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Bk: 3830 Pg: 134 Doc: DFB  
Page: 1 of 7 06/26/2007 01:52 PM**DECLARATION OF TRUST****17 DOWNING THREE NOMINEE TRUST**Dated: As of June 25, 2007

**DONALD R. ROCHELO** and **DONNA L. ROCHELO**, whose tax mailing address is 323 Red Barn Road, Dalton, Massachusetts (the "Trustee" and together with any additional Trustee appointed in accordance with the terms of this Trust, the "Trustees"), hereby declare that any and all property and interest in property, real and personal, that may be acquired hereunder (the "Trust Estate") shall be held in trust, for the sole benefit of the individuals or entities listed in the Schedule of Beneficiaries in the proportions stated in such Schedule, which Schedule has this day been executed by the Beneficiaries (defined below) and filed with the Trustee with receipt acknowledged by at least one Trustee ("Schedule of Beneficiaries") and its successors in interest as Beneficiaries as set forth in revised Schedules of Beneficiaries so executed and acknowledged.

**Section 1: Name and Purpose of Trust**

1.1 This Trust shall be known as the "**17 DOWNING THREE NOMINEE TRUST**" and is intended to be, and shall be, a nominee trust, so-called, for federal and state income tax purposes.

1.2 The purposes for which this Trust is formed and the functions to be carried on by the Trustees are to create a Trust for the benefit of the Beneficiaries for the purpose of holding the record legal title to the Trust Estate and such functions as are necessarily incidental thereto.

**Section 2: Beneficiaries**

2.1 The term "Beneficiaries" shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in such revised Schedules of Beneficiaries from time to time hereinafter executed as provided above. The respective beneficial interests of the Beneficiaries shall be as stated in the Schedule of Beneficiaries.

2.2 If the beneficial interest hereunder is held by more than one person or entity and there is no written agreement otherwise between the Beneficiaries as to how decisions are to be made and actions taken hereunder (including without limitation, amendment and termination of this Trust, appointment and removal of Trustees, directions and notices to Trustees, and execution of documents), such decisions and actions shall be made or taken, as the case may be, by Beneficiaries holding One Hundred Percent (100%) of the beneficial interest of this Trust. All decisions and actions so made or taken, including without limitation, decisions and actions related to amendment or termination of this Trust and appointment or removal of Trustees, shall be deemed to be decisions and actions of all of the Beneficiaries and shall be binding upon all of them and the Trustees.

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2.3 If the beneficial interest hereunder is held by more than one person or entity and there is no written agreement otherwise between the Beneficiaries as to the need for approval of transfers of beneficial interest, any and all transfers of beneficial interests (except involuntary transfers), including without limitation sales, gifts, intra-family transfers, pledges, and mortgages, shall require approval of Beneficiaries representing the percentage interest required under Paragraph 2.2 above. The Trustees shall not be affected by any assignment or transfer of any beneficial interest until receipt by the Trustees of notice from the Beneficiaries stating that such assignment or transfer has in fact been made, and approved if required. Incorporated into such notice to the Trustees shall be a revised Schedule of Beneficiaries, receipt of which shall be acknowledged by at least one Trustee.

2.4 The Trustees shall not be affected by any agreement between the Beneficiaries governing how decisions are to be made or actions taken or the need for approval of transfers unless such agreement is in writing, is executed by all the beneficiaries and is filed with the Trustees.

2.5 Any Trustee may without impropriety become a Beneficiary hereunder and exercise all rights of a Beneficiary with the same effect as though he or she or it were not a Trustee, provided however, the parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law.

**Section 3: Trustees; Powers of Trustees: Instruments  
Executed by Trustees**

3.1 The Trustees shall hold the principal of this Trust and receive the income therefrom for the benefit of the Beneficiaries, and shall pay over the principal and income pursuant to the directions of the Beneficiaries and without such direction shall pay the income to the Beneficiaries in proportion to their respective interests at least yearly.

3.2 Subject to the provisions in Section 3.3 below describing limitations on the authority of the Trustees hereunder, any Trustee, acting singly, may execute on behalf of the Trust any instrument or agreement affecting the Trust to any person or persons (natural or corporate), including any other than Trustee or Trustees hereunder, authority to execute any and all instruments or to take any and all other action which the Trustees are authorized to do by the terms of this Trust.

