

# UNOFFICIAL COPY

0 6 1 1 3 3 3 8

THE CHICAGO DOCK AND CANAL TRUST  
(An Illinois Business Trust)

CERTIFICATE OF AMENDMENT OF  
DECLARATION OF TRUST

86-15538

86-15538

The Trustees of The Chicago Dock and Canal Trust, an Illinois business trust, acting under a Declaration of Trust dated January 22, 1962, and filed on January 23, 1962, with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 18382967, as amended by an instrument dated July 6, 1962, and filed on July 27, 1962, with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 18545266, and as further amended by an instrument dated July 28, 1965, and filed on August 13, 1965, with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 19557294, and as further amended by an instrument dated June 25, 1968, and filed On July 12, 1968, with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 20548738, and as further amended by an instrument dated June 27, 1972, and filed on August 30, 1972, with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 22073695, and as further amended by an instrument dated June 24, 1975, and filed on August 18, 1975 with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 23190727, and as further amended by an instrument dated February 17, 1981, and filed March 25, 1981 with the Recorder of Deeds of Cook County, State of Illinois, as Document No. 25817827, and as further amended by an instrument dated December 8, 1981, and filed December 15, 1981 with the Recorder of Deeds of Cook County, Illinois as Document No.

86-15538

# UNOFFICIAL COPY

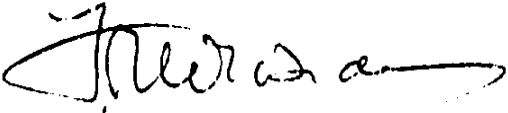
86-116338


26085994, and as further amended by an instrument dated June 25, 1985, and filed September 18, 1985 with the Recorder of Deeds of Cook County, Illinois as Document No. 85195219, hereby certify as follows:

The Trustees of this Trust, acting with the consent of owners of more than two-thirds (2/3) of the outstanding shares of this Trust, voting at the annual meeting of the shareholders of this Trust held on September 16, 1986, have amended the Declaration of Trust by adopting The Chicago Dock and Canal Trust Amended and Restated Declaration of Trust in the form attached hereto as Exhibit A.

This certificate is made and recorded pursuant to Article XII, Section 12.2 of The Chicago Dock and Canal Trust Amended and Restated Declaration of Trust.

Dated this 16th day of September, 1986.

  
\_\_\_\_\_  
William B. Gettin  
\_\_\_\_\_  
Arthur W. ...  
\_\_\_\_\_  
Robert Chapman  
\_\_\_\_\_  
Robert ...  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Arthur W. ...  
\_\_\_\_\_  
Charles K. ...  
\_\_\_\_\_  
Raymond ...  
\_\_\_\_\_  
Edward ...  
\_\_\_\_\_

86-116338

Being all of the Trustees of The Chicago Dock and Canal Trust

# UNOFFICIAL COPY

0 3 1 1 3 3 3 3

## ACKNOWLEDGMENT

STATE OF ILLINOIS )  
                          ) S.  
COUNTY OF C O O K )

On the 16th day of September, 1986, Kenneth S. Axelson, Edward McCormick Blair, Sr., Peter J. P. Brickfield, Carl F. Chapman, Charles R. Gardner, William G. Ogden III, Nathan W. Pearson, Ralph H. Poole, Jr., Fred H. Sides, Gustav Schwab and Robert E. Wood II, being all of the Trustees of The Chicago Dock and Canal Trust appeared before me and acknowledged that they signed the foregoing certificate.

  
Notary Public

My Commission expires:

Aug 22, 1989

THIS DOCUMENT PREPARED BY:

Wilson & McIlvaine (FAR)  
135 South LaSalle Street  
Suite 2300  
Chicago, Illinois 60603

Upon recordation, return to BOX 326.

66-15338

# UNOFFICIAL COPY

0 5 4 1 3 3 3 8

## THE CHICAGO DOCK AND CANAL TRUST AMENDED AND RESTATED DECLARATION OF TRUST

The Declaration of Trust of The Chicago Dock and Canal Trust made on January 22, 1962 and as amended on June 5, 1962, June 1, 1965, June 25, 1968, June 27, 1972, June 24, 1975, February 17, 1981, December 8, 1981 and June 25, 1985 is hereby restated in its entirety as of September 16, 1986 as follows:

1. This trust was created on January 22, 1962 to succeed to the business of The Chicago Dock and Canal Company, an Illinois corporation.
2. The trustees desire that this trust qualify as a "Real Estate Investment Trust" under the provisions of Part II of subchapter M of the Internal Revenue Code of 1954, as from time to time amended ("REIT Provisions").
3. The beneficial interests in this trust shall be divided into common shares ("common shares") and preferred shares ("preferred shares"), which are collectively referred to as "shares", to be evidenced by certificates therefor. Holders of record of the shares are referred to as "shareholders".

NOW, THEREFORE, in consideration of the foregoing, the undersigned do hereby declare that all property acquired by them or any of them or their successors, as trustees, and all income and profits therefrom, shall be by them managed, administered, received, collected, disposed of and distributed for the benefit of such persons as may from time to time be owners of certificates representing shares in this trust in the manner herein provided and subject to the terms and conditions set forth in this instrument and any amendments thereto.

County Clerk's Office  
15738

# UNOFFICIAL COPY

0 3 1 1 3 3 8

## ARTICLE I

### NAME AND LOCATION

This trust may be designated as THE CHICAGO DOCK AND CANAL TRUST. The principal office of this trust shall be in the city of Chicago, unless and until it is changed by the trustees.

## ARTICLE II

### NATURE OF TRUST

The trust shall be of the type commonly referred to as a business trust and shall not be a general partnership, limited partnership, joint venture, joint stock association or corporation. Neither the trustees nor the shareholders, nor any of them, shall be treated as partners, or joint venturers or members of a joint stock association.

## ARTICLE III

### POWER OF TRUSTEES

The trustees shall hold title to all property at any time belonging to this trust, and shall have absolute and exclusive power and control over the management and conduct of the business and affairs of this trust. The enumeration of powers hereinafter set forth shall not be construed as limiting in any way the general powers hereinabove conferred upon the trustees and they shall have all powers necessary, convenient or appropriate to the purposes and ends of this trust, and are authorized to take any action which they may deem proper to carry out such purposes.

The trustees, without limiting the generality of the foregoing, shall have power:

1. To purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property, or any interest therein;

2. To invest the funds of this trust from time to time in such manner as the trustees deem appropriate, to lend money for trust purposes and to take and hold real and personal property as security for the payment of funds so invested or loaned. The loans authorized by this paragraph 2 may include (but shall not be limited to) long-term, short-term or interim loans which may be secured or unsecured and, if secured, the security may be of such nature as the trustees deem appropriate, including senior or junior mortgages, deeds of trust or other security interests in real property or on rights or interests, including leasehold interests, in real property. The investments authorized by this paragraph 2 may include (but shall not be limited to) investments secured by the pledge or transfer of any of the security interests described in the immediately preceding sentence.

