parties' Lawyers (as said term is hereinafter defined). The Parties' Lawyers are also hereby authorized to modify the insurance requirements set forth herein to the extent the insurance provisions hereof are not "market" or cannot be obtained by the tenant.

"**Acceptable Sale**" means a sale of the fee simple interest in the Property to the highest bidder for an all cash price after conducting a widely disseminated marketing effort and at least a first and second round of bidding, and pursuant to a contract which has a "hard" deposit of at least five percent (5%) of the purchase price pursuant to a purchase and sale agreement which is not contingent on financing, due diligence or any other matter which is solely within purchaser's control, and which requires a closing not more than ninety (90) days after the end of the six month marketing effort, with all payments and documents being delivered to the title company, issue the title insurance policy, and disburse all net

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proceeds, and otherwise on such terms as are customary for sales of fee interests this type for similar properties in New York City, as same shall be determined by the Parties' Lawyers (as said term is hereinafter defined).

"**Installments**" means, with respect to the commission payable to the broker entitled to same resulting from an Acceptable Ground Lease, *subject to FIRST* applying all lease payments paid under the Acceptable Ground Lease not to exceed $5,000,0000 to repayment of any unpaid principal balance and interest due under any mortgage loan secured by the Property, the assignment to such broker of 100% of all lease payments paid under the Acceptable Ground Lease until payment in full of the commission, as well as payment of any transfer taxes due by the Lessor.

"**Parties' Lawyers**" means, with respect to general transaction matters other than any ground lease or sale agreement for the Property pursuant to Section 5 herein, including but not limited to matters pertaining to the DHL Lease, Allen & Overy LLP or such other attorneys as are mutually agreed upon by the Parties, and, with respect to any ground lease or sale agreement for the Property pursuant to Section 5 herein, the following: the firm at which Y. David Scharf is partner (or if they are not available, another lawyer selected by Tunnel Associates LLC) and Brief Carmen & Kleiman, LLP, (or if they are not available another lawyer selected by Scott Diamond as manager of SLD 500 LLC, or his successors as manager of SLD 500 LLC. If the two lawyers are unable to agree on the terms of and conclude (and have fully executed) a ground lease or purchase and sale agreement with the ground lessor or the fee interest purchaser, as the case may be, within thirty (30) days after the award of the ground lease or the sale offer, then the two lawyers shall select a third lawyer within five (5) days after the end of said thirty (30) day period, who shall unilaterally have the right to conclude (and have fully executed) a ground lease or purchase and sale agreement with the ground lessor or the fee interest purchaser, as the case may be, with fifteen (15) days after his selection. If the two lawyers shall be unable to agree on selection of the third lawyer within five (5) days after the thirty (30) day period, or if the third lawyer is unable to conclude (and have fully executed) a ground lease or purchase and sale agreement with the ground lessor or the fee interest purchaser, as the case may be, with fifteen (15) days after his selection, either Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or the Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers petition the Supreme Court of New York, NY to select a successor lawyer who shall be charged with finalizing the ground lease or the purchase and sale agreement, as the case may be, (notwithstanding the other time limitations set forth herein) within sixty (60) days of his selection, and the closing shall occur not more than sixty (60) days thereafter.

(b) All net proceeds of an Acceptable Sale shall be distributed by the title company on the date of closing as follows and this agreement shall constitute the disbursement instructions to the title company:

Twenty five percent (25%) to each of the following:

Account Name: Winter Investors, LLC
Bank: Rhinebeck Savings Bank
2 Jefferson Plaza
Poughkeepsie, New York 12601
ABA Number 221971015
Account Number 7700010874

or such other account as may be substituted on the unilateral instructions of Jacob Frydman (or his successors)

Account Name: Mitchell Rutter
Bank: TD Bank
500 Park Avenue
New York, New York 10022
ABA Number 026013673
Account Number 7929443963

or such other account as may be substituted on the unilateral instructions of Mitchell Rutter (or his successors)

Account Name: SFC Enterprises, Inc.
Wachovia Bank, NA
Account Number 2030001185866
ABA Number 031201467

or such other account as may be substituted on the unilateral instructions of Salvatore Cannizzaro (or his successors)

Twelve and one-half Percent (12.5%) of each monthly distribution to each of the following:

Grace and John DelMonaco
Wells Fargo

ABA Number 121000248
Account Number 1010292659449

or such other account as may be substituted on the unilateral instructions of Grace or John Delmonico (or their respective successors)

Warren Diamond
JP Morgan Chase
ABA Number 021000021
Account Number 2981894807
or such other account as may be substituted on the unilateral instructions of Scott Diamond (or his successors as trustee of the Warren Diamond Trust)

6. **Filing of Tax Grievance.** Either Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC) may (but shall not be obligated to), without the requirement of any further authorization by the other Managers, unilaterally file or cause to be filed a tax grievance with respect to the Property and in connection therewith to retain counsel on a contingency basis on such terms which landlords of comparable buildings who contract for such legal services on an arm's-length basis pay for such services on comparable buildings, and the fees, if any, to which such counsel shall be entitled shall be deemed to have been included in the expenses identified in paragraph 4 (b) above. In the event that any Manager shall file a tax grievance as hereinabove set forth, he or it shall promptly notify the other Managers, and such other Managers shall not thereafter file a tax grievance with respect to the tax years for which such tax grievance was filed.

7. **Insurance.** In the event that there is no mortgage loan due secured by the Property which requires otherwise, in the event that the Property shall become vacant, and there shall be no obligation on a tenant to provide insurance, either Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally (but shall not be obligated to) cause 500 Owner to obtain general liability insurance coverage in an amount of not less than $2 million, with not less than a $5 million umbrella policy, and 500 Owner may cease carrying any property insurance coverage.

8. **Maintenance of Property and Capital Calls**. In the event that the Property is not then leased and there are no rents being received by 500 Owner, and in the event that the funds in the Lincoln Citi Account are insufficient to fund the payment of: (i) utilities necessary to keep the Property from deteriorating, (ii) real property taxes, governmental levies, fees, fines, penalties or assessments which, if not paid within sixty (60) days will result in the sale of tax certificates relating to the Property, or a sale of the Property; (iii) insurance which, if not paid within sixty (60) days will result in a lapse of insurance coverage; and/or (iv) payment to the

Company's accountants for preparation of annual tax returns, but not in excess of $20,000 per annum and only if any of the items set forth in (i), (ii), (iii) or (iv) is more than sixty (60) days past due; then, but only in such event, either Frydman (or his successors as manager of Tunnel), or Rutter (or his successors as manager of Tunnel), or Scott Diamond (as manager of SLD 500 LLC or his successors as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally (but shall not be obligated to) cause a capital call notice to be sent to all the members of 500 Lincoln to make additional capital contributions in such amounts as shall be necessary to make the payments set forth in sections (i) – (iv) above, which notices shall be delivered to each Member of 500 Lincoln (the "Contribution Notice") specifying: (i) the total amount of each such additional contribution: (ii) each Member's portion of such additional contribution; and (iii) evidence that the funds in the Lincoln Citi Account are insufficient to fund the payment of the items for which the Contribution Notice is being sent and evidence that the items proposed to be paid with the proceeds of the capital call meet the requirements of this section 8. Within fifteen (15) business days from the date of the delivery to all of the Members of the Contribution Notice, each Member shall advance its respective Percentage Interest of the additional contribution. A Member who does so contribute shall sometimes be referred to hereinafter as a "Contributing Member". If any Member shall fail to contribute all or any portion of its Percentage Interest of such additional contribution within the applicable period of time (hereinafter a "Declining Member"), then the Manager who sent the notice shall send a second notice to the Declining Member stating the amount of the Declining Member's shortfall (the "Shortfall Amount") and if such Declining Member fails to contribute such Shortfall Amount within five (5) days of receipt of such notice, such Manager shall provide written notice thereof to all other Members (the "Shortfall Notice"). Each Contributing Member shall have the right, thereafter, within three (3) days after receipt of the Shortfall Notice to contribute all or a portion of such Member(s)' Shortfall Amount to 500 Lincoln (a "Shortfall Contribution "), in which event such Shortfall Contribution shall reduce such Declining Member's Percentage Interests by two hundred percent (200%) of the Shortfall Contribution, and increase the Percentage Interests of the Contributing Members who made such Shortfall Contribution, prorata, by the same amount. For purposes of the foregoing sentence, each $450,000 of capital contributed after the date hereof shall be deemed to equal one percent (1%) of the Percentage Interests in 500 Lincoln on a non-diluted basis.1 The additional contributions shall be deposited in the Lincoln Citi Account, and the Manger issuing the Contribution Notice shall cause the items proposed to be paid with the proceeds of the capital call, to the extent of the funded portion of such capital call, to be paid out of the Lincoln Citi Account. In the event that any Member's Percentage Interest shall change as a result of a Shortfall Contribution as above set forth, then either Frydman (or his successor as manager of Tunnel), or Rutter (or his successor as manager of Tunnel), or Scott Diamond (as

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1 For purposes of clarity, in the event that a Shortfall Contribution in the amount of $45,000 has not been made by the Declining Member, but is made by a Contributing Member, then the Declining Member's Percentage Interest shall be reduced by 20 basis points, and the Contributing Member's Percentage Interest shall be increased by 20 basis points, which is a result of the following calculation: 45,000÷450,000 times .01 times 2.

manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) may, without the requirement of any further authorization by the other Managers, unilaterally cause a notice to be issued to Citibank modifying the percentage of the automatic monthly distributions from the Lincoln Citi Account as set forth in section 3 (d) above to reflect the changed Percentage Interests of the Members which notice shall take precedence over the notice referenced in Section 3 (e) above, and each of Frydman (or his successor as manager of Tunnel), Rutter (or his successor as manager of Tunnel), and Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC) hereby grant each of the other two with power of attorney to act as attorney-in-fact for solely said limited purpose to execute said notice on each of their behalf, provided however, that in the event that a party shall intentionally use the power granted in this section to wrongfully notice Citibank of a change in the Percentage Interests of the Members, then, in addition to any rights or damages which any party may have against such person in law or in equity, such person shall be liable to each of the other two Managers in the amount of $1,000,000, as liquidated damages, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage for same,

9. **Agreement not to Invoke Buy-Sell**. Frydman and Rutter, as the sole managers of Tunnel (and their successors as the sole managers of Tunnel) or as members of Tunnel hereby represent and warrant to Scott Diamond, and agree and covenant that: (i) they have not heretofore taken any action which would cause Tunnel to initiate the Buy-Sell Agreement; and (ii) they will not hereafter ever take any action which will cause Tunnel to initiate the Buy-Sell Agreement; Scott Diamond hereby represents and warrants to Frydman, Rutter and Tunnel, and agrees and covenants that: (i) the members and managers of Corem have not heretofore taken any action which would cause Corem to initiate the Buy-Sell Agreement; and (ii) he or any of his successors as managers or members of Corem will not hereafter ever take any action which will cause Corem to initiate the Buy-Sell Agreement.

10. **Tax Matters Partner** Beginning in 2012, and in two year cycles, the parties shall alternate being tax matters partner and designating the accountants. Thus, for the first two years following the signing of this agreement, Scott Diamond is designated tax matters partner of 500 Owner, 500 Lincoln and 500 Tenth, and Citrin Cooperman or such other accountant to be selected by Tunnel ("Tunnel Selected Accountant") is hereby selected as the accountants responsible for preparation of federal state and other tax returns required to be filed by 500 Owner, 500 Lincoln and 500 Tenth during the two year cycles during which Scott Diamond is acting as Tax Matters Partner. In each case, at least thirty (30) days prior to the filing of any tax returns for 500 Owner, 500 Lincoln and 500 Tenth, Scott Diamond shall cause a draft of each tax return proposed to be filed on behalf of 500 Owner, 500 Lincoln and/or 500 Tenth to be sent to Frydman and Rutter. In the event that Frydman and Rutter have not, within fifteen (15) days of receipt of each such tax return, stated objections thereto, Scott Diamond shall be authorized to timely file said tax returns and issue all appropriate K-1s and copies of such tax returns to the members entitled to same, and to Frydman and Rutter. In the event that Frydman or Rutter shall have objected (by email or notice to Scott Diamond) within fifteen (15) days of receipt of each such tax return, Frydman, Rutter and Scott

Diamond shall within three (3) business days thereafter meet with, or cause a conference call to be held with, the Tunnel Selected Accountant to resolve any issues with respect to any such tax returns (the "Accountant Meeting"). In the event that as a result of said Accountant Meeting Frydman, Rutter and Scott Diamond have not been able to resolve the issues objected to by Frydman or Rutter, the issues shall be resolved by the Tunnel Selected Accountant, and the tax returns shall be timely filed as prepared by the Tunnel Selected Accountant. Similarly, for the two years beginning in 2014, Rutter is designated tax matters partner of 500 Owner, 500 Lincoln and 500 Tenth, and Citrin Cooperman or such other accountant to be selected by SLD 500 LLC ("Scott Selected Accountant") shall be selected as the accountants responsible for preparation of federal state and other tax returns required to be filed by 500 Owner, 500 Lincoln and 500 Tenth during the two year cycles during which Rutter is acting as Tax Matters Partner. In each case, at least thirty (30) days prior to the filing of any tax returns for 500 Owner, 500 Lincoln and 500 Tenth, Rutter shall cause a draft of each tax return proposed to be filed on behalf of 500 Owner, 500 Lincoln and/or 500 Tenth to be sent to Scott Diamond or his successors. In the event that Scott Diamond or his successors have not, within fifteen (15) days of receipt of each such tax return set forth any objections thereto, Rutter shall be authorized to timely file said tax returns and issue all appropriate K-1s and copies of such tax returns to the members entitled to same, and to Scott Diamond or his successors. In the event that Scott Diamond or his successors shall have objected (by email or notice to Rutter) within fifteen (15) days of receipt of each such tax return, Frydman, Rutter and Scott Diamond shall within three (3) business days thereafter meet with, or cause a conference call to be held with the Diamond Selected Accountant to resolve any issues with respect to any such tax returns (the "Accountant Meeting"). In the event that as a result of said Accountant Meeting Frydman, Rutter and Scott Diamond have not been able to resolve the issues objected to by Frydman or Rutter, the issues shall be resolved by the Diamond Selected Accountant, and the tax returns shall be timely filed as prepared by the Selected Accountant. The parties shall continue the arrangement of alternating the tax matters partner and the selection of the Accountant, until 500 Lincoln Owner, 500 Lincoln and 500 Tenth are dissolved. Neither party may select as the designated accountant any firm with which Steve Stoltzenberg is associated or any firm which does not have offices in New York City and at least 150 accounting professionals firm-wide.