3.3 Except as hereinafter provided in case of the termination of this Trust, the Trustees shall have no power to deal in or with the Trust Estate except as directed by the Beneficiaries. When, as, if and to the extent specifically directed by the Beneficiaries, the Trustees shall have the following powers:

- (a) to buy, sell, convey, assign, mortgage or otherwise dispose of all or any part of the Trust Estate and execute and deliver leases and subleases either as landlord or tenant;
- (b) to execute and deliver notes for borrowing for the Beneficiaries;
- (c) to grant easements or acquire rights or easements and enter into agreements and

arrangements with respect to the Trust Estate;

- (d) to direct any person or persons, acting singly or together with others and whether or not serving as a Trustee hereunder, to sign checks, drafts, notes, bills of exchange, acceptances, undertakings and other instruments or orders for payment, transfer or withdrawal of money for whatever purpose and to whomsoever payable, including those drawn to the individual order of a signer, and all waivers of demand, protest, notice of protest or dishonor of any check, note, bill, draft, or other instrument made, drawn and endorsed in the name of the Trust; and
- (e) to open one or more bank accounts in the name of the beneficiaries, which shall be part of the Trust Estate; provided that any such accounts shall always be opened in a manner which will not cause the Trust to be deemed a separate taxable entity by either the state or federal government.

Any and all instruments executed pursuant to such directions may create obligations extending over any periods of time, including periods extending beyond the date of any possible termination of the Trust. A direction to the Trustees by a Beneficiary may be made by a Durable Power of Attorney.

3.4 Every written contract or instrument signed by the Trustees shall refer to this instrument and may refer to the Trust as the "**17 DOWNING THREE NOMINEE TRUST**". No Trustee hereunder shall have, or be subject to, any personal liability whatsoever for, on account of, or under any contract, obligation or undertaking of the Trust, and such contract, obligation or undertaking shall be enforceable only against the Trust Estate. Likewise, no Beneficiary hereunder shall have, or of, or under any contract, obligation or undertaking of the Trust, and such contract, obligation or undertaking shall be enforceable only against the Trust Estate.

3.5 No Trustee hereunder shall be liable for any error of judgment nor for any loss arising out of any act or omission in good faith, but shall be responsible only for his or her own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. No purchaser, transferee, pledgee, mortgagee or other lender shall be under any liability to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the requisite number of Trustees under Paragraph 3.2 appearing from the records of the Registry of Deeds (defined below) to the Trustees hereunder, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that (a) at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, (b) the execution and delivery thereof or taking of such action was duly authorized, empowered and directed by the Beneficiaries, and (c) such instrument or document or action is valid, binding, effective and legally enforceable.

3.6 Any persons dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the requisite number of Trustees under Paragraph 3.2 appearing from the records of the Registry of Deeds to be Trustees hereunder and acknowledged by at least one Trustee as to (a) who are the Trustees or the Beneficiaries hereunder, (b) the authority of the Trustees to act, or (c) the existence or non-existence of any fact or facts which constitute conditions precedent to act by the Trustees or which are in any other manner germane to the affairs of the Trust. Such certificates may address, among other things, whether or not a Beneficiary is a corporation, or if a corporation, whether or not a transaction involved the transfer of all or substantially all of that corporate Beneficiary's assets, or assets in Massachusetts, and whether or not any of the Beneficiaries is a minor, a personal representative of an estate, incompetent or a "non-foreign person" for Federal income tax purposes.

3.7 Notwithstanding any provisions contained herein, no Trustee shall be required to take any action which will, in the opinion of such Trustee, involve the Trustee in any personal liability unless first satisfactorily indemnified by the Beneficiaries or otherwise. More generally, if any Trustee shall at any time for any reason (other than for willful breach of trust) be held to be under any personal liability (for contract, tort or otherwise) as such Trustee, then such Trustee shall be held harmless and indemnified by the Beneficiaries, jointly and severally, against all loss, costs, damage, or expense by reason of such liability.

3.8 No Trustee shall be required to furnish bond.

**Section 4: Resignation or Removal of Trustees;  
Appointment of Successor or Additional Trustees**

4.1 Any Trustee hereunder may resign at any time by an instrument in writing signed and acknowledged by such Trustee and delivered to all remaining Trustees and to each Beneficiary. Such resignation shall take effect on the date specified therein provided that such resignation shall only be effective upon the recording of such instrument with the Registry of Deeds.

4.2 Upon the resignation or inability of **DONALD R. ROCHELO OR DONNA L. ROCHELO** to serve as Trustees, the remaining Trustee shall continue to serve. Upon the resignation or inability of **DONALD R. ROCHELO AND DONNA L. ROCHELO** to serve as Trustee(s) the Successor Trustee(s) is designated as **JASON M. ROCHELO AND MARK J. ROCHELO**.