3. To sell and convey, mortgage, pledge, lease as lessor, with leases commencing immediately or in futuro and for terms extending beyond the term of this trust, and otherwise dispose of all or any part of the property and assets of this trust; provided, however, that no real property owned by the trustees may be sold without the favorable vote or written approval of six (6) trustees or two-thirds ( $\frac{2}{3}$ ) of the duly qualified and acting trustees, whichever is greater; and provided further that (i) any sale, conveyance, lease or other disposition of all or substantially all of the property and assets of this trust (otherwise than by mortgage or pledge) or (ii) any sale of all or any part of the property and assets of this trust for any shares, bonds or other securities or obligations of the purchaser, or any other consideration, as a step in proceedings looking toward the merger, consolidation, dissolution or termination of this trust or the carrying out of any plan of reorganization or rearrangement of the business or properties

REC-16338

# UNOFFICIAL COPY

0 6 1 1 3 3 3 1

conducted or held hereunder, may be made only upon the favorable vote or written approval of six (6) trustees or two-thirds ( $\frac{2}{3}$ ) of the duly qualified and acting trustees, whichever is greater, and upon the favorable vote of the holders of at least two thirds ( $\frac{2}{3}$ ) of the outstanding common shares of this trust (and upon any favorable vote required by the provisions of any series of preferred shares which may at the time be outstanding), or their proxies, voting at a meeting called for that purpose, pursuant to notice as hereinafter provided.

4. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with shares or other interests in, or obligations of, other domestic or foreign corporations, associations or individuals.

5. To make a charge upon all boats or vessels passing through the canals or slips owned by this trust, or lying in its basins or harbors, or lying to or laying alongside of its docks or piers or in any manner using or occupying the property of this trust.

6. To erect buildings and machinery and otherwise improve and use the property of this trust in such manner and to such extent as the trustees may deem necessary or advisable for the best interests of this trust.

7. To enclose, make and protect and also erect and construct on the land of this trust, wharves, docks, moles, piers, breakwaters and such other erections, protections, improvements and conveniences for the safety and accommodation of boats and vessels and the security and advantageous use of the property, wharves and docks of this trust or for the purposes of convenience in the use and enjoyment of said property by this trust as the trustees may deem necessary and proper.

8. To excavate, maintain, preserve and keep open canals, basins, slips and such other ways with their embankments, supporters and appurtenances for the entrance of boats and vessels of all kinds from Lake Michigan and also from the Chicago harbor and river.

9. To make contracts and incur liabilities, to borrow money for trust purposes at such rates of interest as the trustees may determine without regard to the restriction of any usury law, to issue the notes, bonds and other obligations of this trust, and to secure any of the obligations of this trust by mortgage, pledge or deed of trust of all or any of its property, franchises and income.

10. To elect, appoint, and discharge officers and agents of this trust, to fix their compensation and to confer upon them such power and authority as the trustees deem expedient.

11. To employ any person, firm or corporation as an independent contractor in connection with the management of any real estate owned by this trust, provided that no such independent contractor or any shareholder in or partner of such independent contractor shall own at any time more than thirty-five percent (35%) of the outstanding shares of this trust.

12. To appoint one or more banks as depositaries for the funds of this trust and to have such accounts with such depositaries as the trustees may deem expedient.

13. To have a seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

14. To make donations for the public welfare or for charitable, scientific, religious or educational purposes.

15. To purchase, take, receive or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of the outstanding shares of this trust for such price or prices and at such time or times as the trustees may deem appropriate.

16. With the consent of the owners of at least two-thirds ( $\frac{2}{3}$ ) of the outstanding common shares (and any consent required by the provisions of any series of preferred shares at the time

outstanding) of this trust, or their proxies, voting at a meeting called for that purpose, pursuant to notice as hereinafter provided, but only with such consent, to amend this trust in any particular, including an alteration, enlargement or contraction of the purposes of this trust, except that no amendment shall be made which imposes any liability on shareholders of this trust.

17. To declare and pay dividends on the outstanding shares of this trust as provided in Article IV.

18. To maintain offices for the transaction of any business of this trust in any state or territory of the United States.

19. To employ counsel of their choice, irrespective of whether any trustee is a member or associated with any firm so employed, and to begin, prosecute, defend and settle suits at law or in equity or otherwise, and to compromise or refer to arbitration any claims in favor of or against this trust.

20. To issue shares of the trust (and warrants, options and rights to purchase shares) as provided in Article IV and to list such shares (warrants, options, rights or debt securities of the trust) on any securities exchange.

No investment or reinvestment of the property of this trust shall be deemed improper because a greater proportion of the trust property is invested therein than is usual for trustees or because of any law now or hereafter in effect which generally limits the investments which may be held or retained by trustees.

## ARTICLE IV

### SHARES

**Sec. 4.1. Authorized Shares, and Description of Common and Preferred Shares:** The beneficial interests in this trust shall be divided into two classes of transferable shares: common shares and preferred shares, all of which shall be without par value. The total number of shares which this trust shall have authority to issue is: 20,000,000 common shares and 1,000,000 preferred shares. Common shares shall have equal voting and dividend rights and equal distribution rights upon termination of this trust and shall have no preference, preemption, conversion, exchange or redemption rights. The trustees are hereby expressly authorized at any time, and from time to time, upon the favorable vote or written approval of six (6) trustees or two-thirds (2/3) of the duly qualified and acting trustees, whichever is greater, to provide for the issuance of preferred shares in one or more series, with such voting powers, full or limited, or without voting powers, and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the trustees, including (without limiting the generality thereof) the following as to each such series:

(a) the designation of such series,

(b) the dividends payable with respect to such series, the rates or basis for determining such dividends, any conditions and dates upon which such dividends shall be payable, the preferences, if any, of such dividends over, or the relation of such dividends to, the dividends payable on any other class or series of shares of this trust, whether such dividends shall be non-cumulative or cumulative, and, if cumulative, the date or dates from which such dividends shall be cumulative,

(c) whether preferred shares of such series shall be redeemable at the option of this trust or the holder or both or upon the happening of a specified event and, if redeemable, whether for



cash, property or rights, including securities of this trust, the times, prices or rates and any adjustment and other terms and conditions of such redemption,

(d) the terms and amount of any sinking, retirement or purchase fund provided for the purchase or redemption of preferred shares of such series,

(e) whether or not preferred shares of such series shall be convertible into or exchangeable for shares of another class or series, at the option of this trust or of the holder or both or upon the happening of a specified event and, if provision be made for such conversion or exchange, the terms, prices, rates, adjustments and any other terms and conditions thereof,

(f) the extent, if any, to which the holders of the preferred shares of such series shall be entitled to vote with respect to the election of trustees or otherwise, including, without limitation, the extent, if any, to which such holders shall be entitled, voting as a series or as part of a class, to elect one or more trustees upon the happening of a specified event or otherwise,

(g) the restrictions, if any, on the issue or reissue of preferred shares of such series or any other series,

(h) the extent, if any, to which the holders of the preferred shares of such series shall be entitled to preemptive rights, and

(i) the rights of the holders of the preferred shares of such series upon the termination of this trust or any distribution of its assets.