11. **Sale of 39th Street Property.** Rutter and Warren Diamond are hereby authorized to jointly negotiate with one or more prospective purchasers for the sale of the 39th Street Property, provided that same shall be on terms not less beneficial to 500 Owner than as set forth in this section 11 (or as otherwise authorized by the prior written authorization of Frydman (or his successor as manager of Tunnel) and Rutter (or his successor as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC or his successor as manager of SLD 500 LLC). The Parties hereby agree that 500 Owner shall sell the 39th Street Property, provided that such sale shall be at a price, and on terms not less beneficial to 500 Owner as follows: (i) a sale price of not less than six million five hundred thousand Dollars ($6,500,000) to be paid cash at closing; (ii) a deposit of not less than ten percent (10%) of the purchase price which deposit shall be nonrefundable except in the event of failure of seller to deliver title; (iii)

purchaser agreeing to make a legal access accommodation (by easement, or otherwise) for the owner and all occupants of the adjacent property at 500 10th Avenue and each of their respective employees, agents, contractors and invitees, to be able to access and exit from the boiler room located in the 500 10th Avenue building; (iv) where there is no merger of any zoning lots between the 39th Street Property and any other zoning lot comprising the Property; (v) where the purchaser acknowledges that the property is sold "as is-where is" without any representations or warranties with respect to the building, the land, any system therein, or with respect to hazardous materials; and (vi) which sale closes no later than June, 2013, although Rutter and Warren Diamond shall attempt to complete negotiations so that closing may take place prior to year end 2012, and otherwise on such terms as Rutter and Warren Diamond shall otherwise agree. The Parties hereby also agreed that at closing the net proceeds of the sale of the 39th Street Property (after payment of all appropriate expenses incurred by 500 Owner to sell the 39th Street Property) shall be disbursed at closing FIRST, an amount equal to $200,000 to Tunnel (as designated by Frydman and Rutter); and the balance remaining THEREAFTER, fifty percent (50%) to Tunnel (as designated by Frydman and Rutter) and fifty percent (50%) to Corem (wired into a Corem bank account as directed by Scott Diamond). Similarly, when any payments are made under a mortgage granted to the Buyer of the 39th Street Property (including the payoff of the mortgage), the proceeds shall be deposited into the 500 Lincoln Citibank Money Market Account, Account Number 9932285772, and then go fifty percent (50%) to Tunnel (as designated by Frydman and Rutter) and fifty percent (50%) to Corem (wired into a Corem bank account as directed by Scott Diamond).

12. **Acknowledgement Of Indemnity And Guaranty Agreement.** Warren and Scott Diamond acknowledges that the Diamond Trust, as a partner in 500 Lincoln, is bound to and is deemed to have executed that certain Indemnity and Guaranty Agreement dated as of December 10, 2010 (the "Indemnity"), which Indemnity was executed as a prerequisite for the loan refinancing.

13. **Attorney's Bills.** Frydman, Rutter and Scott Diamond hereby agree that promptly after the execution of this Agreement either of them may cause two (2) payments, one of which shall be payable to Morrison Cohen LLP, counsel for Tunnel, and one of which shall be payable to Brief Carmen & Kleiman, LLP, counsel for Scott Diamond to be made for legal fees incurred in connection with the resolution of the disputes among the Parties hereto out of the Lincoln Citi Account, each in the amount of $100,000.00. Except as otherwise set forth in this section 12, the Parties will each be responsible for their respective legal fees, costs, and expenses incurred in connection with this Agreement and the negotiation thereof.

14. **Discontinuance of the New Diamond Action.** Simultaneously with the execution hereof, Scott Diamond shall cause lawyers representing plaintiffs in the New Diamond Action to file the necessary documentation for the discontinuance with prejudice of the New Diamond Action.

15. **Release of Claims.** For valuable consideration, the sufficiency of which is hereby acknowledged, each of the signatories hereto, and their respective predecessors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, do hereby irrevocably and unconditionally RELEASE AND FOREVER DISCHARGE each of the other signatories hereto, and their respective heirs, predecessors, successors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, from all liability for all claims, demands, damages, obligations, actions, and causes of action, whether known or unknown, whether now or hereafter discovered, foreseen or unforeseen, arising out of or connected to or with any acts and/or omissions occurring from the beginning of the world up to and including the Effective Date. This Release, however, shall not apply to any new controversies, causes of action, actions, proceedings, claims, suits, arbitrations, damages, judgments, liabilities, or losses that may arise subsequent to the execution of this Agreement, including but not limited to any claims for breach of this Agreement, except that the signatories hereto and their respective predecessors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns expressly disclaim all and any claim other than a claim for breach of contract, including but not limited to, specifically, any claim for fraud or any claim that the release herein is not binding.

16. **Covenant Not to Sue.** Each Party covenants that, with respect to any claim or the subject matter of any claim released herein or in any prior written agreement, including but not limited to the Settlement Agreements, it shall not commence any litigation, arbitration or other legal proceeding of any kind against any other member or manager of 500 Lincoln, 500 Owner, 500 Tenth or Corem, whether or not a signatory hereto. In the event of a breach of this paragraph, in addition to any other remedies available hereunder, the breaching party shall be liable for full payment of the prevailing Party's actual costs, actual disbursements and actual attorney's fees in defending the action and in prosecuting a claim pursuant to this paragraph.

17. **Breach of this Agreement.** It is recognized that damages in the event of breach by a Party of any representation, warranty or covenant made in this Agreement, the Operating Agreements and the Settlement Agreements will be difficult if not impossible to ascertain. It is therefore agreed that, in addition to, and without limiting any other remedy or right that a non-breaching Party might have against a breaching Party, each Party shall also have the right to:

(a) Injunction. An injunction against a breaching Party issued by a court or arbitrator or arbitration panel of competent jurisdiction enjoining such breach, and each breaching Party hereby consents to the issuance of any preliminary or permanent injunction enjoining the breaching conduct without limitation and without bond; and

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(b) Liquidated Damages. The Parties agree that in the event of a breach by a Party of any covenant contained in this Agreement, actual damages would difficult or impossible to ascertain, and that therefore, each single occurrence which may be considered a breach of any covenant contained in this Agreement shall require the imposition of a liquidated damage award in favor of the non-breaching Party in the amount of two hundred fifty thousand dollars ($250,000) per violation, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage per violation.

(c) Specific Enforcement. The right to have such covenants specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any breach of any of such covenants will cause irreparable injury to the non-breaching Party to whom such covenant was made and that money damages will not provide an adequate remedy. Each Party acknowledges and agrees that the covenants are reasonable and valid in all respects.

(d) Other Remedies. Nothing contained in subsections 15(a), 15(b) and/or 15(c) shall be construed as exclusive or as prohibiting a Party from pursuing any other remedies available for such breach or threatened breach or for the breach of any other provisions of this Agreement.

18. **Indemnification.** Each Party hereto hereby agrees to immediately indemnify, defend, and hold each other Party harmless against any and all claims and all losses, reasonable attorneys fees, and costs related to such Party's breach of any representation, warranty, covenant or obligation contained in this Agreement, the Operating Agreements and the Settlement Agreements. Each indemnified Party having a right to a defense hereunder shall have the immediate right of payment from the breaching Party for costs and attorneys' fees related to his/her/its defense, and may seek an immediate award and payment through the legal and equitable powers of any court or arbitration panel at any time during the subject matter proceedings, and if an action or motion requesting relief under this paragraph is brought to enforce same, then claimant shall be entitled to an additional award for their reasonable attorneys fees and costs related to said motion. Each indemnified Party having a right to a defense hereunder: (i) hereby reserve the absolute right to its choice of counsel at all times; and (ii) may, at its sole discretion, settle any litigation, claim, or regulatory matter without the consent of the breaching Party and without prejudicing such non-breaching Party's rights to indemnification and defense contained herein.

19. **Dispute Forum.** Should any dispute arise between the Parties which gives rise to injunctive or equitable relief pursuant to the terms of this Agreement, the Operating Agreements or the Settlement Agreements, then notwithstanding anything else contained in such agreements, the party initiating an action seeking injunctive or equitable relief may at his/her/its election bring such action in a court of competent jurisdiction, and each of the other Parties hereby consent to same and shall not seek to dismiss or otherwise move such action to arbitration or

other adjudication.

20. **Entire Agreement**. This Agreement shall modify and amend in accordance with its terms, the terms of each of the Operating Agreements and the Settlement Agreements, and in the event of any inconsistencies between this Agreement and any of the Operating Agreements or Settlement Agreements, the terms of this Agreement shall control. Except as specifically amended by the terms hereof, the Parties hereto hereby ratify and reaffirm each of the terms, agreements, conditions, representations, warranties and covenants set forth in each of the Operating Agreements and Settlement Agreements and acknowledge that such agreements constitute the valid and legally enforceable undertakings and obligations of Parties. The Parties hereto hereby acknowledge that this Agreement contains the complete and entire agreement and understanding of the Parties concerning the matters contained herein and may not be altered, modified, or changed in any manner, except by a writing duly executed by all Parties hereto. There are no oral or written collateral or side agreements concerning the matters contained herein. All prior and contemporaneous discussions and negotiations have been, and are, merged and integrated into and superseded by this Agreement.

21. **Counterparts.** This Agreement may be executed (including by electronic mail or facsimile) in separate counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same agreement.

22. **No Other Actions Authorized.** Except as otherwise expressly provided herein, in the Operating Agreement and Settlement Agreements, no action may be taken by 500 Owner, 500 Lincoln or 500 Tenth without the express prior written and notarized authorization of Frydman (or his successors as manager of Tunnel) and Rutter (or his successors as manager of Tunnel) and Scott Diamond (as manager of SLD 500 LLC, or his successors as manager of SLD 500 LLC). Each of the Parties hereto represent and warrant, agree and covenant to each of the other Parties hereto that he/she/it shall not unilaterally, directly or indirectly, through agents, employees, representatives or otherwise, without the express written agreement of undertake any action not specifically authorized by this Agreement.

23. **Notice.** All demands, notices, requests, consents and other communications required or permitted under this Agreement, the Operating Agreements and/or the Settlement Agreements shall be in writing and shall be personally delivered, or sent by facsimile machine or e-mail (with a confirmation copy sent by one of the other methods authorized in this Section), or by reputable commercial express delivery service (including Federal Express and U.S. Postal Service overnight delivery service), or deposited with the U.S. Postal Service mailed first class, registered or certified mail, postage prepaid, as set forth below:

If to TUNNEL ASSOCIATES, LLC: to Frydman and Rutter as hereinafter provided;

If to COREM CAPITAL PARTNERS, LLC: To Scott Diamond as hereinafter provided;

If to Scott Diamond:

788 Shrewsbury Ave.
Suite 105
Tinton Falls, NJ 07724
EMAIL: scott@americanselfstorage.com

With a Copy To:
Ira Kleiman, Esq.
Brief Carmen & Kleiman, LLP
805 Third Avenue, 12th Floor
New York, NY 10022
EMAIL: ik@abriefjustice.com
FAX: 212-832-1747

If to Mitchell Rutter:

c/o Essex Capital Partners, Ltd.
635 Madison Avenue, Suite 1300
New York, NY 10022
EMAIL: mbr@essexcapital.com
FAX: 212 888 0220

With a Copy To:
Y. David Scharf
Morrison Cohen LLP
909 Third Avenue
New York, NY 10022
EMAIL: dscharf@morrisoncohen.com
FAX: (212) 735-8708

If to Jacob Frydman:

44 Wall Street
New York, NY 10005
Jacob.F@urpa.com

With a Copy To:
Y. David Scharf
Morrison Cohen LLP
909 Third Avenue
New York, NY 10022
EMAIL: dscharf@morrisoncohen.com
FAX: (212) 735-8708

If to Warren Diamond:

788 Shrewsbury Ave.
Suite 105
Tinton Falls, NJ 07724
EMAIL: Warrenhdiamond@aol.com

With a Copy To:
Matthew J. Brief, Esq.
Brief Carmen & Kleiman, LLP
805 Third Avenue, 12th Floor
New York, NY 10022
mjb@briefjustice.com
FAX: 212-832-1747

Notices shall be deemed given and delivered upon the earlier to occur of (i) receipt by the party to whom such notice is directed; (ii) if sent by facsimile machine or e-mail, on the day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) such notice is sent if sent (as evidenced by the facsimile confirmed receipt) prior to 5:00 p.m. Eastern Time and, if sent after 5:00 p.m. Eastern Time, on the next day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) after which such notice is sent; (iii) on the first day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following the day the same is deposited with a commercial courier if sent by commercial overnight delivery service; or (iv) the fifth day (other than a Saturday, Sunday or legal holiday in the jurisdiction to which such notice is directed) following deposit thereof with the U.S. Postal Service as aforesaid. Each party, by notice duly given in accordance herewith, may specify a different address for the giving of any notice hereunder.