4.3 Additional Trustees may be appointed or any Trustee may be removed by an instrument or instruments in writing signed by the Beneficiaries. However, no such appointment or removal shall be deemed to be effective until a certificate signed and acknowledged by any Trustee naming the Trustee or Trustees appointed or removed, and, in the case of any appointment, the acceptance in writing signed and acknowledged by the Trustee or Trustees appointed has been recorded at the Registry of Deeds. Upon the recording of the instrument at the Registry of Deed, the legal title to the Trust Estate shall thereupon and without the necessity of any conveyance be vested in said succeeding or additional Trustee or Trustees. Each succeeding Trustee and additional Trustee

shall have all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

4.4 In the event that there is no Trustee, either through the death or resignation of a sole Trustee without prior appointment of a successor Trustee or for any other cause, persons or entities purporting to be the Beneficiaries hereunder may record in the Registry of Deeds an affidavit stating the names and addresses of all the Beneficiaries hereunder and including as attachments to such affidavit:

- (a) a true and complete copy of the instrument, as executed, by which the Beneficiaries have amended or terminated this Trust or removed or appointed a Trustee, as the case may be; and
- (b) a true and complete copy of the written agreement, if any, as executed between the Beneficiaries, governing how decisions are to be made and actions taken (or if no such agreement exists, a statement to that effect in the affidavit); and
- (c) if appropriate for any of the Beneficiaries, evidence of authorization, such as a certificate of corporate vote; and
- (d) the most recent Schedule of Beneficiaries as filed with the Trustees, and received by at least one of them.

Such affidavit, to be made under the pains and penalties of perjury, when executed by persons or entities purporting to be Beneficiaries holding the required percentage of beneficial interests necessary to make decisions or take actions, pursuant to such written agreement between the Beneficiaries (or if none, pursuant to Paragraph 2.2 above), and recorded together with an attorney's certificate under M.G.L. c. 183, Section 5B, shall have the same force and effect as if the certificate of a Trustee or Trustees required or permitted hereunder had been recorded and persons dealing with the Trust or Trust Estate may always rely without further inquiry upon such an affidavit as so executed and recorded as to the matters stated herein.

#### **Section 5: Amendments**

5.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by the percentage of the Beneficiaries required under paragraph 2.2 above and delivered to the Trustees. However, no such amendment shall be effective until the instrument of amendment or a certificate setting forth the terms of such amendment, signed by the Trustees and acknowledged by one of them, has been recorded with the Registry of Deeds.

#### **Section 6: Termination**

6.1 This Trust may be terminated at any time by notice in writing from the Beneficiaries holding the requisite percentage of the beneficial interest pursuant to written agreement between the

Beneficiaries (or if no such agreement, from the Beneficiaries holding the percentage of beneficial interest required under Paragraph 2.2 above) to the Trustees and to the other Beneficiaries, if any. However, such termination shall only be effective when a certificate thereof signed by the Trustees, and acknowledged by one of them, shall be recorded with the Registry of Deeds. Notwithstanding any other provision of the undersigned that this Trust not violate the Rule Against Perpetuities, this Trust shall terminate in any event NINETY (90) years from the date hereof, if not sooner terminated as provided herein.

6.2 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Beneficiaries as tenants in common in proportion to their respective interests hereunder, or as otherwise directed by all of the Beneficiaries, provided, however, the Trustees may retain such portion thereof, as in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.

**Section 7: Governing Law**

7.1 This Declaration of Trust shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

**Section 8: Registry of Deeds.**

8.1 The term "Registry of Deeds" as used herein shall mean the Berkshire County (Middle District ) Registry of Deeds, provided, however, if this Declaration of Trust is recorded or filed for registration in any other public office, within or without the Commonwealth of Massachusetts, any person dealing with portions or all of the Trust Estate as to which documents or instruments are recorded or filed for registration in such other public office in order to constitute notice to persons not parties thereto may rely on the state of the record with respect to this Trust in such other public office, and with respect to such portions or all of the Trust Estate.

EXECUTED as a sealed instrument as of the date first set forth above.

Witnesses as to the Trustee:

Kariscad Zueato

Donald R. Roche

DONALD R. ROCHELO, as Trustee  
aforesaid and not individually

Dian J. Fauch

Kariscad W. Zueato

Donna L. Roche

DONNA L. ROCHELO, as Trustee  
aforesaid and not individually

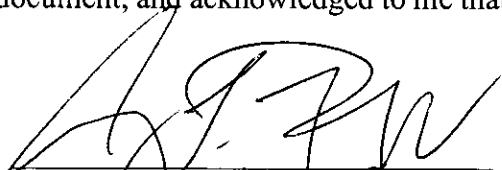
Dian J. Fauch

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

June 25, 2007

On this 25 day of June, 2007, before me, the undersigned notary public, personally appeared DONALD R. ROCHELO and DONNA L. ROCHELO, proved to me through satisfactory evidence of identification, which was a Massachusetts State Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

  
Notary Public: Amy L. Perry Mercier  
My commission expires: 9/14/2012