Before the trust shall issue any preferred shares of any series, a certificate setting forth the resolution or resolutions of the trustees fixing the voting powers, designations, preferences and rights of such series, the qualifications, limitations or restrictions thereof, and the number of preferred shares of such series authorized by the trustees, shall be signed by a trustee or the secretary of the trust and filed in the office of the recorder of deeds of Cook County, Illinois.

**Sec. 4.2. Acquisition of Shares by Trustees:** Any trustee hereunder may acquire, hold and dispose of shares in this trust to the same extent and in the same manner as if he were not a trustee and without affecting in anyway his status or power as such trustee.

**Sec. 4.3. Transfer of Certificates:** Subject to Sections 4.7 and 4.8 hereof, the certificates representing shares provided for herein shall be transferable by an appropriate instrument in writing and by the surrender of such certificates to the trustees or to the person designated therefor by them, but no transfer shall be of any effect as against the trustees until it has been recorded upon the books of the trustees kept for that purpose. Upon such transfer and surrender, and the recording thereof in the trust books, a new certificate shall be issued to the transferee. In case of a transfer of only a part of the shares evidenced by a certificate, a new certificate for the residue shall be issued to the transferor. The person in whose name shares stand on the books of this trust shall be deemed to be treated as the absolute owner thereof for all purposes hereof, and until the existing certificate is surrendered and the transfer is recorded as required above, the trustees shall not be affected by any notice, actual or constructive, of any transfer.

Any person becoming entitled to any share or shares in this trust in consequence of the death or bankruptcy of any shareholder, or in any way other than by transfer in accordance with the preceding paragraph, may receive a new certificate or certificates for the share or shares and be recorded on the books of this trust as the owner thereof, upon the production of proper evidence of the event entitling him to such ownership and the delivery of the existing certificate or certificates to the trustees or the person designated by them. Until such evidence is produced and the existing certificate or certificates has or have been surrendered, the trustees shall not be affected by any notice of the change in title.

**Sec. 4.4. Loss or Destruction of Certificates Representing Shares:** In case of the loss or destruction of a certificate representing shares, a new certificate may be issued in its stead, upon such terms and conditions as the trustees may deem expedient.



# UNOFFICIAL COPY

3 6 1 1 3 3 3 1

**Sec. 4.5. Effect of Death of Shareholder or Transfer of Shares:** The death, insolvency or incapacity of one or more of the shareholders, or a transfer of shares by any shareholder or shareholders, shall not operate to terminate or dissolve this trust or affect its continuity in any way, nor shall it entitle any legal representative or other person to a dissolution of this trust, to a partition of the property of this trust or to an accounting. In the event of the death of a shareholder, or a transfer of shares by a shareholder, the transferee, heirs, legatees or legal representatives of the decedent or transferor shall succeed to his rights.

**Sec. 4.6. Inspection of Stock Books:** The stock books of this trust showing the ownership of all shares of this trust and recording all transfers thereof, shall be subject to inspection by any shareholder or his attorney or agent at all reasonable times, under such reasonable conditions as the trustees may prescribe.

**Sec. 4.7. Limitation on Ownership of Common Shares:** The beneficial ownership of common shares by any person shall not exceed 9.8% of the total number of outstanding common shares of this trust. The trustees shall have the power, under the provisions of Section 4.8, to refuse to transfer common shares to any person whose beneficial ownership exceeds 9.8% of the total number of outstanding common shares and, to call for redemption any common shares beneficially owned by any person in excess of 9.8% of the total number of outstanding shares. The limitation on beneficial ownership of common shares set forth in this Section 4.7 shall not apply to acquisitions of common shares pursuant to a cash tender offer made for all outstanding shares of the trust (including securities convertible into shares) in conformity with applicable federal and state securities laws where two-thirds (2/3) of the outstanding shares (not including shares or securities convertible into shares held by the tender offeror and/or any affiliate or associate thereof) are duly tendered and accepted pursuant to the cash tender offer; nor shall this limitation apply to the acquisition of common shares by an underwriter in a public offering of common shares. For the purposes of this Section 4.7, the term "person" shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group deemed to be a person pursuant to Section 14(d)(2) of the Securities Exchange Act of 1934, as in effect on June 30, 1986; the term "ownership" shall be defined in accordance with the REIT Provisions and shall also mean ownership as defined in Rule 13d-3 of the General Rules and Regulations under such Act, as in effect on June 30, 1986; and the terms "affiliate" and "associate" shall have the respective meanings as such terms have in Rule 12b-2 of the General Rules and Regulations under such Act, as in effect on June 30, 1986.

**Sec. 4.8. Transfer Restriction and Redemption:** If the trustees shall at any time and in good faith, be of the opinion that the beneficial ownership of common shares by any person exceeds or is about to exceed the 9.8% limitation imposed in Section 4.7, then the trustees shall have the power to prevent the transfer of common shares to such person and to call for redemption any common shares owned by such person in excess of the beneficial ownership of common shares permitted under Section 4.7. The redemption price to be paid for any common shares so called for redemption, pursuant to this section, on the date fixed for redemption shall be (i) the last reported sale price of the common shares on the last business day prior to the redemption date on the principal national securities exchange on which the common shares are listed or admitted to trading, or (ii) if the common shares are not so listed or admitted to trading, the average of the highest bid and lowest asked prices on such last business day as reported by the National Quotation Bureau, Incorporated or a similar organization selected from time to time by this trust for the purpose, or (iii) if not determinable as aforesaid, as determined in good faith by the trustees. From and after the date fixed for redemption by the trustees, the holder of any common shares so called for redemption shall cease to be entitled to any dividends, voting rights and other benefits with respect to such common shares, except only the right to payment of the redemption price fixed as aforesaid.

**Sec. 4.9. Information from Shareholders:** Shareholders shall upon demand disclose to the trustees in writing such information regarding direct, indirect and constructive ownership of shares

as the trustees deem necessary to determine if the shareholders are in compliance with the provisions of Section 4.7 and to determine if this trust is in compliance with the REIT Provisions or the provisions of any other applicable law.

**Sec. 4.10. Issuance and Repurchase of Shares:** The shares may be issued for such consideration as the trustees shall determine, including upon the conversion of convertible debt obligations of this trust, or by way of share dividend or share split in the discretion of the trustees. All shares shall be fully paid and nonassessable upon receipt by this trust of full consideration for which they have been issued or without additional consideration if issued by way of share split or share dividend. Subject to the provisions of any series of preferred shares at the time outstanding, the trustees may, on behalf of this trust, purchase or otherwise acquire outstanding shares for such consideration and on such terms as they may deem proper. Shares reacquired by this trust shall no longer be deemed outstanding and shall have no voting rights or dividend rights and may be cancelled and restored to the status of authorized but unissued shares by action of the trustees.