24. **Additional Terms.** This Agreement may be executed (including by electronic mail or facsimile) in separate counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same agreement.

    a. This Agreement shall be governed, construed, and enforced according to the laws of the State of New York, without regard to its conflict of laws principles. The Parties hereby agree and consent to jurisdiction in courts of the State of New York located in the County of New York for any action, suit or proceeding arising out of or based upon this Agreement or any matter relating to it and waive any objection that they may have to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over them.

b. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope or interpretation of this Agreement.

c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

d. This Agreement shall be binding upon, and inure to the benefit of, the Parties, as well as their parents, affiliates, successors, assigns, and present and former owners, members, managers, directors, officers, partners, agents, shareholders, employees, heirs, beneficiaries, and personal representatives, if any.

e. No person or entity not a Party to this Agreement shall have any rights hereunder.

f. No provision, term or condition of this Agreement shall be deemed to have been changed, modified, waived, discharged or terminated unless the Parties otherwise agree in a writing signed by the Parties.

g. The making, execution, and delivery of this Agreement by the Parties have not been induced by any representations, statements, warranties, or other agreements other than those expressed herein.

h. This Agreement shall not be invalid as a consequence of any administrative, typographic, or ministerial error.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year set forth below.

TUNNEL ASSOCIATES, LLC

Date: ________

By: ______________________
Name: Mitchell B. Rutter
Member

Date: 12|13|12

By: ______________________
Name: Jacob Frydman
Member

SLD 500 LLC

Date: ________

By: ______________________
Name: Scott Diamond
Manager

SCOTT DIAMOND

Date: ________

____

MITCHELL RUTTER

Date: ________

____

JACOB FRYDMAN

Date: 12|13|12

____

WARREN DIAMOND

Date: ________

____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year set forth below.

Date: 12/13/12

TUNNEL ASSOCIATES, LLC

By: ______________________
Name: Mitchell B. Rutter
Member

Date: ________

By: ______________________
Name: Jacob Frydman
Member

SLD 500 LLC

Date: ________

By: ______________________
Name: Scott Diamond
Manager

SCOTT DIAMOND

Date: ________

____

MITCHELL RUTTER

Date: 12/13/12

____

JACOB FRYDMAN

Date: ________

____

WARREN DIAMOND

Date: ________

____

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year set forth below.

TUNNEL ASSOCIATES, LLC

Date: ________

By: ______________________
Name: Mitchell B. Rutter
Member

Date: ________

By: ______________________
Name: Jacob Frydman
Member

SLD 500 LLC

Date: 12/13/12

By: ______________________
Name: Scott Diamond
Manager

Date: 12/13/12

SCOTT DIAMOND

____

Date: ________

MITCHELL RUTTER

____

Date: ________

JACOB FRYDMAN

____

Date: 12/13/12

WARREN DIAMOND

____

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EXHIBIT A

500 Lincoln LLC
c/o Essex Capital
635 Madison Avenue, Suite 1300
New York, New York 10022

December ___, 2012

Citi Private Bank
Citibank, N.A.
111 Huntington Avenue, 30th Floor
Boston, Massachusetts 02199

Attention: Mr. Peter M. Cowan

Re: 500 Lincoln, LLC - Account No. 59211304
Authorization for monthly initiation of ACHs

Ladies and Gentlemen:

The Undersigned are all the Managers of 500 Lincoln, LLC ("500 Lincoln"). We wish to establish a monthly process to automatically make electronic disbursements through the Automated Clearing House (ACH) from Account # 59211304 (the "Lincoln Citi Account") which 500 Lincoln maintains at Citibank N.A. Branch #735, 785 Fifth Avenue, New York, New York 10022.

The herein instructions shall remain in effect indefinitely and may not be revoked or amended except by the delivery of new, jointly issued written instructions that have been executed and notarized by ALL of the Managers of 500 Lincoln (the "Joint Instruction"). No individual Manager or individual Manager's affiliate or agent shall have the ability or authority to revoke or alter the herein instructions except through a Joint Instruction. The following constitute All of the Managers of 500 Lincoln: Jacob Frydman (or his successors as manager of Tunnel Associates, LLC), Mitchell Rutter (or his successor as managers of Tunnel Associates, LLC) and Scott Diamond as Manager of SLD 500, LLC (or its successors).

On or before the 20th of each month, 500 Lincoln, LLC receives a wire transfer into the Lincoln Citi Account from Wells Fargo Bank Northwest, National Association (or a successor servicing firm). We would like automatic ACH transfers to be issued immediately upon receipt of this instruction letter and thereafter on the 21st of each month thereafter (or, if the 21st is not a banking day, on the next succeeding banking day) (each a "Distribution Date").

Therefore, please accept this as 500 Lincoln's authorization to make distribution of ALL SUMS IN THE LINCOLN CITI ACCOUNT ON EACH DISTRIBUTION DATE, LESS $50,000 (thereby maintaining a balance of $50,000 in said account) from the Lincoln Citi Account in the following proportions:

Twenty five percent (25%) of each monthly distribution to each of the following:

Account Name: Winter Investors, LLC
Bank: Rhinebeck Savings Bank
2 Jefferson Plaza
Poughkeepsie, New York 12601
ABA Number 221971015
Account Number 7700010874
or such other account as may be substituted on the unilateral instructions of Jacob Frydman (or his successors)

Account Name: Mitchell Rutter
Bank: TD Bank
500 Park Avenue
New York, New York 10022
ABA Number 026013673
Account Number 7929443963
or such other account as may be substituted on the unilateral instructions of Mitchell Rutter (or his successors)

Account Name: SFC Enterprises, Inc.
Wachovia Bank, NA
Account Number 2030001185866
ABA Number 031201467
or such other account as may be substituted on the unilateral instructions of Sal Cannizarro (or his successors)

Twelve and one-half Percent (12.5%) of each monthly distribution to each of the following:

Grace and John DelMonaco
Wells Fargo
ABA Number 121000248
Account Number 1010292659449
or such other account as may be substituted on the unilateral instructions of Grace or John Delmonico (or their respective successors)

Warren Diamond

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JP Morgan Chase
ABA Number 021000021
Account Number 2981894807
or such other account as may be substituted on the unilateral instructions of Scott Diamond (or his successors as trustee of the Warren Diamond Trust)

In addition to the foregoing you are hereby authorized to pay checks by phone issued on this account to all of the following persons:

List vendor list, and in addition the lawyer or Law firm which represents 500 Lincoln in a real estate tax grievance, provided however, that any such payment must be accompanied by a certification under oath of such lawyer or law firm which states: "I hereby certify under penalties of perjury that the undersigned is the attorney of record for the owner of the property located at 500 Tenth Avenue, New York, NY, and that I have obtained real estate tax reduction in the amount of $__________ for tax years ___________ and ____________."

Except as expressly provided for in this instruction letter no other withdrawals may be made out of the Citi Lincoln Account unless authorized in writing (or by instrument signed by) ALL of the Managers of 500 Lincoln.

Please charge the requisite fees to the Lincoln Citi Account.

Very truly yours,

500 LINCOLN, LLC

By: TUNNEL ASSOCIATES, LLC, Manager

By: ___________________________
Name: Jacob Frydman
Title: Manager

-and-

By: ___________________________
Name: Mitchell B. Rutter
Title: Manager

-and-

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By: SLD 500, LLC, Manager

By: ______________________
Name: Scott Diamond
Title: Manager

ACKNOWLEDGMENTS

STATE OF NEW YORK)
)
COUNTY OF ____________)

On this _____ day of December, 2012, before me, the undersigned notary public, personally appeared Mitchell B. Rutter, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that by his signature on the instrument he executed the instrument, did depose and say that he is the Manager of Tunnel Associates, LLC, the entity described in the foregoing instrument and that he executed the foregoing instrument on behalf of said entity in his official capacity.

IN WITNESS WHEREOF, I hereunto set my hand.

____
Notary Public
My Commission Expires:

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STATE OF NEW YORK)
)
COUNTY OF ______________)

On this _____ day of December, 2012, before me, the undersigned notary public, personally appeared Jacob Frydman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that by his signature on the instrument he executed the instrument, did depose and say that he is the Manager of Tunnel Associates, LLC, the entity described in the foregoing instrument and that he executed the foregoing instrument on behalf of said entity in his official capacity.

IN WITNESS WHEREOF, I hereunto set my hand.

____
Notary Public
My Commission Expires:

STATE OF NEW YORK)
)
COUNTY OF ______________)

On this _____ day of December, 2012, before me, the undersigned notary public, personally appeared Scott Diamond, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that by his signature on the instrument he executed the instrument, did depose and say that he is the Manager of SLD 500, LLC, the entity described in the foregoing instrument and that he executed the foregoing instrument on behalf of said entity in his official capacity.

IN WITNESS WHEREOF, I hereunto set my hand.

____
Notary Public
My Commission Expires:

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EXHIBIT B

500 Lincoln LLC
c/o Essex Capital
635 Madison Avenue, Suite 1300
New York, New York 10022

The date of this letter is ___________, which date has been entered by _________________, one of the Managers of 500 Lincoln, LLC, who hereby certifies to Citibank NA and to each of the other Managers of 500 Lincoln, under penalties of perjury, that the events which are required to have occurred a pre-requisite to the sending of this letter to Citibank, NA have heretofore occurred.

____
Signature of Manager

Citi Private Bank
Citibank, N.A.
111 Huntington Avenue, 30th Floor
Boston, Massachusetts 02199

Attention: Mr. Peter M. Cowan

Re: 500 Lincoln, LLC - Account No. 59211304
Authorization to cease ACH distributions

Ladies and Gentlemen:

The Undersigned are all the Managers of 500 Lincoln, LLC ("500 Lincoln"). We wish to revise the monthly process to automatically make electronic disbursements through the Automated Clearing House (ACH) from Account # 59211304 (the "Lincoln Citi Account") which 500 Lincoln maintains at Citibank N.A. Branch #735, 785 Fifth Avenue, New York, New York 10022.

The herein instructions shall remain in effect until the earlier to occur of the following: (i) twelve months from the date hereof; and (ii) the receipt by Citibank, N.A. of a new, jointly issued written instructions that have been executed and notarized by ALL of the Managers of 500 Lincoln (the "Joint Instruction"). No individual Manager or individual Manager's affiliate or agent shall have the ability or authority to revoke or alter the herein instructions except through a Joint Instruction. The following constitute All of the Managers of 500 Lincoln: Jacob Frydman (or his successor as manager of Tunnel Associates, LLC), Mitchell Rutter (or his successor as

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manager of Tunnel Associates, LLC) and Scott Diamond as Manager of SLD 500 LLC (or its successor as manager of Corem Capital Partners, LLC).

On or before the 20th of each month, 500 Lincoln, LLC receives a wire transfer into the Lincoln Citi Account from Wells Fargo Bank Northwest, National Association (or a successor servicing firm). We would like automatic ACH transfers to be issued on the 21st of each month, commencing on the 21st day of the Month in which this instruction letter is delivered to Citibank, NA, (if same is delivered prior to the 21st day of a month, , and continuing on the 21st of each month thereafter (or, if the 21st is not a banking day, on the next succeeding banking day) (each a "Distribution Date").

Therefore, please accept this as 500 Lincoln's authorization to make the following distributions:

i. Until the earlier to occur of the following: (i) twelve (12) months from the date hereof; or (ii) the receipt by Citibank, N.A. of a new Joint Instruction, FIFTY PERCENT (50%) OF THE SUMS DEPOSITED INTO THE LINCOLN CITI ACCOUNT DURING THE PRIOR MONTH;

ii. Upon receipt of a new Joint Instruction, in accordance with such Joint Instruction; and

iii. From and after the twelve (12) months from the date hereof if no new Joint Instruction has been received by Citibank, N.A, ALL SUMS IN THE LINCOLN CITI ACCOUNT ON EACH DISTRIBUTION DATE, LESS $50,000 (thereby maintaining a balance of $50,000 in said account)

Each such distribution in the following proportions:

Twenty five percent (25%) of each monthly distribution to each of the following:

Account Name: Winter Investors, LLC
Bank: Rhinebeck Savings Bank
2 Jefferson Plaza
Poughkeepsie, New York 12601
ABA Number 221971015
Account Number 7700010874
or such other account as may be substituted on the unilateral instructions of Jacob Frydman (or his successors a)

Account Name: Mitchell Rutter
Bank: TD Bank
500 Park Avenue
New York, New York 10022

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ABA Number 026013673
Account Number 7929443963
or such other account as may be substituted on the unilateral instructions of Mitchell Rutter (or his successors

Account Name: SFC Enterprises, Inc.
Wachovia Bank, NA
Account Number 2030001185866
ABA Number 031201467
or such other account as may be substituted on the unilateral instructions of Sal Cannizarro (or his successors)

Twelve and one-half Percent (12.5%) of each monthly distribution to each of the following:

Grace and John DelMonaco
Wells Fargo
ABA Number 121000248
Account Number 1010292659449
or such other account as may be substituted on the unilateral instructions of Grace or John Delmonico (or their respective successors)

Warren Diamond
JP Morgan Chase
ABA Number 021000021
Account Number 2981894807
or such other account as may be substituted on the unilateral instructions of Scott Diamond (or his successors as trustee of the Warren Diamond Trust)

In addition to the foregoing you are hereby authorized to pay checks by phone issued on this account to all of the following persons:

List vendor list, and in addition the lawyer or Law firm which represents 500 Lincoln in a real estate tax grievance, provided however, that any such payment must be accompanied by a certification under oath of such lawyer or law firm which states: "I hereby certify under penalties of perjury that the undersigned is the attorney of record for the owner of the property located at 500 Tenth Avenue, New York, NY, and that I have obtained real estate tax reduction in the amount of $__________ for tax years ____________ and _____________."

Except as expressly provided for in this instruction letter no other withdrawals may be made out of the Citi Lincoln Account unless authorized in writing (or by instrument signed by) ALL of the Managers of 500 Lincoln.

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Please charge the requisite fees to the Lincoln Citi Account.

Very truly yours,

500 LINCOLN, LLC

By: TUNNEL ASSOCIATES, LLC, Manager

By: ______________________________
Name: Jacob Frydman
Title: Manager

-and-

By: ______________________________
Name: Mitchell B. Rutter
Title: Manager

-and-

By: SLD 500, LLC, Manager

By: ___________________________
Name: Scott Diamond
Title: Manager

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EXHIBIT E

2014 Corem Settlement Agreement

This Agreement ("Agreement"), made as of June 18, 2014, by and between Warren H. Diamond, ("Diamond"), John Del Monaco ("Del Monaco"), Salvatore Cannizzaro ("Cannizzaro") and Scott Diamond ("Scott"), individually, and in their capacities as the members, managers and trustees of Corem Capital Partners LLC, Diamond Trust, American Self Storage Mgmt. Assoc. LLC, American Self Storage Mgmt. Assoc. Inc, American Self Storage Management Associates LLC, SLD 500 LLC, Sal Cannizzaro Family Limited Partnership I now known as SDD&F LP ("SDD&F"), and SFC Enterprises, Inc. ("SFC"), each referred to herein as a "Party" and collectively referred to herein as the "Parties";

WHEREAS, disputes have arisen over the appropriateness of any distribution of proceeds from the sale of the building known as 512 West 39th Street, New York, New York;

WHEREAS, disputes have arisen over amounts allegedly due for management and other fees that are claimed due by Diamond and Del Monaco and/or their affiliates and affiliate entities;

WHEREAS, by entering into this Agreement no party hereto concedes the validity of any claim or admits to any obligation or liability other than such party's obligations as set forth in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. To settle any and all claims raised by Diamond and Del Monaco and

their related and affiliate entities for claimed management fees and legal fees in the total amount of $470,966.58 representing $371,411 in alleged management fees incurred and $99,555.58 in alleged legal fees incurred, Corem Capital Partners LLC ("Corem") agrees to a special allocation from the disbursement from Corem's share of proceeds of the payoff of the mortgage on 512 W. 39th Street, New York, New York as follows:

For the sake of Corems books and records the distribution being made pursuant to this Agreement ("Special Allocation") to its members shall be:

SDD&F	$950,000.00
Diamond Trust	$776,262.50
Del Monaco	$776,262.50

Checks shall be cut as follows:

SFC	$950,000.00
Diamond	$771,609.67
Del Monaco	$771,609.67
SLD 500 LLC	$9,305.66

2. The parties acknowledge that this Special Allocation deviates from the manner in which distributions are to be allocated as is set forth in the Corem Operating Agreement. Notwithstanding that the Special Allocation deviates from the percentage and distribution schedule set forth in the Corem Operating Agreement, it is specifically agreed that no further deviations from the distribution percentage and means specified in the Corem Operating Agreement shall be permitted unless specifically agree to in writing by all of the Managers of Corem. The parties further agree that they will take all steps as is necessary and required pursuant to the Corem Operating Agreement to ratify and approve the above Special Allocation. In addition, the parties acknowledge and agree that the Special Allocation will be deemed to satisfy all of the relevant provisions of The SFC and Corem Management Fee agreement dated on or about November 10, 2005 and November 11, 2005 and will be

reflected as payment in FULL. The parties hereby acknowledge that the Special Allocation is in full settlement and satisfaction of all claims by Diamond, Del Monaco, ASSMA (as hereinafter defined), and any entity they are affiliated with, whether made directly or indirectly, relating to management fees or legal fees due from Corem, SFC or SDD&F. There will be no more management fees of any kind including, but not limited to the Management Fee agreement referred to in this paragraph, charged to Corem, SFC, Cannizzaro or SDD&F in connection with the operation of Corem, 500 Lincoln, LLC ("Lincoln") and its related entities now or in the future, including, but not limited to, any future sale, re-leasing or refinance. Additionally, Corem's books and records will reflect that no monies are due to SFC, Cannizzaro, SDD&F, Diamond, Del Monaco, SLD 500 LLC, American Self-Storage Management Associates, LLC, American Self-Storage Mgmt. Assoc. Inc., American Self Storage Mgmt. Assoc., LLC (the prior three entities collectively "ASSMA") or any other affiliate or related entity, and no accounts payable will be reflected on Corem's books and records due to Irwin Siegel, Esq., Mr. Siegel's law firm or any other law firm. In this regard, ASSMA, Diamond and Del Monaco hereby release Corem, SDD&F, SFC and Cannizzaro, from any and all claims and cause of action of whatever kind or nature. Excepted from this provision are reasonable reimbursements that may be due to the Managers of Corem as is expressly permitted by the Corem Operating Agreement.

Notwithstanding the forgoing, should the 501 Tenth Avenue, New York, NY property be refinanced within the next ~~48~~ (WP) (12) months the balance of the ~~$169,704.08~~ $119,704.08 mangement fee shall be due and payable to ASSMA from SDD&F provided the proceeds to SDD&F from such refinance is in excess of $2,000,000.

3. Corem shall, within 7 days after the execution of this Agreement, engage the accountant hereinafter defined in this paragraph to prepare tax returns for the years 2011 and 2012 and to promptly issue K-1's to the members of Corem in accordance with the

Corem Operating Agreement as may have been modified by the September 14, 2010 agreement between John Del Monaco and SDD&F LP, successor to the Cannizzaro Family Limited Partnership I ("September 14, 2010 Agreement"). The tax returns shall be filed in a commercially reasonable time period after the accountant is retained. The parties designate Joseph Tighe from CohnReznick LLP as the accountant for Corem responsible for preparing the filings for 2011, 2012 and 2013. As will the 2011 and 2012 tax returns, the 2013 tax returns shall be filed in a commercially reasonable time period after the accountant is retained and within the current extension period. Mr. Tighe will be authorized by Corem to prepare the appropriate tax returns and any taxes due as well as the reasonable fees for the accountant's services will be paid through Corem in accordance with the Corem Operating Agreement. The parties further agree that the $400,161.00 tax allocation, as referenced in the March 31, 2010 letter of SDD&F Limited Partnership and the September 14, 2010 Agreement is accurate, and will be adjusted accordingly as part of the 2013 Corem tax filing. The parties acknowledge that Mr. Tighe is Del Monaco's and may be Diamond's personal accountant. In no event will Corem incur any expense towards the preparation of Del Monaco's and Diamond's personal tax returns.

4. SLD 500 LLC agrees to provide to SDD&F on a monthly basis, all necessary books and records containing financial information and accounts for 500 Lincoln LLC, 500 Lincoln Owner LLC, and Corem to the extent they are available to SLD 500 LLC, including, but not limited to, monthly bank statements, accounts receivable and payable reports.

5 The parties agree to sign any and all documents reasonably required by the lender or by its corporate fiduciary in connection with the loan on the assets held by 500 Lincoln LLC or 500 Lincoln Owner LLC.

6. The parties acknowledge that pursuant to a Settlement Agreement dated November 3, 2005, SLD 500 LLC was appointed by Corem as the co-manager of Lincoln designated by Corem until the death, incapacity, removal for cause or resignation of Scott Diamond. Corem shall replace SLD 500 LLC as the co-manager of Lincoln in accordance with Corem's and Lincoln's Operating Agreement.

Notwithstanding the foregoing, the parties agree that subject to the approval of Tunnel Associates, LLC, the co-managers of Lincoln representing Corem shall be SLD 500 LLCand John Del Monaco, at all times acting unanimously. If John Del Monaco or his successor shall be a co-manager of Lincoln along with SLD 500 LLC then Corem shall replace SLD 500 LLC and Del Monaco or his successor upon the death, incapacity, removal for cause or resignation of Scott Diamond.

7. The parties hereto acknowledge that even though SLD 500 LLC is to be reimbursed for its current legal expenses as set forth in paragraph 1 hereof, attorney client privilege is maintained between SLD 500 LLC, Scott Diamond and their attorney. SLD 500 LLC represents that the reimbursement obtained from this agreement satisfies its current legal expenses. Hereinafter, Corem's attorney will be unanimously agreed upon by the Managers of Corem and the cost borne by Corem.

8. INTENTIONALLY LEFT BLANK

9. To effectuate this Agreement, the parties agree to amend the Corem Operating Agreement. The parties further agree that this Agreement, once executed by all Managers and Members of Corem shall constitute the written agreement of the Managers and Members of Corem required, pursuant to Article 10, section 10.1, necessary to amend the Corem Operating Agreement. Accordingly, the Agreement is amended and modified as follows:

1.5 of the Corem Operating Agreement entitled <u>Place of Business</u> is hereby restated as follows:

1.5 <u>Place of Business</u> The principal place of business of the Company shall be located at 501 Tenth Avenue, New York, NY 10018. The managers shall give notice to the members of Corem of any change in the principal place of business. For so long as SLD 500 LLC is a co-manager of Lincoln, the mailing address of Corem shall be c/o SLD 500 LLC. Currently c/o SLD 500 LLC, 788 Shrewsbury Ave, Suite 2109, Tinton Falls, NJ 07724. The Manager(s) of SLD 500 shall give notice to the Members of Corem of any change in the mailing address of Corem. When and if SLD 500 LLC is no longer a co-manager of Lincoln the managers of Corem will agree upon a mailing address and give notice to its members.

3.1.1 (A) is restated as follows:

3.1.1 (A) The management, operation and control of the Company and its day-to-day business affairs shall vest in three (3) Managers. The Managers need not be Members of the Company. John Del Monaco designates himself as one of the Managers. The "Cannizarro Family Limited Partnership I n/k/a SDD&F LP" designates Sal Cannizarro as one of the Managers. The Diamond Trust designates SLD 500 LLC as one of the Managers.

3.1.1 (B) is restated as follows:

3.1.1 (B) Each Manager shall designate one person or entity who shall serve as a successor Manager of the Company in the place and stead of such person or entity in the event that such person or entity cannot or will not serve as a Manager of the Company. Such designation shall be made in writing and kept with the books and records of the Company as provided in Section 6.2. The designation may be changed at any time. Should there be a vacancy in Manager at any time the original delegating member (that is: John Del Monaco, SDD&F or The Diamond Trust) or their respective successor in interest shall designate a successor manager.

Any reference to "both Managers" shall be understood to mean "all Managers".

Any reference to "the other Manager" shall be understood to mean "the other Managers".

10. In accordance with the forgoing,

Manager Del Monaco names as his successor manager Maria Steinberg.

Manager Cannizzaro names as his successor manager Frank Cannizzaro.

Manager SLD 500 LLC names as its successor manager Brandon Rosen.

11. Notwithstanding anything herein to the contrary, the parties agree that the Corem Operating Agreement shall be amended and a new paragraph inserted therein to provide that: "notwithstanding anything else to the contrary contained herein, all distributions must be made timely and no distribution due and owing may be delayed or withheld for any reason unless unanimously approved in writing by all of the Managers of Corem.

12. Except as set forth herein, the parties agree that this Agreement does not modify or change the terms of the Corem Operating Agreement, dated October 30, 2002, the Settlement Agreement dated November 3, 2005 and the Agreement dated April 27, 2009.

13. This Agreement and the terms hereof may not be modified, altered or

changed unless approved in writing and signed by all of the parties hereto.

14. This Agreement may be executed by electronic or facsimile signatures and it is expressly agreed that electronic or facsimile signatures may be used as original signatures for all purposes.

15. In the event there is a legal proceeding commenced by any party hereto to enforce its rights pursuant to this Agreement, the substantially prevailing party in any such proceeding shall be entitled to recover from the other party all of its reasonable attorneys' fees, costs and expenses incurred in connection therewith.

IN WITNESS WHEREOF, the parties have hereunto signed their names as of the date first above written.

John Del Monaco

Sal Cannizzaro

Warren H. Diamond, Beneficiary
Diamond Trust

Scott Diamond, Trustee
Diamond Trust

John Del Monaco, Manager
American Self-Storage Mgmt. Assoc. LLC

Warren H. Diamond, Manager
American Self-Storage Mgmt. Assoc., LLC

John Del Monaco, Manager
American Self-Storage Mgmt. Assoc. Inc.