**Sec. 4.11. Dividends and Distributions to Shareholders:** Subject to the provisions of any series of preferred shares at the time outstanding, the trustees shall from time to time distribute such proportion of the net profits, surplus (including paid-in surplus), capital, or assets held by the trustees as they may deem proper. Subject to any such provisions, the holders of common shares shall be entitled to receive, in proportion to their respective ownership of common shares, any such dividends or distributions. Subject to any such provisions, such distribution may be made in cash or property (including without limitation any type of obligation of the trust or any assets thereof), and the trustees may distribute to the holders of shares of any class or series, in proportion to their respective ownership thereof, additional shares of such class or series, as the case may be or of any other class or series, or warrants, options, or rights to purchase such shares in such manner and on such terms as the trustees may deem proper. Shareholders shall have no right to any dividend or distribution unless and until declared by the trustees.

**Sec. 4.12. Form of Share Certificate:** Certificates for shares shall be in such form as the trustees shall deem appropriate, shall be signed (by manual or facsimile signatures) in the name of THE CHICAGO DOCK AND CANAL TRUST by the president and countersigned by the secretary, or an assistant secretary, shall bear the actual or facsimile seal of this trust and shall bear notice of the requirement that certain information (as hereinafter described) may be required to be submitted to the trustees by a transferee as a condition precedent to the transfer of such certificates, provided that, where only facsimile signatures for the trust are used, the certificates shall be countersigned manually by a transfer agent or register. Certificates shall be personal property and the ownership thereof shall not give any person any legal or equitable title in or to the property of this trust or any part thereof, but shall only entitle owners thereof to the rights of shareholders specified in this trust.

**Sec. 4.13. Warrants, Options and Rights:** Subject to the provisions of any series of preferred shares at the time outstanding, the trustees, in their discretion, may from time to time issue warrants, rights or options which shall entitle the holders thereof to purchase shares and/or fractional shares of such class or series at such time and on such terms as the trustees may prescribe including, without limiting the generality of the foregoing, the times within which any such warrants, rights or options must be exercised, any provision for redemption thereof and the consideration, if any, to be paid for such warrants, rights and options and the consideration to be paid upon the exercise thereof for such shares. The provisions of this Article IV relative to certificates for shares shall apply so far as appropriate to such warrants, rights and options.

## ARTICLE V

### SHAREHOLDERS

**Sec. 5.1. Rights of Shareholders:** The rights of all persons owning or becoming entitled to shares in this trust shall be subject to all the terms and conditions of this trust. No shareholder shall,

except as expressly herein provided, have any voice in the management or control of the property, affairs or business of this trust, or any power of control over the trustees in these respects. No shareholder shall have any right to partition of the property of this trust or to an accounting during the continuance of this trust.

**Sec. 5.2. Liabilities of Shareholders:** Shareholders shall not be liable for any assessment on account of the shares owned by them, and the trustees shall have no power to bind the shareholders personally. All persons dealing with or having any claim against the trustees or any officer or agent of this trust shall look only to the funds and property of this trust for the payment of any debt, claim, damage, judgment or decree, or of any money or other thing that may become due or payable in any way, whether founded upon contract or tort, and the shareholders shall not be personally or individually liable therefor.

In every written order, contract, instrument or obligation given or executed by the trustees or under their authority, it shall be the duty of the trustees to insert or cause to be inserted a stipulation to the effect that the shareholders shall not be liable for any debt, demand or liability incurred by or under the authority of the trustees, and reference shall be made to this trust. The letterheads of this trust and other stationery used in transactions or correspondence with outsiders shall contain a brief notice to the same effect. However, no dereliction of the trustees or of the officers or agents of this trust in this regard shall have the effect of rendering any shareholder personally liable.

**Sec. 5.3. Annual Meeting of Shareholders:** The shareholders shall elect the trustees at the annual meeting of the shareholders, which annual meeting shall be held at the offices of this trust, or at such other place as may be designated by the trustees, on the third (3rd) Tuesday in September of each year commencing with the year 1986. If the day fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding business day. If the election of trustees shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the trustees shall cause the election to be held at a meeting of the shareholders as soon thereafter as may be convenient. Duly elected trustees shall serve until their successors are elected and shall have qualified.

**Sec. 5.4. Special Meetings:** Special meetings of the shareholders may be called by the trustees, to be held at the office of this trust, or at such other place as may be designated by the trustees, but only for the purpose of enabling the shareholders to vote on those matters upon which they are specifically entitled to vote by this trust.

**Sec. 5.5. Notice of Meeting:** Written or printed notices stating the place, day and hour of any meeting shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. The notice of all special meetings or any other meeting at which any matter specified in paragraph 16 of Article III is to be considered shall set forth the purposes for which the meeting is called. If mailed, such notices shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address, as it appears on the records of this trust, with postage thereon prepaid. Any shareholder may waive notice of any meeting in writing either before or after such meeting.

**Sec. 5.6. Quorum:** Subject to the provisions of any series of preferred shares at the time outstanding, a majority of the outstanding shares of this trust entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the shareholders; provided that if less than a majority of the outstanding shares are represented at said meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting shall be the act of the shareholders unless the affirmative vote of more than a majority is required by any provision of this trust.

**Sec. 5.7. Proxies:** At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. Such proxy shall be filed with

# UNOFFICIAL COPY

3 6 1 1 3 3 3 3

the secretary of this trust before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

**Sec. 5.8. Voting of Shares:** Each outstanding common share shall be entitled to one (1) vote upon each matter submitted to a vote at a meeting of shareholders. Each outstanding preferred share of any series shall be entitled to such voting rights, if any, as specified in the resolutions of the trustees providing for such series.

**Sec. 5.9. Voting by Ballot:** Voting on any question or in any election may be viva voce unless the presiding officer shall order, or a majority of the shareholders present shall demand, that voting be by ballot.

**Sec. 5.10. Record Date:** For the purpose of determining the shareholders who are entitled to vote or act at any meeting or any adjournment thereof, or who are entitled to participate in any dividend, or for the purpose of any other action, the trustees may from time to time close the transfer books for such period not exceeding sixty (60) days as the trustees may determine; or without closing the transfer books the trustees may fix a date not more than sixty (60) days prior to the date of any meeting of shareholders or dividend payment or other action as a record date for the determination of shareholders entitled to vote at such meeting or any adjournment thereof or to receive such dividend or to be treated as shareholders of record for purposes of such other action.

## ARTICLE VI

### TRUSTEES

**Sec. 6.1. Number, Tenure and Qualifications:** The number of trustees of this trust shall be eleven (11). The trustees need not be residents of Illinois or shareholders of this trust. Any trustee may resign by notice in writing to the secretary. The death, incapacity or resignation of any or all of the trustees shall not terminate this trust nor in any way affect its continuity. Any vacancy among the trustees occurring during a term of office may be filled by a majority of the then remaining trustees and the person so appointed shall serve until the next annual meeting of the shareholders.

No person shall be eligible to serve as a trustee of this trust if such person is an officer or employee of, or has any direct or indirect proprietary interest in, any independent contractor which furnishes or renders services pertaining to the trust property, or which manages or operates such property.