Warren H. Diamond, Manager
American Self-Storage Mgmt. Assoc., Inc.

Scott Diamond, Manager
SLD 500 LLC

Sal Cannizzaro, Managing Partner
SDD&F LP

Sal Cannizzaro, President
SFC Enterprises, Inc.

By: COREM CAPITAL PARTNERS LLC

By: Sal Cannizzaro, Manager

By: John Del Monaco, Manager

By: SLD 500 LLC, Manager
By: Scott Diamond, its Manager

Signature page to the 2014 Corem Settlement Agreement.

GENERAL RELEASE

For valuable consideration, the sufficiency of which is hereby acknowledged, each of the signatories hereto, and their respective predecessors, successors, heirs, assigns, agents, employees, attorneys, and representatives, as well as any entity or entities controlled by any of the signatories hereto, its administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, do hereby irrevocably and unconditionally RELEASE AND FOREVER DISCHARGE each of the other signatories hereto, and their respective predecessors, successors, heirs, assigns, agents, employees, attorneys and representatives, as well as any entity or entities controlled by any of the signatories hereto, its administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, from all liability for all claims, demands, damages, obligations, actions, causes of actions, suits, debts, sums of money, costs, expenses, fees, accounts, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, liability and any other obligations whatsoever, in law, admiralty, or equity, whether known or unknown, that he ever had, now have, or hereafter can, shall or may have, whether now or hereafter discovered, foreseen or unforeseen, arising out of or connected to or with any acts and/or omissions occurring from the beginning of the world up to and including June 18, 2014. For the avoidance of doubt, it is specifically agreed that the entities releasing and being released include but are not limited to American Self Storage Mgmt. Assoc., LLC; American Self Storage Mgmt. Assoc., Inc.; American Self Storage Management Associates LLC, SFC Enterprises, Inc.; and SLD 500 LLC. Notwithstanding the foregoing, specifically excepted from the operation of the foregoing release are claims for conversion, fraud, fraud in the inducement, and breach of fiduciary duty. Finally, the duties and obligations of the parties under the 2014 Corem Settlement Agreement dated June 18, 2014, between Warren H. Diamond, John Del Monaco, Salvatore Cannizzaro, and Scott Diamond, except as modified in this Agreement, shall not be released herewith.

Warren H. Diamond, Beneficiary
Diamond Trust and Individually

Salvatore Cannizzaro

Salvatore Cannizarro, Managing Partner
SDD&F LP

Scott Diamond, Trustee
Diamond Trust

John Del Monaco

Scott Diamond, Manager
SLD 500 LLC

John Del Monaco, Manager
American Self Storage Management Associates LLC

Warren H. Diamond, Manager
American Self Storage Management Associates LLC

John Del Monaco, Manager
American Self Storage Mgmt. Assoc. LLC

Warren H. Diamond, Manager
American Self Storage Mgmt. Assoc. LLC

John Del Monaco, Manager
American Self Storage Mgmt. Assoc. Inc.

Warren H. Diamond, Manager
American Self Storage Mgmt. Assoc. Inc

Salvatore Cannizarro, Manager
SFC Enterprises

Signature page to the June 19 2014 General Release

EXHIBIT F

For Discussion Purposes Only

TIAA

Private Placements Group

PROPOSED SUMMARY OF TERMS

8/26/2014

DHL/Deutsche Post AG

503-519 10th Avenue, 505-507 W. 38th Street, New York, New York

Amount:	Approximately $53.0 million (+/- 3%) at closing, accreting to $97 million at maturity
Purpose:	To provide additional financing on the Property – to be pari passu with existing deal
Property:	A seven-story industrial building totaling approximately 249,997 sq. ft. that serves as DHL's Manhattan trucking and distribution facility
Pricing:	4.38% zero coupon monthly~ 185 basis points over the interpolated US Treasury equal to the average life of the transaction, payable monthly
Funding:	Immediate funding of approximately $53.0 million; closing by September 2014
Lease Guarantor:	Deutsche Post AG
Lessee:	DHL Express (USA), Inc.
Lessor/Borrower:	Existing SPE
Maturity/Average Life:	-12.6 years / 12.6 years (approx.) – one year beyond the lease term -Maturity extends one year beyond lease term. RVI policy covers balloon at maturity (assumes non renewal of lease)
Maturity (Original Deal):	Term of the original transaction will be extended one year with the loan being interest only after the end of the lease term. An interest reserve will be created at closing with an amount sufficient to pay the interest only payments
Balloon Payment:	Approximately $97 million to be covered by a residual value insurance policy by Lexington Insurance, a sub of AIG
LTV:	Minimum appraised value to be $200MM, resulting in a maximum LTV at closing of 69.5% including the existing notes and an LTV at maturity of 48.5% based on today's minimum appraised value of $200MM
Debt Service Coverage:	1.05x (after trustee fees)
Lease:	- 11.5 year lease term remaining (approximately) - Triple Net Lease except for the following: - Landlord responsible for roof, structure, façade (including windows), foundation bearing walls, columns, and other items affecting the building structure - To be mitigated with existing reserve of $0.25 per sq. ft. annually in original financing - Reserve equal to operating expenses for the property and trustee fees in the year following the lease term - All other reserves from existing transaction to be in place for the additional financing

TIAA
Private Placements Group

PROPOSED SUMMARY OF TERMS
DHL/Deutsche Post AG
503-519 10th Avenue, 505-507 W. 38th Street
New York, New York

Collateral:	- First mortgage on Property - Assignment of Lease - Lien on all reserve accounts - This tranche will be pari passu and cross defaulted with the existing notes
Callable:	-Allowed at any time at the greater of 1% or a makewhole of Treasuries + 50 basis points -Prepayable at par in the last 12 months of term
Casualty/Condemnation:	Lease can be terminated due to casualty and condemnation Notes payable at par in the event of a casualty or condemnation Casualty and condemnation gap insurance to be provided at closing from an acceptable insurer rated A- or better (including Lexington Insurance (AIG))
Existing Loan:	- Existing loan to be extended by 12 months to be coterminous with the zero coupon Note - Reserve to cover interest and operating expenses in the last 12 months to be established by sweeping excess cash flow (timing of cash sweep and amounts are TBD) - The RVI policy for the zero coupon will cover the 5% uncovered balloon on the existing Note (approximately $4.5MM) and the new gap policy for the zero coupon will also cover the extension of the maturity on the existing Note
Broker:	Direct

EXHIBIT G

TIAA CREF

Teachers Insurance and Annuity Association

730 Third Avenue, New York, NY 10017

September 9, 2014

500 Lincoln, LLC
c/o Essex Capital Partners Ltd.
635 Madison Avenue
New York, NY 10022

Attn: Mitchell B. Rutter, Manager
Jacob Frydman, Manager
Scott Diamond, Manager

Re: 500 Lincoln, LLC ("Lessor" or "Borrower")
DHL Express (USA), Inc. ("Lessee")
Deutsche Post AG ("Lease Guarantor")
$53,000,000 (+/-3%) 4.38% Zero Coupon Secured Notes due 2027 accreting to $92,000,000 (+/-3%) ("Pass-Through Certificates ")

Gentlemen:

We refer to the Pass-Through Certificates dated December 10, 2010 relating to the financing provided to Borrower by Teachers Insurance and Annuity Association of America ("TIAA") in the original amount of $96,450,315 (the "Original Loan") for the Lessee's Manhattan distribution and trucking facility located at 503-519 10th Avenue, New York, NY and 505-507 West 38th Street, New York, NY (the "Property"). TIAA is pleased to inform you of its intention to acquire additional Pass-Through Certificates (the "Pass-Through Certificates") to provide additional financing for the Property. The Pass-Through Certificates have a coupon of 4.38% per annum accreting on a monthly basis to approximately $92,000,000 at maturity and are to be issued at a dollar price equal to 100% of par. The documents evidencing and securing the Original Loan (the "Original Loan Documents") will be appropriately modified at the closing of the additional financing to reflect both the Original Loan and the additional financing and, without limitation, the mortgage, assignment of lease and other documents securing the Original Loan shall be modified so that they secure the Original Loan and the additional financing, and the Original Loan and the additional financing shall be cross defaulted. Except as otherwise set forth below, the proposal will be substantially in accordance with the attached Proposed Summary of Terms (the "Summary"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Summary.

1. Conditions to Acquisition of Pass-Through Certificates:

(a) TIAA's acquisition of the Pass-Through Certificates will be contingent upon the preparation, execution and delivery of documents, in form and substance satisfactory to TIAA and to TIAA's special counsel, substantially in accordance with this letter agreement and the Summary. TIAA's acquisition of the Pass-Through Certificates will be further contingent upon the satisfactory completion of due diligence, including, without limitation, review of the executed lease, appraisal, environmental, and engineering reports; and is further contingent upon, among other things (i) the absence of any material adverse change in the business, operations, creditworthiness or financial condition of the Lessee, the Borrower, the Guarantor or any controlling member or manager of Borrower, (ii) the absence of any default by the Lessee under its Lease, and (iii) the absence of any default under the Original Loan Documents.

(b) The documents shall contain such representations and warranties, closing conditions, covenants, events of default and remedies, requirements for delivery of financial statements, evidence of authorization and opinions related to dual authorizations required by TIAA and its counsel and other information and provisions as are usual and customary in this type of transaction and as we and our special counsel may deem reasonably necessary to accomplish this transaction.

(c) Such authorization will expire if the necessary documents, as foresaid, have not been completed and signed by October 30, 2014 (the "Closing Date"), unless TIAA has extended such date in writing.

(d) Unless and until the closing of the additional financing occurs, the Original Loan and the Original Loan Documents shall continue unmodified and in full force and effect.

2. Special Counsel: Greenberg Traurig

3. Expenses: 500 Lincoln, LLC agrees to pay, or cause to pay, TIAA for all reasonable and out-of-pocket expenses incurred in connection with this transaction, including, without limitation, fees and expenses of our special counsel, local counsel, printing costs, costs of procuring a private placement number, the initial NAIC filing fee, broker's or finder's fees or commissions, appraisal, engineering and environmental reports, whether or not this transaction is consummated.

4. Confidentiality: You are in agreement that you will not make any press releases or statements mentioning or identifying TIAA as the source of financing of this transaction, and you will cause your affiliates not to disclose, to any other person (other than your partners, representatives or advisors on a need to know basis) the existence of this letter or the Summary, the identity of TIAA as a party to this letter or any information included in the attached Summary, nor will you issue or make any press announcements or press release or statement relating to same, in each case without TIAA's prior written consent.

If the foregoing properly sets forth your understanding of this transaction, please evidence acceptance of the conditions of this letter by having it executed below by a duly authorized officer of 500 Lincoln, LLC and by returning to TIAA one executed counterpart for the attention of Eleanora Gililova, Global Private Markets, along with a check payable to Teachers Insurance and Annuity Association of America in the amount of $250,000 in immediately available and good funds, as a good faith deposit and to cover estimated transaction expenses.

In the event the Pass-Through Certificates are acquired, the good faith deposit will be returned to the Borrower in its entirety.

In the event the Pass-Through Certificates are not acquired and subject to the following two sentences, if the Borrower has acted in good faith to comply with all terms and conditions set forth herein (as determined by TIAA in its reasonable discretion) and TIAA elects not to acquire the Pass-Through Certificates, the good faith deposit will be used to pay for all of TIAA's expenses and TIAA will return any remaining balance to the Borrower. In addition, if TIAA does not acquire the Pass-Through Certificates due to a material adverse change with respect to the business, operations, creditworthiness or financial condition of the Lessee, the Guarantor or the Borrower, the good faith deposit will be used to pay for all of TIAA's reasonable out-of-pocket expenses and TIAA will return any remaining balance to the Borrower. In all other circumstances, if the Pass-Through Certificates are not acquired due to the Borrower's failure to act in good faith to comply with the terms and conditions set forth herein, then TIAA shall retain the entire good faith deposit.

Furthermore, notwithstanding anything else to the contrary herein, from and after the date hereof to and including December 31, 2014 if (i) Borrower or Borrower's successor as owner of the Property obtains financing for the Property from another lender or (ii) Borrower or such successor signs any commitment with another lender to obtain such financing and TIAA has not notified Borrower in writing that it has elected not to acquire the Pass-Through Certificates , the good faith deposit will be retained by TIAA in its entirety and Borrower hereby agrees to pay or cause to be paid to TIAA an additional Make-Whole Amount (if such amount is a positive number), which shall be calculated in good faith as follows:

TIAA shall calculate the Make-Whole Amount payable as if the Pass-Through Certificates, bearing the terms set forth in the Summary, had been acquired by TIAA on the earlier of the occurrence of (i) or (ii) above and immediately thereafter prepaid in full, in accordance with standard market practices for calculating "make-whole" or yield maintenance and assuming a discount rate of U.S. Treasuries plus 50 basis points. Borrower agrees to promptly notify TIAA in writing of the occurrence of either event set forth in items (i) or (ii) in the first sentence of this paragraph, and TIAA and Borrower agree that the payment of such Make-Whole Amount represents a reasonable and appropriate approximation of the harm suffered by TIAA if either event set forth in items (i) or (ii) in the first sentence of this paragraph occurs. The good faith deposit (or portion thereof) retained by TIAA and the Make-Whole Amount paid to TIAA shall be deemed to be liquidated damages, and shall not be applied or credited to repayment of the Original Loan.