**Sec. 6.2. Recording:** At any time there is a change in the trustees acting hereunder for any reason, the remaining trustees, including any newly elected trustee or trustees, shall make, sign, acknowledge and record in the office of the recorder of deeds of Cook County, Illinois, their certificate reciting the death or resignation of any trustee or trustees and the appointment of a new trustee or trustees, if any, and such certificate prior to the recording thereof shall be endorsed with the written acceptance of such election by any successor trustee.

**Sec. 6.3. Regular Meetings of Trustees:** Regular meetings of the trustees shall be held quarterly. One of such regular meetings shall be held immediately after, and at the same place, as the annual meeting of shareholders. At such meeting the trustees shall elect the officers of this trust for the ensuing year.

**Sec. 6.4. Special Meetings of Trustees:** Special meetings of the trustees may be called by or at the request of any trustee or by an officer of this trust to be held at the office of this trust or at such other place as may be designated by the Secretary.

**Sec. 6.5. Notice:** Notice of any meeting of the trustees shall be given at least seven (7) days prior thereto by written notice delivered personally or mailed to each trustee at his business address or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United



# UNOFFICIAL COPY

3 6 1 1 3 3 3 8

States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any trustee may waive notice of any meeting in writing either before or after such meeting. The attendance of a trustee at any meeting shall constitute a waiver of notice of such meeting, except where the trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the trustees need be specified in the notice or waiver of notice of such meeting.

**Sec. 6.6. Quorum:** Seven trustees shall constitute a quorum for the transaction of business at any meeting of trustees; provided that if less than seven trustees are present at any meeting, a majority of the trustees present may adjourn the meeting from time to time without further notice.

**Sec. 6.7. Manner of Acting:** Six trustees attending any meeting duly called, may exercise any of the powers, discretions and trusts vested in the trustees by this trust (except as otherwise provided in Article III, paragraph 3, Article IV, Section 4.1, and Article XI), provided, however, that if at any time there are less than six trustees acting hereunder, all of the trustees may exercise any of such powers (other than the powers specified in Article III, paragraph 3, Article IV, Section 4.1, and Article XI). Trustees may participate in meetings by conference telephone or similar communication equipment if all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

**Sec. 6.8. Compensation:** The trustees by the affirmative vote of six (6) trustees then in office, and irrespective of any personal interest of any of them, shall have authority to establish reasonable compensation of all trustees for services to this trust, including compensation for special services or expert advice. The trustees may be paid their expenses, if any, of attendance at each meeting of the trustees.

**Sec. 6.9. Presumption of Assent:** A trustee of this trust by his presence at a meeting of the trustees at which action on any matter is taken shall be conclusively presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of this trust immediately after adjournment of the meeting. Such right to dissent shall not apply to a trustee who voted in favor of such action.

**Sec. 6.10. Action by Trustees Without Meeting:** It is not the intent that the trustees must hold meetings for all actions to be taken hereunder since the places of residence of the trustees and their other business obligations may preclude the holding of meetings with respect to the exercise of all of the powers hereunder. Therefore:

(a) The execution of any contract, transfer, conveyance, mortgage, pledge, lease or other instrument on behalf of this trust by all of the trustees without holding a meeting shall have the same effect as action authorized at a meeting of the trustees; and

(b) Except as otherwise provided in subparagraph 3 of Article III, Article IV, Section 4.1, and Article XI, seven (7) trustees may take any action or execute any written instrument in the name of all of the trustees on behalf of this trust without holding a meeting, provided that at least seven (7) days' prior written notice has been given to all of the trustees of the subject matter of the proposed action or of the written instrument to be executed, and provided, further, that no trustee shall have notified the secretary of this trust in writing of his objection to the proposed action, or to the proposed execution of the written instrument in question, prior to the expiration of said seven (7) day period. If any such objection shall be received by the secretary, then he shall promptly call a meeting of the trustees to consider the proposed action. Any trustee may waive any notice required under this subsection; and

(c) Any action required or permitted to be taken at a meeting of the trustees, or any other action which may be taken at a meeting of the trustees, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the trustees entitled to vote with respect to the subject matter thereof.

**Sec. 6.11. Action by Seven Trustees Binding As To Third Parties:** Notwithstanding the foregoing provisions or any other provisions of this trust, any contract, transfer, conveyance, mortgage, pledge, lease or other instrument executed in the name of all of the trustees by seven (7) trustees shall, as to third persons dealing with the trustees, have the same effect as action authorized at a meeting of the trustees, and no person dealing with the trustees shall be required to ascertain whether the foregoing provisions with respect to notice to all of the trustees have been met.

**Sec. 6.12. Power to Appoint an Attorney-in-Fact:** Any trustee at any time acting hereunder may appoint any co-trustee to be attorney-in-fact for the appointing trustee by an instrument in writing executed under seal and acknowledged as deeds of real estate are required to be acknowledged in Illinois, giving such attorney-in-fact full power, for such period of time and to such extent as may be provided in such written instrument, to perform the duties and to execute the powers by this trust conferred upon the appointing trustee.

**Sec. 6.13. Reports:** The trustees shall annually make a written report of their operations during the preceding fiscal year, showing their receipts, disbursements and earnings and the assets and condition of this trust, together with an opinion thereon of an independent certified public accountant based upon an examination of the books and records of the trust. Such reports shall be kept on file at the principal office of this trust at all times and shall be subject to inspection by any shareholder, or his attorney or agent, at any reasonable time, and copies of such reports shall be promptly mailed to each shareholder.

**Sec. 6.14. Committees of Trustees:** The trustees, by resolution duly adopted, may designate from among their members one or more committees which shall consist of two (2) or more trustees. The trustees may designate one (1) or more trustees as alternate members of any such committee. Such committees shall have and may exercise such powers as shall be conferred or authorized by the resolution appointing them (other than the powers specified in Article III, paragraph 3, Article IV, Section 4.1 and Article XI). A majority of any such committee may determine its action and fix the time and place of its meetings, unless the trustees shall otherwise provide. The trustees, by resolution duly adopted, may at any time change the membership of any such committee, fill vacancies in it, or dissolve it. The trustees may also appoint persons who are not trustees to serve as advisory members of any such committee.

## ARTICLE VII OFFICERS

**Sec. 7.1. Number:** The officers of this trust shall be a president, one or more vice presidents (the number thereof to be determined by the trustees), a treasurer, a secretary, and such assistant treasurers or assistant secretaries as may be elected or appointed by the trustees; provided that the president, the treasurer and the secretary shall each be a trustee of this trust. Any two or more offices may be held by the same person except the offices of president and vice president and except the offices of president and secretary.

**Sec. 7.2. Term of Office:** Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

**Sec. 7.3. Removal:** Any officer elected by the trustees may be removed by the trustees whenever in their judgment the best interests of this trust would be served thereby, but such removal



# UNOFFICIAL COPY

3 6 1 1 3 3 3

shall be without prejudice to the contract rights, if any, of the person so removed. The trustees may also accept the resignation of any such officer.

**Sec. 7.4. Vacancies:** A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the trustees for the unexpired portion of the term of such office.

**Sec. 7.5. President:** The president shall be the principal executive officer of this trust and shall, in general, supervise and control all of its business and affairs. He shall preside at all meetings of the shareholders and of the trustees. He may sign with the secretary, or any other proper officer of this trust thereunto authorized by the trustees, certificates for shares of this trust, and any contracts or other instruments which the trustees have authorized to have executed; and, in general, shall perform all duties incident to the office of president and such other duties as may be prescribed by the trustees from time to time.

**Sec. 7.6. Vice President:** Each vice president shall perform such duties as from time to time may be assigned to him by the president or by the trustees.

**Sec. 7.7. Treasurer:** The treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of this trust; receive and give receipts for moneys due and payable to this trust from any source whatsoever, and deposit all such moneys in the name of this trust in such banks, trust companies or other depositaries as shall be selected in accordance with the provisions of this trust; and (b) in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the trustees.

**Sec. 7.8. Secretary:** The secretary shall: (a) keep the minutes of the shareholders' and of the trustees' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of this trust; (c) be custodian of the trust records and of the seal of the trust, and (d) see that the seal of this trust is affixed to all certificates for shares prior to the issuance thereof, and to all documents, the execution of which on behalf of this trust under its seal is duly authorized in accordance with the provisions of this trust; (e) keep or cause to be kept a register of the post office address of each shareholder, which shall be furnished to the secretary by such shareholder; (f) sign with the president certificates for shares of this trust; (g) have general charge of the stock transfer books of this trust; and (h) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the trustees.

**Sec. 7.9. Assistant Treasurers and Assistant Secretaries:** The assistant secretaries may sign with the president certificates for shares of this trust. The assistant treasurers and assistant secretaries, in general, shall perform such duties as shall be assigned to them by the treasurer or secretary, respectively, or by the president or the trustees.

**Sec. 7.10. Salaries:** The salaries, if any, of the officers shall be fixed from time to time by the trustees, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a trustee.

**Sec. 7.11. Loans:** No loans shall be contracted on behalf of this trust and no evidences of indebtedness shall be issued in its name by any officer unless authorized by a resolution of the trustees. Such authority may be general or confined to specific instances.

**Sec. 7.12. Checks and Drafts:** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of this trust shall be signed by such officer or officers of this trust and in such manner as shall from time to time be determined by resolution of the trustees.

**Sec. 7.13. Deposits:** All funds of this trust not otherwise employed shall be deposited from time to time by the officers to the credit of this trust in such banks, trust companies or other depositaries as the trustees may select.

## ARTICLE VIII LIABILITY OF TRUSTEES

No trustee shall be liable for any act or omission whatsoever of any other trustee or of any officer or agent of this trust; nor shall any trustee be liable for any negligence, error in judgment, or for any act or omission, except for his own willful breach of trust. While it is the intention of the trustees to operate this trust in such manner as to qualify as a Real Estate Investment Trust under the REIT Provisions the trustees shall not be liable to the shareholders if at any time it should be determined that the trust does not so qualify. No trustee shall be required to give any bond or surety to secure the performance of this trust.

Every Act or thing done or omitted, and every power exercised or obligation incurred by the trustees, or any of them, in the administration of this trust or in connection with any business, property or concerns of this trust, whether ostensibly in their own names or in their trust capacity, shall be done, omitted, exercised or incurred by them as trustees and not as individuals; and every person contracting or dealing with the trustees or having any debt, claim or judgment against them or any of them shall look only to the funds and property of this trust for payment or satisfaction; and no trustee or trustees and no officer or agent of this trust shall ever be personally liable for or on account of any contract, debt, tort, claim, damage, judgment or decree arising out of, or preservation of, the property of this trust or the conduct of any business of this trust. A stipulation or notice to this effect shall be inserted in any contract, order or similar instrument made by the trustees or their officers or agents, and on stationery used by them, but the omission thereof shall not be construed as a waiver of the foregoing provision, and shall not render the trustees, officers or agents personally liable.

## ARTICLE IX REIMBURSEMENT AND INDEMNIFICATION OF TRUSTEES

Sec. 9.1. *Indemnity*: This trust shall indemnify from the trust estate any person (and his heirs, executors and administrators) who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (and all appeals therefrom), by reason of his being or having been a trustee, officer, employee or agent of this trust, or his serving or having served at the request of this trust as a director, officer, employee, trustee or agent of a corporation, partnership, joint venture, trust or other enterprise, against (a) all expenses (including attorneys' fees and costs of investigation) actually and reasonably paid or incurred by him in connection with any action or proceeding and (b) all amounts actually and reasonably paid or incurred by him in satisfaction of settlements, judgments, fines and penalties in connection with any action or proceeding, provided, however, that no person shall be indemnified under the foregoing provisions unless it shall have been determined or adjudicated that such person's action or omission did not constitute willful breach of trust or, with respect to any criminal action or proceeding, that such person had no reasonable cause to believe that his conduct was unlawful.

Sec. 9.2. *Payment of Indemnity*: Indemnification (unless ordered by a court) shall be made by this trust only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the person to be indemnified has met the applicable standards set forth in Section 9.1. Such determination shall be made: (a) by the trustees acting by a quorum consisting of trustees who were not parties to the action or proceeding; or (b) if such a quorum is not obtainable, or, even if obtainable and a quorum of disinterested trustees so directs, by legal counsel in a written opinion; or (c) by the shareholders. Notwithstanding the foregoing, the person to be indemnified may, either before or within two (2) years after a determination has been made as provided above (other than by a court), bring suit against this trust in any court of competent

# UNOFFICIAL COPY

3 6 1 1 3 3 3 8

jurisdiction to determine whether such person is entitled to indemnification pursuant to the standards set forth in Section 9.1 and such court shall thereupon have the exclusive authority to make such determination. Such court shall make an independent determination of whether such person is entitled to indemnification as provided hereunder, irrespective of any prior determination made by the trustees, legal counsel or the shareholders. If the court shall determine that such person is entitled to indemnification hereunder, then this trust shall also pay to such person, in addition to the amount he is entitled to be indemnified for under Section 9.1, all expenses (including attorneys' fees) incurred by such person in connection with such judicial determination.

Expenses incurred in accordance with Section 9.1 may be paid by this trust in advance of the final disposition of any action or proceeding, as authorized by the trustees, upon receipt of an undertaking by or on behalf of the person to be indemnified to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified as provided in this Article.