This commitment shall expire on October 30, 2014 if it has not been extended in writing by TIAA.

Upon receipt by TIAA of an executed counterpart of this letter and the check for the good faith deposit, our agreement to purchase from the Trustee and the Trustee's agreement to issue, sell and deliver the Pass-Through Certificates to us, upon the terms and conditions set forth herein, shall become a binding agreement between us. Failure to receive such counterpart and check by September 16, 2014 will constitute termination of the agreements contained herein, unless TIAA has extended such date in writing. Notwithstanding the foregoing, for the avoidance of doubt, in the event of a termination pursuant to the prior sentence, Borrower will be remain liable for the expenses of TIAA as provided above.

This letter is governed by New York State law. The parties hereto consent to the nonexclusive jurisdiction of the state and federal courts in the city, county and state of New York with respect to any suit, action, proceeding or claim arising hereunder. Each party irrevocably waives, to the fullest extent permitted by law, any objection that it may have, whether now or in the future, to the laying of venue in, or to the jurisdiction of, any and each of such courts for the purposes of any such suit, action, proceeding or claim and further waives any claim that any such suit, action, proceeding or claim has been brought in an inconvenient forum, and each party hereby submits to such jurisdiction.

500 LINCOLN LLC AND TIAA EACH IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.

Very truly yours,

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

By ______________________
Name: David Persky
Title: Managing Director

Accepted and agreed to:

500 Lincoln, LLC

By ______________________
Name: Mitchell Rutter
Title: Manager

By ______________________
Name: Jacob Frydman
Title: Manager

By ______________________
Name: Scott Diamond
Title: Manager

TIAA
Private Placements Group

PROPOSED SUMMARY OF TERMS

DHL/Deutsche Post AG
503-519 10th Avenue, 505-507 W. 38th Street, New York, New York

Amount:	Approximately $53.0 million (+/- 3%) at closing, accreting to $92 million at maturity
Purpose:	To provide additional financing on the Property – to be pari passu with existing deal
Property:	A seven-story industrial building totaling approximately 249,997 sq. ft. that serves as DHL's Manhattan trucking and distribution facility
Pricing:	4.38% zero coupon monthly
Funding:	Immediate funding of approximately $53.0 million; closing by September- October 2014
Lease Guarantor:	Deutsche Post AG
Lessee:	DHL Express (USA), Inc.
Lessor/Borrower:	Existing SPE
Maturity/Average Life:	-12.6 years / 12.6 years (approx.) – one year beyond the lease term -Maturity extends one year beyond lease term. RVI policy covers balloon at maturity (assumes non renewal of lease)
Maturity (Original Deal):	Term of the original transaction will be extended one year with the loan being interest only after the end of the lease term. An interest reserve will be created at closing (and/or from excess cash flow retained through initial lease term) with an amount sufficient to pay the interest only payments
Balloon Payment:	Approximately $97 million to be covered by a residual value insurance policy by Lexington Insurance, a sub of AIG
LTV:	Minimum appraised value to be $200MM
Debt Service Coverage:	1.05x (after trustee fees)
Lease:	- 11.5 year lease term remaining (approximately) - Triple Net Lease except for the following: - Landlord responsible for roof, structure, façade (including windows), foundation bearing walls, columns, and other items affecting the building structure - To be mitigated with existing reserve of $0.25 per sq. ft. annually in original financing (and any other amounts as may be required by updated engineering report) - Reserve equal to operating expenses for the property and trustee fees in the year following the lease term - All other reserves from existing transaction to be in place for the additional financing

TIAA

Private Placements Group

PROPOSED SUMMARY OF TERMS

DHL/Deutsche Post AG

503-519 10th Avenue, 505-507 W. 38th Street

New York, New York

Collateral:	- First mortgage on Property - Assignment of Lease - Lien on all reserve accounts - This tranche will be pari passu and cross defaulted with the existing notes
Callable:	-Allowed at any time at the greater of 1% or a makewhole of Treasuries + 50 basis points -Prepayable at par in the last 12 months of term
Casualty/Condemnation:	Lease can be terminated due to casualty and condemnation Notes payable at par in the event of a casualty or condemnation Casualty and condemnation gap insurance to be provided at closing from an acceptable insurer rated A- or better (including Lexington Insurance (AIG))
Existing Loan:	- Existing loan to be extended by 12 months to be coterminous with the zero coupon Note - Reserve to cover interest and operating expenses in the last 12 months to be established - The RVI policy for the zero coupon will cover the 5% uncovered balloon on the existing Note (approximately $4.5MM) and the new gap policy for the zero coupon will also cover the extension of the maturity on the existing Note
Broker:	Direct

EXHIBIT H

From: Jacob Frydman
To: "Scott Diamond"
Cc: "Mitchell B. Rutter"
Subject: KTR
Date: Tuesday, August 26, 2014 5:46:00 PM

Scott:

I just received a call from Terry Tanner at K TR. He has been contacted by Teachers insurance and expected the retainer letter back today in order to meet their deadline.

I just called you to get your approval, but apparently on the tennis court and not able to address this till tomorrow. I'm traveling tomorrow not available until after Labor Day. If you're unable to speak now I must make an executive decision without you.

Given the urgency of this matter I am going to move forward and sign off on behalf of 500 Lincoln LLC on the K TR appraisal.

I assume that will meet with your approval. So that you have ample opportunity to voice your opposition, I will withhold sending this to Terry for the next half hour. If I do not hear back from you in the next half hour I will assume that you are in consent.

I have Mitch's consent.

Thank you,

Jacob Frydman
Chairman, CEO

UNITED REALTY GROUP OF COMPANIES
60 Broad Street, 34th Floor | New York, NY 10005
Direct: 212-388-6880 | Main: 212-388-6800
Mobile: 917-578-3800 | Fax: 212-388-6811
Jacob.F@URPA.com

EXHIBIT I

From: Warrenhdiamond
To: Jacob Frydman
Subject: Loan Meeting
Date: Sunday, August 31, 2014 4:01:48 PM

Jacob
In an effort to resolve the differences that the parties have with regard to the proposed loan and any changes or modifications in our existing agreements, which need to be addressed prior to closing, will you please come to our offices in NJ at your convenience. Please set something up with Scott and we will try to make it work.
Thank You
Sincerely
Warren

Warren Diamond
American Real Estate Mgmt
788 Shrewsbury Ave
Suite 105
Tinton Falls, NJ 07724

Cell: 732-245-9300
Office: 732-741-0707
Fax: 732-741-0505

EXHIBIT J

SLD 500 LLC
788 Shrewsbury Avenue
Suite 105
Tinton Falls, NJ 07724

September 15, 2014

Mr. Jacob Frydman
44 Wall Street
New York, NY 10005

Mr. Mitchell B. Rutter
635 Madison Avenue, Suite 1300
New York, NY 10022

Re: 500 Lincoln, Additional Financing from TIAA-CREF

Dear Jacob and Mitch:

As a Manager of 500 Lincoln, LLC, I write to advise I will agree to the payment of the $250,000.00 good faith deposit required by the commitment letter dated September 9, 2014, received from TIAA-CREF on the following conditions:

1. The provisions of Paragraph 8 of the Settlement Agreement dated December 12, 2012 shall not apply to the transaction contemplated by the commitment letter; and

2. My agreement to go forward with funding the good faith deposit at this time, shall not be construed as an agreement to enter into or close the transaction itself. I have a number of reservations about the transaction, and certain issues which must be resolved prior to the closing. While I anticipate that my concerns will be alleviated and the closing will take place, I wanted to make my position clear at the outset, so that there is no question of liability in the event we cannot reach agreement.

Please note that while Warren Diamond is not a Manager of 500 Lincoln, I am sending this to him for his signature as well, since it concerns, in part, the December 12, 2012 Settlement Agreement to which he is a signatory.

If the foregoing is acceptable to you, please sign below and e-mail or fax this back to me. An e-mailed or faxed signature shall be deemed an original for all purposes.

Thank you.

Very truly yours,

SLD 500 LLC

By: Scott L. Diamond

The Foregoing is Consented
And Agreed to:

TUNNEL ASSOCIATES, LLC

By: ______________________________
Mitchell B. Rutter

By: ______________________________
Jacob Frydman

____
Warren Diamond

EXHIBIT K

On September 14, 2014, Warren Diamond, in violation of the Agreement wrote to Jacob Frydman stating:

Jacob
It would be magnanimous of you if the money that Tunnel received to incentivize them to sell the little building was given to a charity of SCOTT'S or MY choice. Corem also gave 100 k to Eric Birnbaum which we were not reimbursed for. We would like that amount also to be donated by you to one of our charities. Jacob you will get recognition for the donations as well. Scott and I worked very hard to get that deal done , as did you and Mitch. But we paid a penalty.
We are looking at 200,000 dollars that is being asked for and we will MATCH it.
How wonderful is that!!!! I'm sure you will concur.
You guys could be the brightest people, with the most creative minds I have come across in my many years in the business. Please make this happen and let's move forward together. Thank You!!!
Sincerely

Warren Diamond
American Real Estate Mgmt
788 Shrewsbury Ave
Suite 105
Tinton Falls, NJ 07724

EXHIBIT L

From: Warrenhdiamond [mailto:warrenhdiamond@aol.com]
Sent: Friday, September 19, 2014 10:57 AM
To: Jacob Frydman
Cc: Scott Diamond
Subject: Mortgage

Jacob
We were hoping for a response to my email that was sent to you other day about being charitable. We know that you spoke to Mitch about it.
Your silence does speak volumes.

As far as the mortgage goes Scott and I think it's to expensive. Scott said he is going to make one last attempt to resolve this issue with you directly. If you are serious about getting the mortgage my strong suggestion to you is not to wait until the last minute and resolve this with him. Otherwise, your opportunity to get your hands on this money will be squandered. That I am very sure of.
I wish you the best of luck in resolving this with Scott.
Sincerely

Warren Diamond
American Real Estate Mgmt
788 Shrewsbury Ave
Suite 105
Tinton Falls, NJ 07724

Cell: 732-245-9300
Office: 732-741-0707
Fax: 732-741-0505

EXHIBIT M

STRICTLY PRIVATE & CONFIDENTIAL

Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020

Tel 212 610 6300
Fax 212 610 6399

500 Lincoln, LLC
c/o Essex Capital Partners Ltd.
635 Madison Avenue
New York, NY 10022
Attention: Mitchell B. Rutter
Jacob Frydman; and
Scott Diamond

Our ref SSE/0091949-0000001 NY:20323059.2

September 16, 2014

Financing of 503-519 10th Avenue and 505-507 West 38th Street, New York, New York (the **Property**)

Gentlemen,

I am writing to you on behalf of Allen & Overy LLP to confirm the terms and conditions upon which we will act for 500 Lincoln, LLC (**Company**) in relation to the modification of the existing USD 96,450,315 financing (the **Original Loan**) made to 500 Lincoln Owner LLC (**Borrower**) and to the origination of the additional USD 92,000,000 financing (the **Additional Loan**; together with the Original Loan, collectively, the **Loan**) to be provided to Borrower with respect to the Property (the **Transaction**).

We confirm that we have no conflict in acting for the Company on the Transaction. Our terms of engagement in respect of the Transaction will be governed by this letter and its appendices, subject to any specific amendments that we may agree with you in writing.

Unless otherwise defined, or the context requires otherwise, words defined or given a particular construction in Appendix 1 (the **General Terms and Conditions**) have the same meaning when used in this letter.

1. Our team

I will lead and be responsible for supervising the Transaction. The core members of our US team will be Kevin O'Shea (US Real Estate Finance Partner), Yaakov Sheinfeld (US Real Estate Finance Associate) and other partners, associates, trainees and paralegals, as required. You will, of course, have access to any other specialists within the firm that may be required.

2. Scope of our work

For the purposes of this letter, we have assumed that our work will involve:

(a) negotiating and finalising the term sheet for the Transaction (the **Term Sheet**);

(b) negotiating and finalising a New York law loan agreement (the **Facility Agreement**) and other customary, market-standard loan and security documents relating to the Loan, including, without limitation, a note, mortgage, environmental indemnity agreement, non-recourse carveout guaranty, assignment of leases and rents, deposit account control agreement, etc.);

(c) drafting and negotiating customary New York and Delaware law opinions to be provided by us as counsel for Borrower and the relevant Borrower consents and certifications necessary to provide such opinions;

(d) collating, reviewing and negotiating relevant conditions precedent documents; and

(e) attending to the signing and closing of the Facility Agreement and the associated security documents (together the **Transaction Documents**).

3. Fees

Subject to the assumptions set out in paragraph 4 below, our fees for the work described under paragraph 2 above shall be capped at USD 85,000. Any additional work beyond that described under paragraph 2 above or contrary to the assumptions set out in paragraph 4 below shall be at the standard hourly rates for the lawyers performing any such work.