**Sec. 9.3. Recourse to Trust Assets:** The indemnification provided by this Article shall be limited to the assets of this trust, and no shareholder shall be personally or individually liable therefor to any extent.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

3 6 1 1 3 3 8

## ARTICLE X

### DURATION AND TERMINATION

This trust shall have perpetual existence, provided, however, that if the foregoing provision creates a period for this trust of longer duration than that permitted under the law of Illinois, the foregoing is revoked as to the period of time beyond that permitted by said law, and this trust shall continue for a period not longer than twenty-one (21) years after the date of the death of the survivor of the following persons, being the original trustees and all their descendants living at the date of execution of this trust:

<u>Name</u>	<u>Address</u>
Hermann J. Dirks.....	5555 Sheridan Road, Chicago, Illinois
Margaret E. Dirks.....	2914 N. 17th Avenue, Phoenix Arizona
Hermann J. Dirks, Jr.....	2914 N. 17th Avenue, Phoenix, Arizona
Hermann J. Dirks, III.....	2914 N. 17th Avenue, Phoenix, Arizona
Catherine Ellen Dirks.....	
Henry G. Hopper.....	217 Alpern Avenue, Elberon, New Jersey
Lynn Hopper.....	217 Alpern Avenue, Elberon, New Jersey
Gail Hopper.....	217 Alpern Avenue, Elberon, New Jersey
Sheldon Lee.....	2500 Lincoln Street, Evanston, Illinois
Elizabeth Lee Loughran.....	304 West Gregory Street, Pensacola, Florida
Deborah Sheldon Lee.....	2500 Lincoln Street, Evanston, Illinois
William B. Ogden, III.....	Woodchuck Hill Road, Fayetteville, New York
William Butler Ogden, IV.....	Woodchuck Hill Road, Fayetteville, New York
Christopher Walker Ogden.....	Woodchuck Hill Road, Fayetteville, New York
Ralph H. Poole, Jr.....	Bellwood Farm, Geneva, New York
Marten Ann Poole.....	Bellwood Farm, Geneva, New York
Mary F. Poole.....	Bellwood Farm, Geneva, New York
Ralph H. Poole, III.....	Bellwood Farm, Geneva, New York
Alan F. Poole.....	Bellwood Farm, Geneva, New York
Fred H. Sides.....	Byram Lake Road, Mt. Kisco, New York
Randolph Whitehouse Sides.....	Byram Lake Road, Mt. Kisco, New York
Helene Huguelet Sides.....	Byram Lake Road, Mt. Kisco, New York
Gustav Schwab.....	RFD #3, Peekskill, New York
Alice Clark Schwab.....	RFD #3, Peekskill, New York
Gustav Schwab, VI.....	RFD #3, Peekskill, New York
Albert C. Svoboda.....	E. Cuba Road, Barrington, Illinois
Albert C. Svoboda, III.....	14 North Normal, Ypsilanti, Michigan
Albert C. Svoboda, IV.....	14 North Normal, Ypsilanti, Michigan
Craig K. Svoboda.....	14 North Normal, Ypsilanti, Michigan
Kerri Beth Svoboda.....	14 North Normal, Ypsilanti, Michigan
Mae Svoboda Rhodes.....	628 Duane, Glen Ellyn, Illinois
C. Harker Rhodes, III.....	628 Duane, Glen Ellyn, Illinois
James A. Rhodes.....	628 Duane, Glen Ellyn, Illinois
Edward J. Rhodes.....	628 Duane, Glen Ellyn, Illinois

Upon the termination of this trust for any reason, the trustees shall immediately proceed to wind up the affairs of this trust and, after first paying or providing for the payment of all liabilities of this trust, shall distribute the assets of the trust to the shareholders ratably according to the respective rights of the class or series of shares held by them. Before a shareholder shall be entitled to receive

his proportionate part of the assets of this trust upon liquidation, such shareholder shall be required to surrender certificates representing his shares in this trust to the trustees.

## ARTICLE XI

### BUSINESS COMBINATION TRANSACTIONS

**Sec. 11.1. Higher Vote Required for Certain Business Combinations:** In addition to any favorable vote required by any other provision of this trust and except as otherwise expressly provided in Section 11.3 of this Article XI, any Business Combination Transaction (as defined below) shall require the favorable vote of the holders of at least two-thirds (2/3) of the voting power of all of the shares of this trust then entitled to vote generally in the election of trustees voting together as a single class. Such favorable vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified by any other provision of this trust.

**Sec. 11.2. Certain definitions:** For purposes of this Article XI:

(a) "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on June 30, 1986.

(b) "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act, as in effect on June 30, 1986.

(c) "Business Combination Transaction" shall mean:

(i) any merger or consolidation of this trust with (A) an Interested Shareholder or (B) any other Person (whether or not itself an Interested Shareholder) which is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Shareholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with, or proposed by or on behalf of, an Interested Shareholder or an Affiliate or Associate of an Interested Shareholder of any assets of this trust having an aggregate fair market value of \$5,000,000 or more; or

(iii) the issuance or transfer by this trust (in one transaction or a series of transactions) of any of its securities to, or proposed by or on behalf of, an Interested Shareholder or an Affiliate or Associate of an Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$5,000,000 or more; or

(iv) the adoption of any plan or proposal for the termination or dissolution of this trust, or any spin-off or split-up of any kind of this trust, proposed by or on behalf of an Interested Shareholder or an Affiliate or Associate of an Interested Shareholder; or

(v) any reclassification of securities (including any reverse stock split), or recapitalization of this trust, or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (A) any class of equity securities of this trust or (B) any class of securities of this trust convertible into equity securities of this trust, represented by securities of such class which are directly or indirectly owned by an Interested Shareholder and all of its Affiliates and Associates.

(d) "Continuing Trustee" means (i) any trustee of this trust who (A) is neither the Interested Shareholder involved in the Business Combination Transaction as to which a vote of Continuing Trustees is provided hereunder, nor an Affiliate, Associate, employee, agent, or nominee of such Interested Shareholder, or the relative of any of the foregoing, and (B) was a



trustee of this trust prior to the time that such Interested Shareholder became an Interested Shareholder, and (ii) any successor of a Continuing Trustee described in clause (i) who is recommended or elected to succeed a Continuing Trustee by the affirmative vote of a majority of Continuing Trustees.

(e) "Fair Market Value" means (i) in the case of shares the highest closing sale price during the 30-day period immediately preceding the date in question of such shares on the principal securities exchange on which such shares are listed, or, if such shares are not listed on any such exchange, the highest bid quotation with respect to a share of such shares during the 30-day period preceding the date in question as reported by the National Quotation Bureau, Incorporated or similar organization selected from time to time by this trust for the purpose, or, if no such quotation is available, the fair market value on the date in question of a share of such shares as determined by a majority of the Continuing Trustees in good faith; and (ii) in the case of property other than cash or shares, the fair market value of such property on the date in question as determined by a majority of the Continuing Trustees in good faith.

(f) "Interested Shareholder" shall mean any Person (other than this trust, any employee benefit plan maintained by this trust or any trustee or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is, or was at any time within the two-year period immediately prior to the date in question, the Beneficial Owner, directly or indirectly, of 5% or more of the voting power of the then outstanding Voting Shares of this trust; or

(ii) is an Affiliate of this trust and at any time within the two-year period immediately prior to the date in question was the Beneficial Owner, directly or indirectly, of 5% or more of the voting power of the outstanding Voting Shares of this trust; or

(iii) is an assignee of, or has otherwise succeeded to, any shares of Voting Shares of this trust of which an Interested Shareholder was the Beneficial Owner, directly or indirectly, at any time within the two-year period immediately prior to the date in question, if such assignment or succession shall have occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act of 1933, as amended.