4. Assumptions

Our assumptions in providing the fee cap set out above are as follows:

(a) our scope of work is as set out under paragraph 2 above;

(b) the terms of the Transaction are substantially as set out in the email sent to us by you on September 11, 2014;

(c) no legal due diligence exercise will be necessary on the Company, Borrower or the Property;

(d) there will be no protracted negotiations in relation to the Term Sheet or the Transaction Documents;

(e) there will be no material negotiations with any tenant at the Property and such tenant(s) will provide the documentation required in connection with the Facility Agreement without condition or delay and on substantially the forms provided in connection with the Original Loan;

(f) the members of the Company will provide unified guidance and direction with respect to matters affecting it and/or the Borrower in connection with the Transaction and will provide organizational documents clearly establishing the authorized representatives of the Company and Borrower with respect to the Transaction;

(g) the Transaction Documents will not contain any unusual provisions, will be on substantially the same form as the documents for the Original Loan and will otherwise be substantially based on customary US practice for large real estate loan originations in the New York market;

(h) the Transaction will be completed within three months from the date of this letter;

(i) no specialty opinions will be required in connection with the Transaction;

(j) no advice will be required on structuring or tax issues in connection with the Transaction;

(k) fee earners will not be required to travel outside of their respective home offices;

(l) we will not be required to negotiate or review any security or other transaction documents, other than the Transaction Documents;

(m) we will not be required to negotiate, review or satisfy the conditions precedent to any insurance policies required in connection with the Transaction (including any residual value insurance policies); and

(n) the Company and Borrower will provide all relevant comments and conditions precedent documents in a timely and orderly manner.

5. Invoicing

We will invoice you in USD at or prior to funding of the Additional Loan. Our Fees will be paid directly at funding and netted out of the proceeds provided to Borrower. Any queries on any invoice should be raised with me as soon as reasonably practicable.

6. Disbursements

Paragraph 3 above sets out the fees we charge for professional work done by us. Our requirements as regards other charges (the **Disbursements**) are set out in Appendix 2 to this letter, which forms part of this letter.

We do not normally provide copies of receipts or records of the Disbursements. However, you may request copies of such items upon prior reasonable written notice.

7. General Terms and Conditions

In Appendix 1 to this letter, I attach our General Terms and Conditions which form part of this letter. To the extent that the terms of this letter (or any subsequent amendments to the terms set out in this letter as may be agreed from time to time) are inconsistent with the terms of the General Terms and Conditions, the terms of this letter (or any subsequent amendments) shall prevail.

8. General

Although we will endeavour to keep you informed as soon as possible of any information of which you should be aware, should you wish to make any enquiries relating to the progress of the Transaction, then please do not hesitate to contact me or any of my partners.

I hope that you will find the contents of this letter to be satisfactory. If so, I should be grateful if you could counter-sign and return to us the enclosed duplicate copy of this letter in order to indicate your acknowledgement of and agreement with the terms set out above and in the accompanying appendices; in the meantime, your continued instructions will constitute such acknowledgement and agreement.

I hope that by sending this letter to you I have clearly stated how your work will be handled on a day-to-day basis and our terms of engagement. However, if you have any queries, please do not hesitate to contact me as your relationship partner.

I am very much looking forward to working with you and your colleagues.

Yours sincerely,

Kevin J. O'Shea
Partner
For and on behalf of Allen & Overy LLP

The appointment of Allen & Overy LLP on the above terms is agreed.

For **500 Lincoln, LLC**

By: Scott Diamond, ~~co~~manager, SLD 500 LLC, comanager

By: Mitchell Rutter, comanager

By: Jacob Frydman, comanager

By countersigning this letter, Borrower hereby acknowledge and agree to pay our professional fees in accordance with the attached terms.

Acknowledged by:

For **500 Lincoln Owner LLC**

By: Scott Diamond, ~~co~~manager, SLD 500 LLC, comanager

By: Mitchell Rutter, comanager

By: Jacob Frydman, comanager

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APPENDIX 1

ALLEN & OVERY LLP GENERAL TERMS AND CONDITIONS

1. Definitions

Unless the context otherwise requires:

A&O Group means Allen & Overy LLP and other undertakings which are authorised to carry the name **Allen & Overy**, each such undertaking being an **A&O Entity**;

Allen & Overy LLP is a limited liability partnership incorporated in England and Wales with registered number OC 306763 and registered office at One Bishops Square, London E1 6AD;

Partner is a title referring to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications, or an individual with equivalent status in another A&O Entity. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is available for inspection at One Bishops Square, London E1 6AD;

Relationship Partner means the Partner identified as such from time to time. If no Partner has been identified as such, the Relationship Partner for a particular matter will be the Partner responsible for the overall supervision of that matter; and

we, us and **our** refer to the A&O Entity providing services on a particular matter; and **you, yourself** and **your** refer to the person or entity receiving those services.

2. Application and interpretation

2.1 These terms will apply to our work for you except to the extent that we agree, or have agreed, different terms with you.

2.2 Nothing in these terms will apply to the extent that their enforcement would result in a breach of applicable law or regulations.

2.3 Each provision of these terms will be enforceable independently of each of the others and validity of each provision will not be affected if any of the others are invalid.

3. Your relationship with the A&O Group

3.1 The A&O Group is not a legal entity or a partnership and does not itself provide legal services. Legal services are provided by individual A&O Entities, each of which is a separate and distinct business, and some of which are limited liability undertakings.

3.2 Unless agreed otherwise, services from a particular jurisdiction will be provided by the A&O Entity practising in that jurisdiction. The lawyer-client relationship in respect of such advice will be between you and the relevant A&O Entity and the retainer will be on these terms. For this purpose, you authorise any A&O Entity to instruct any other A&O Entity on your behalf. If at any time you would like the name of the A&O Entity providing services from a particular jurisdiction, this will be available from the Relationship Partner or on our website at www.allenovery.com/regulatory.

3.3 We will not be responsible for advising you on non-legal matters, and you will be responsible for deciding whether documents or advice prepared or reviewed by us meet your commercial objectives. We are not responsible for the accuracy of any computer models, algorithms or for any formulae in the documentation.

3.4 We reserve the right not to send any of our Partners, staff or consultants to any location where we believe there is a risk to their personal safety.

4. Our team

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We will use fee-earners at appropriate levels of seniority for the work concerned. We will try to avoid changing any members of our team but, if this cannot be avoided, we will inform you promptly of any such change. The final decision as to which fee-earner carries out a piece of work will, however, be taken by a partner of Allen & Overy LLP.

5. Fees

5.1 Please note the following important information about our hourly rates:

(a) The rates are exclusive of VAT and similar taxes (if any) and disbursements, which will be charged in addition.

(b) The rates will apply to work carried out between the date of this letter and 30 April 2015. The rates are subject to annual review and we will tell you at the relevant time if there is a change to applicable rates.

(c) We will charge at our agreed hourly rates, except for work performed by lawyers in our Tax, Derivatives and Employment and Benefits groups, which will be charged at premium rates. With your agreement, we may also charge our premium rates in other circumstances, depending on, for example, the urgency and complexity of the work involved.

(d) Unless otherwise agreed in writing, the rates apply to work carried out by our lawyers based in our offices in the United States. Work performed by other offices will be charged at the applicable standard international rate for the office concerned. We will let you know these rates if requested or relevant.

6. Invoicing

6.1 Invoices shall be paid in the currency stated in the invoice in immediately available and freely convertible and transferable funds and without set-off, counterclaim or (save as required by law) any other withholding or deduction of taxes or duties. If any withholding or deduction is required by law, the amount of each invoice shall be treated as increased to the extent necessary to ensure that, after any such withholding or deduction, a net sum equal to the amount of the invoice is received.

6.2 Any money provided by you on account of fees, costs and disbursements shall be offset against any invoices that become due.

6.3 Our invoices are payable within 30 days of their submission, failing which we may exercise our right to stop acting under paragraph 13 (Termination). You will also remain liable to pay our fees even if a third party agrees to pay them. If you have any questions concerning part of one of our invoices, this will not delay payment of the balance.

6.4 If any tax or amounts in respect of tax must be deducted (other than applicable withholding tax for which a tax withholding certificate is provided to us), or other deductions must be made, from any amounts payable to us, you will pay such additional amounts as may be necessary to ensure that we receive a net amount equal to the full amount we would have received had payment not been made subject to tax or any other deduction.

7. Documents and document storage

7.1 We will retain copyright in all documents we draft and produce in relation to any matter (and, subject to our duties of confidentiality to you, may therefore use the intellectual property rights in the documents as the basis for advising on other matters) but you will have an unlimited licence to use those documents for your own purposes.

7.2 In some circumstances, in particular, if you have not paid all of our invoices, we may have the right to keep documents that belong to you even if you ask us to return or destroy them.

7.3 We may destroy documents relating to a matter when we consider that we do not need to keep them, failing which we reserve the right to charge for our storage costs. Subject to paragraph 7.2 and to applicable laws or regulations, we will also destroy documents before this time if you instruct us to do so. However we reserve the right to keep documents belonging to us, and cannot guarantee that we can erase all electronic documents (including those on back-up tape).

8. Liability

8.1 Without prejudice to your right to bring a claim against the A&O Entity providing the relevant services, you agree, to the extent such agreement is enforceable under applicable laws and regulation, that there is no assumption of a personal duty of care by, and you will not bring any claim against, any Partner or other member, shareholder or employee of or consultant to any A&O Entity.

8.2 If we and another party are liable to you in respect of the same loss, our liability will not increase by reason of any limitation of liability that you have agreed with that party, or your inability to recover from that party (e.g. because of its insolvency), beyond what it would have been if no such limitation been agreed and if that other party had paid its share in full.

8.3 Our services are for your benefit and may not be used or relied upon by anyone else without our prior written consent. Nor can we accept liability for the acts or omissions of any third party we may instruct on your behalf or for the default of any financial institution with whom we deposit money on your behalf.

9. Concerns, jurisdiction and governing law

9.1 This matter and our retainer on any matter (including any non-contractual obligations arising out of or in connection with this agreement or our retainer on any matter) will be governed by and construed in accordance with English law.

9.2 If you have any concerns about our services, please contact the partner responsible for the matter, the Relationship Partner or our Regional Managing Partner for the United States, David Krischer. If this does not lead to a solution, you and we will try to resolve disputes through an alternative dispute resolution (**ADR**) procedure recommended (at either party's written request, if not otherwise agreed) by the Centre for Effective Dispute Resolution. If the dispute is not resolved within 45 days of an agreement or request to use ADR, either party may begin legal proceedings.

9.3 Subject to paragraph 9.2, the English courts shall have exclusive jurisdiction to determine any dispute or claim which may arise out of or in connection with this letter or our retainer on any matter (including a dispute relating to any non-contractual obligations arising out of or in connection with this matter or our retainer on any matter).

10. Electronic communications

We may communicate with you electronically (including through our newchange dealroom or similar system). You accept the risks involved in such communication, except in the case of our gross negligence or wilful default. We may also monitor communications in order to establish facts, to determine that communications using our systems are relevant to our business or to comply with applicable laws or regulations.

11. Conflicts/relationships with other clients

11.1 Under legal and professional rules, we may have to stop acting for you if there is a conflict between our duties to you and to other clients, or between our interests and your interests. As it is difficult for us to anticipate all situations which you might perceive to involve such a conflict, please notify us promptly if you consider there may be a potential conflict.

11.2 Subject to our compliance with the professional rules which regulate our conduct as lawyers, we should not be prevented or restricted by virtue of our relationship with you from advising other clients, including clients whose interests may be adverse to your own and companies that you might wish to acquire.

12. Confidentiality

12.1 We will treat any information obtained from you that is not in the public domain as confidential. However, we may sometimes have to disclose information to regulatory authorities or under rules of law or professional conduct. If so, we would (where permissible and practicable) inform you of the request or requirement to disclose.

12.2 We will not use information which is confidential to you for the advantage of, or, subject to paragraph 12.1, disclose such information to, any third party. In the same way, you acknowledge that we will not use confidential information obtained from any other party for your advantage or disclose such information to you, even if it is relevant to a matter.

12.3 We may sometimes outsource support services such as word processing, translation and photocopying, on the basis that our suppliers have agreed or will agree to keep any information they receive from us confidential. We may also discuss your affairs with your other advisers on a matter.

12.4 This paragraph 12 will not prohibit A&O Entities sharing confidential information with each other. However, you should not assume that information you provide to a person working on one matter will be communicated to a person working on another matter. You should therefore provide all information that has a bearing on a matter direct to the relevant team.

13. Termination

Our retainer for a matter will terminate upon delivery of our final invoice. Otherwise, you may terminate our retainer on any or all matters by written notice at any time. We may do so if we have good reason (such as delay in payment of our fees) and upon reasonable notice. In either case, you will pay our fees and other charges up to the time of termination.

14. Anti-money laundering laws

Under anti-money laundering laws, we may need formal evidence of your identity before we can act. We must also report suspicions of money laundering activity to our Money Laundering Reporting Officer or to the relevant external authorities, or both. We may have to stop work on a matter and may not be allowed to tell you if we make such a report. We will not be liable to you for the consequences of any such report made in good faith.

15. Miscellaneous

Please see our website at www.allenovery.com/regulatory for further information about our complaints procedure, our position in relation to the provision of financial services, including insurance mediation, and how we hold and process personal data.

APPENDIX 2

DISBURSEMENTS

16. We do not charge for the use of meeting rooms, word processing or normal secretarial work or for domestic telephone calls (other than dial-in conference calls arranged through an external supplier) or postage.

17. We currently charge for meals provided in our conference suites, international telephone calls, mobile telephone calls, video conference calls, courier services and all facsimile transmissions, in each case at rates designed to recover our costs.

18. We currently charge a flat rate of US$0.30 per sheet for standard A4 internal printing, including internal drafts and photocopying. Rates for non-standard internal printing are available on request.

19. All other expenses that we incur on your behalf, (including but not limited to courier charges, overtime payments to secretarial staff working on the engagement, dial-in conference calls arranged through an external supplier, and fees for the use of online services such as Lexis Nexis and Westlaw), will be charged at cost. The provision of a data room, should we not be able to provide for the data room within our office, will be charged at cost. To the extent that we use our document checkers in London to review and check documentation, we will charge the prevailing London hourly rates (as converted into the invoiced currency) for such document checkers, the current hourly rate for such document checkers is £90 per hour.

20. Travel and accommodation expenses that we incur in respect of the Transaction will be charged at cost. Travel and accommodation will be at a business class standard. If we incur travel expenses on behalf of more than one client, we will only charge you your proportionate share.

EXHIBIT N

From: Warrenhdiamond
To: yaakov.sheinfeld@allenovery.com
Cc: yaakov.sheinfeld@allenovery.com; Kevin.OShea@allenovery.com; Mitchell B. Rutter; Jacob Frydman; Sal Cannizzaro; JOHN@AMERICANSELFSTORAGE.COM; Scott Diamond
Subject: Re: 500 Lincoln - AO Comments to Commitment Letter dated 9-9-14 (0091949-0000001)
Date: Monday, September 22, 2014 3:58:20 PM

Yaakov and Kevin
What are you doing?
We advised you pens down on this deal.
If this goes forward it will be difficult for us to use your firm for this closing or anything else in the future. It appears you take orders from one side only.
I am going to advise Scott based on your actions to look for other counsel.
Perhaps you have now been engaged by Tunnel now? If so tell us because Scott will not pay for your services.
This is a serious matter and if not rectified immediately ethics complaints may be filed. Please guide yourself accordingly.

Warren Diamond
Consultant SLD 500
American Real Estate Mgmt
788 Shrewsbury Ave
Suite 105
Tinton Falls, NJ 07724

Cell: 732-245-9300
Office: 732-741-0707
Fax: 732-741-0505

On Sep 22, 2014, at 3:35 PM, Scott Diamond <scott@selfstoragenj.com> wrote:

> Yaakov,
>
> Respectfully, I'm confused. Why are you working on this when you were told to stop?
>
> --Scott DIamond
>
> On Mon, Sep 22, 2014 at 2:53 PM, <Yaakov.Sheinfeld@allenovery.com> wrote:
>
>> Attached please find our comments to the commitment letter, which we will be sending out to TIAA's counsel at 4PM absent any additional comments from the client group.
>>
>> Yaakov
>>
>> **Yaakov Sheinfeld | Associate**
>>
>> **Allen & Overy LLP**
>>
>> 1221 Avenue of the Americas | New York | New York 10020
>>
>> Direct +1 646 344 6812 | Tel +1 212 610 6300
>>
>> Fax +1 212 610 6399
>>
>> www.allenovery.com
>>
>> **Annual Review 2014** – Ideas that change business

The foregoing e-mail may contain US tax advice. If so, please read the following carefully:

Unless otherwise expressly stated in the foregoing message, this advice was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding US federal tax-related penalties that may be imposed with respect to the matters addressed. Some of this advice may have been written to support the promotion or marketing of the transactions or matters addressed to persons other than our client. For such advice, be advised that the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed and if you are a person other than our client, you should seek advice based on your particular circumstances from an independent tax advisor. In addition, unless expressly stated to the contrary in the foregoing message, nothing herein shall be construed to impose a limitation on disclosure by any person of the tax treatment or tax structure of any transaction that is addressed herein.

Allen & Overy LLP
1221 Avenue of the Americas
New York, New York 10020
Tel: 212 610 6300
Fax: 212 610 6399
http://www.allenovery.com

EXHIBIT O

MODIFICATION AGREEMENT

This Modification Agreement ("Modification Agreement") is made and entered into as of this ____ day of October, 2014, by and between (i) TUNNEL ASSOCIATES, LLC ("Tunnel"), a New York limited liability company, (ii) SLD 500, LLC, a New York limited liability company, ("SLD 500 LLC"), (iii) Scott Diamond, (iv) Mitchell Rutter ("Rutter"), (v) Jacob Frydman ("Frydman"), and (vi) Warren Diamond.

RECITALS

WHEREAS, the parties hereto have entered into an Agreement ("Agreement") dated December 12, 2012; and

WHEREAS, the parties now wish to modify and amend their said Agreement;

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

1. All defined terms used herein shall have the meaning ascribed thereto in the Agreement, unless otherwise defined herein.

2. Paragraph 2 of the Agreement shall be amended to read as follows:

Management of 500 Lincoln and 500 Tenth:

(a) The Parties agree and acknowledge that SLD 500, LLC, an entity wholly owned by Scott Diamond and of which Scott Diamond is the sole control person, shall replace the co-manager of 500 Lincoln previously designated by Corem to act as co-manager of 500 Lincoln and 500 Tenth, except as otherwise set forth herein, and from this date forward the two co-managers of 500 Lincoln and 500 Tenth are Tunnel and SLD 500 LLC. The same shall automatically take effect, without the need for any additional documentation.

(b) Scott Diamond hereby represents and warrants and agrees and covenants to Tunnel, Frydman and Rutter that: (i) SLD 500 LLC was formed by him solely to act as a co-manager of 500 Lincoln and 500 Tenth (and if acceptable to Corem, Corem) and for no other purpose; (ii) that on the date hereof SLD 500 LLC is a co-manager of Corem; (iii) that Scott Diamond owns 100% of the membership or other ownership interests in SLD 500 LLC; (iv) that Scott Diamond is the sole manager or sole managing member of SLD 500 LLC; (v) that so long as 500 Owner, 500 Lincoln or 500 Tenth or any other entity in which Tunnel, Frydman or Rutter have any direct or indirect interest, owns the Property or any interest in the Property, Scott Diamond shall not: (a) sell or otherwise transfer more than 49% of any interests in SLD 500 LLC; (b) permit any other person to own any membership or other interest in SLD 500 LLC, except for Faith Diamond; (c) except for Faith Diamond, or as otherwise set forth herein, permit any other person to be a manager or managing member of SLD 500 LLC or otherwise have the ability to control or take any action on behalf of or otherwise cause SLD 500 LLC to act or refrain from acting on any matter whatsoever.

(c) Provided that Scott Diamond or his heirs continue to own 51% of the membership interests in SLD 500 LLC; Scott Diamond and/or his successor in interest, may designate his successor as manager of SLD 500 LLC, to act as co-manager of 500 Lincoln and 500 Tenth, such designation to take effect only upon the death, resignation, permanent disability or incapacity of Scott Diamond, by making such designation in writing and by providing written notice to Tunnel, Frydman and Rutter, provided, however, that so long as Rutter or Frydman or any of their Affiliates have a direct or indirect interest in Tunnel, 500 Tenth, 500 Lincoln, and/or 500 Owner, Warren Diamond shall not be designated as a successor manager of SLD 500 LLC.

(d) The Parties herein acknowledge that the Property shall, going forward, be self-managed by the two co-managers of 500 Lincoln pursuant to the terms of this Agreement, unless otherwise agreed in writing, and any prior agreement to cause the Property to be managed by a third party manager is hereby waived.

(e) The Parties herein acknowledge that Scott Diamond and SLD 500 LLC has heretofore utilized the services of Warren Diamond as a consultant, and agree that upon invitation or request of Scott Diamond, Warren Diamond may attend meetings, make telephone calls or otherwise represent Scott Diamond and SLD 500 LLC in Scott Diamond's discretion.

3. The definition of "Installments" as set forth in Paragraph 5 (a) (ii) of the Agreement is hereby modified to read as follows:

> "**Installments**" means, with respect to the commission payable to the broker entitled to same resulting from an Acceptable Ground Lease, *subject to FIRST* applying all lease payments paid under the Acceptable Ground Lease not to exceed $94,000,0000 to repayment of any unpaid principal balance and interest due under any mortgage loan secured by the Property, the assignment to such broker of 100% of all lease payments paid under the Acceptable Ground Lease until payment in full of the commission, as well as payment of any transfer taxes due by the Lessor.

4. The Parties agree that Par. 4 (e) of the Agreement is limited to Property, General Liability and Umbrella Liability Insurance.

5. Paragraph 8 of the Agreement is hereby modified to add the following sentence:

The Parties understand that under no circumstances shall a capital call notice be sent to cover the payment of any monthly mortgage payment unless agreed to by all the managers.

6. Paragraph 9 of the Agreement is hereby modified to read as follows:

<u>Agreement not to Invoke Buy-Sell</u>. Frydman and Rutter, as the sole managers of Tunnel (and their successors as the sole managers of Tunnel) or as members of Tunnel hereby represent and warrant to Scott Diamond, **Corem and SLD 500 LLC,** and agree and covenant that: (i) they have not heretofore taken any action which would cause Tunnel to initiate the Buy-Sell Agreement; and (ii) they will not hereafter ever take any action which will cause Tunnel to initiate the Buy-Sell Agreement; Scott Diamond hereby represents and warrants to Frydman, Rutter and Tunnel, and agrees and covenants that: (i) the members and managers of Corem have not heretofore taken any action which would cause Corem to initiate the Buy-Sell Agreement; and (ii) he or any of his successors as managers or members of Corem will not hereafter ever take any action which will cause Corem to initiate the Buy-Sell Agreement.

7. Paragraph 17 (b) of the Agreement is modified to read as follows:

(b) Liquidated Damages. The Parties agree that in the event of a breach by a Party of any covenant contained in this Agreement, actual damages would difficult or impossible to ascertain, and that therefore, an occurrence which may be considered a breach of any covenant contained in this Agreement shall require the imposition of a liquidated damage award in favor of the non-breaching Party in the amount of two hundred fifty thousand dollars ($250,000) per breaching Party, which the Parties agree is not a penalty, and which represents a reasonable liquidated damage.

8. The Parties agree that at the closing of the contemplated loan with Teachers for $93,000,000, ("Loan") SLD 500 LLC shall receive the sum of $200,000 from Tunnel for services rendered. Additionally, at closing, the Diamond Trust shall receive from proceeds the sum representing its share of monies paid for RVI Insurance, but not less than $720,000.00. In the event the RVI Insurance is later refunded by DHL, The Diamond Trust shall not share in any such refund, having already been paid.

9. The Parties agree to pay the firm of Brief Carmen & Kleiman, LLP, the sum of Ten Thousand ($10,000.00) to review the Loan and to facilitate the closing. The Parties further agree to pay Brief Carmen & Kleiman, LLP the sum of $5,000.00 for preparing the instant Amendment Agreement, both sums to be paid at the closing of the Loan. The Parties hereto acknowledge that Brief Carmen & Kleiman LLP has heretofore represented and continues to represent SLD 500 LLC, Scott Diamond, Warren Diamond and the Diamond Trust, and the Parties agree to waive any conflict, and that attorney client confidentiality and privilege shall continue to be maintained between Brief Carmen & Kleiman, LLP, and Scott Diamond, SLD 500 LLC, Warren Diamond and the Diamond Trust for all purposes.

10. For valuable consideration, the sufficiency of which is hereby acknowledged, each of the signatories hereto, and their respective predecessors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, do hereby irrevocably and unconditionally RELEASE AND FOREVER DISCHARGE each of the other signatories hereto, and their respective heirs, predecessors, successors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns, from all liability for all claims, demands, damages, obligations, actions, and causes of action, whether known or unknown, whether now or hereafter discovered, foreseen

or unforeseen, arising out of or connected to or with any acts and/or omissions occurring from the beginning of the world up to and including the date hereof. This Release, however, shall not apply to any new controversies, causes of action, actions, proceedings, claims, suits, arbitrations, damages, judgments, liabilities, or losses that may arise subsequent to the execution of this Modification Agreement, including but not limited to any claims for breach of this Modification Agreement, except that the signatories hereto and their respective predecessors, administrators, officers, directors, managers, shareholders, members, constituents, subsidiaries, affiliates, insurers, employees, attorneys, representatives, agents, owners, and all of their respective successors and assigns expressly disclaim all and any claim other than a claim for breach of contract, including but not limited to, specifically, any claim for fraud or any claim that the release herein is not binding.

11. Except as set forth herein, the December 12, 2012 Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year set forth below.

TUNNEL ASSOCIATES, LLC

Date: _________

By: ______________________________
Name: Mitchell B. Rutter
Member

Date: _________

By: ______________________________
Name: Jacob Frydman
Member

SLD 500 LLC

Date: _________

By: ______________________________
Name: Scott Diamond
Manager

The Diamond Trust

Date: _________

____
Name: Scott Diamond, Trustee

MITCHELL RUTTER

Date: _________

____

JACOB FRYDMAN

Date: _________

____

WARREN DIAMOND

Date: _________

____

EXHIBIT P

From: scott@selfstorageni.com on behalf of Scott Diamond
To: Jacob Frydman; Mitchell B. Rutter; JOHN@AMERICANSELFSTORAGE.COM; Sal Cannizzaro
Subject: Diamond Trust Buyout
Date: Tuesday, October 21, 2014 2:45:37 PM

Pursuant to the conversation that Mitch, Jacob and I had yesterday:

For a variety of reasons foremost of which is the betterment of the ongoing partnership, the Diamond Trust is most interested in a buyout of its interest in Corem.

Purchase price: $20mm
Terms: $10mm on TIAA Closing
$10mm wrap on the TIAA mortgage at the same interest rate.

Regards,

--Scott Diamond