For the purpose of determining whether a Person is an Interested Shareholder, the outstanding Voting Shares of this trust shall include unissued shares of Voting Shares of this trust of which the Interested Shareholder is the Beneficial Owner but shall not include any other shares of Voting Shares of this trust which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise, to any Person who is not the Interested Shareholder.

(g) A "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group deemed to be a person pursuant to Section 14(d)(2) of the Exchange Act, as in effect on June 30, 1936.

(h) "Voting Shares" shall mean the outstanding shares of this trust entitled to vote generally in the election of trustees.

**Section 11.3. When Higher Vote is not Required:** The provisions of Section 11.1 of this Article XI shall not be applicable to any particular Business Combination Transaction, and such Business Combination Transaction shall require only such affirmative vote of the shareholders, if any, as is required by the other provisions of this trust, if the conditions specified in either of the following paragraphs (a) and (b) are met:

(a) **Approval by Continuing Trustees:** The Business Combination Transaction shall have been approved by the affirmative vote of a majority of the Continuing Trustees even if the Continuing Trustees do not constitute a quorum of the trustees.



**(b) Form of Consideration, Price and Procedure Requirements:** All of the following conditions shall have been met:

(i) With respect to each share of each class of shares of this trust (and for the purposes of this Article XI each series of preferred shares shall be deemed a separate class of the shares), the holder thereof shall be entitled to receive on or before the date of the consummation of the Business Combination Transaction (the "Consummation Date"), cash and consideration, in the form specified in Section 11.3(b)(ii) hereof, with an aggregate Fair Market Value as of the Consummation Date at least equal to the highest of the following:

(A) the highest per share price (including brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder to which the Business Combination Transaction relates, or by any Affiliate or Associate of such Interested Shareholder, for any shares of such class of shares of this trust acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination Transaction (the "Announcement Date") or (2) in the transaction in which it became an Interested Shareholder, whichever is higher;

(B) the Fair Market Value per share of such class of shares of this trust on the Announcement Date; or

(C) the highest preferential amount per share, if any, to which the holders of shares of such class of shares of this trust are entitled in the event of any voluntary or involuntary termination, liquidation, dissolution or winding up of this trust.

(ii) The consideration to be received by holders of a particular class of shares of this trust as described in Section 11.3(b)(i) hereof shall be in cash or, if the consideration previously paid by or on behalf of the Interested Shareholder in connection with its acquisition of beneficial ownership of shares of such class of shares of this trust consisted, in whole or in part, of consideration other than cash, then in the same form as such consideration. If such payment for shares of any class of shares of this trust has been made in varying forms of consideration, the form of consideration for such class of shares of this trust shall be either cash or the form used to acquire the beneficial ownership of the largest number of shares of such class of shares of this trust previously acquired by the Interested Shareholder.

(iii) After such Interested Shareholder has become an Interested Shareholder and prior to the Consummation Date: (A) there shall have been no failure to declare and pay at the regular date therefor any full dividends (whether or not cumulative) on the outstanding preferred shares of this trust, if any, except as approved by the affirmative vote of a majority of the Continuing Trustees; (B) there shall have been (1) no reduction in the annual rate of dividends paid on the common shares of this trust (except as necessary to reflect any subdivision of the common shares), except as approved by the affirmative vote of a majority of the Continuing Trustees, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse share split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the common shares, unless the failure so to increase such annual rate is approved by the affirmative vote of a majority of the Continuing Trustees; and (C) such Interested Shareholder shall not have become the Beneficial Owner of any additional Voting Shares except as part of the transaction which results in such Interested Shareholder becoming an Interested Shareholder.

(iv) After such Interested Shareholder has become an Interested Shareholder, neither such Interested Shareholder nor any Affiliate or Associate thereof shall have received the

benefit, directly or indirectly (except proportionately as a shareholder of this trust), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by this trust.

(v) A proxy or information statement describing the proposed Business Combination Transaction and complying with the requirements of the Exchange Act and the General Rules and Regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to the shareholders of this trust at least 30 days prior to the Consummation Date (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions thereof).

**Section 11.4. Powers of Continuing Trustees:** A majority of the Continuing Trustees shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article XI, including, without limitation, (a) whether a Person is an Interested Shareholder, (b) the number of shares of Voting Shares beneficially owned by any Person, (c) whether a Person is an Affiliate or Associate of another and (d) whether the requirements of Section 11.3(b) have been met with respect to any Business Combination Transaction. The good faith determination of a majority of the Continuing Trustees on such matters shall be conclusive and binding for all the purposes of this Article XI.

**Section 11.5. No Effect on Fiduciary Obligations:**

(a) Nothing contained in this Article XI shall be construed to relieve the trustees or an Interested Shareholder from any fiduciary obligation imposed by law.

(b) The fact that any Business Combination Transaction complies with the provisions of Section 11.3 of this Article XI shall not be construed to impose any fiduciary duty, obligation or responsibility on the trustees, to approve such Business Combination Transaction or recommend its adoption or approval to the shareholders, nor shall such compliance limit, prohibit or otherwise restrict in any manner the trustees, with respect to evaluations of or actions and responses taken with respect to such Business Combination Transactions.

## ARTICLE XII

### GENERAL PROVISIONS

**Sec. 12.1. Fiscal Year:** Each fiscal year of this trust shall begin on the first day of May in each year and end on the last day of April in the following year, provided, however, that the trustees, by resolution duly adopted, may change the fiscal year of the trust.

**Sec. 12.2. Recording.** This trust instrument and any amendment thereto shall be promptly recorded in the office of the recorder of deeds of Cook County, Illinois.

**Sec. 12.3. Illinois Law:** This amended and restated trust shall not be effective until signed by all trustees. This amended and restated trust shall be construed and interpreted and its validity determined in accordance with the laws of Illinois.

66416738

# UNOFFICIAL COPY

3 6 1 0 3 3 8

IN WITNESS WHEREOF, the undersigned have affixed their hands this 16th day of September, 1988.

*Kenneth S. Axelson*  
Kenneth S. Axelson

*Edward McCormick Blair, Sr.*  
Edward McCormick Blair, Sr.

*Peter J.P. Brickfield*  
Peter J.P. Brickfield

*Carl F. Chapman*  
Carl F. Chapman

*Charles R. Gardner*  
Charles R. Gardner

*William B. Ogden, III*  
William B. Ogden, III

*Nathan W. Pearson*  
Nathan W. Pearson

*Ralph H. Poole, Jr.*  
Ralph H. Poole, Jr.

*Gustav Schwab*  
Gustav Schwab

*Fred H. Sidra*  
Fred H. Sidra

*Robert E. Wood, II*  
Robert E. Wood, II

Being all of the Trustees of THE CHICAGO DOCK & CANAL TRUST.

PROPERTY RECORDER  
THOSE FROM 8738 09/16/88 14 18 09  
#415 # 14 #-86-418338  
COOK COUNTY RECORDER

864158338

864158335

3200