

PERINI CORP
Form 10-Q
August 09, 2006

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q**

(X) QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2006

OR

() TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 1-6314

Perini Corporation

(Exact name of registrant as specified in its charter)

MASSACHUSETTS
(State or other jurisdiction of
incorporation or organization)

04-1717070
(I.R.S. Employer
Identification No.)

73 MT. WAYTE AVENUE, FRAMINGHAM, MASSACHUSETTS 01701-9160
(Address of principal executive offices)
(Zip code)

(508) 628-2000
(Registrant's telephone number, including area code)

NONE
(Former name, former address and former fiscal year,
if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-Accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares of Common Stock, \$1.00 par value per share, of registrant outstanding at August 4, 2006 was 26,435,795.

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June 30, 2006 and December 31, 2005

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Part I. Financial Information

Item 1. Financial Statements (Unaudited)

PERINI CORPORATION AND SUBSIDIARIES
CONSOLIDATED CONDENSED BALANCE SHEETS (UNAUDITED)
JUNE 30, 2006 (UNAUDITED) AND DECEMBER 31, 2005
(In Thousands)

ASSETS

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Cash and Cash Equivalents (Note 3)	\$
Accounts Receivable, including retainage	
Unbilled Work	
Deferred Tax Asset	
Other Current Assets	
Total Current Assets	\$
Property and Equipment, less Accumulated Depreciation of \$29,459 in 2006 and \$25,947 in 2005	\$
Goodwill	\$
Other Assets	\$
	\$
	=====
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>	
Current Maturities of Long-term Debt	\$
Accounts Payable, including retainage	
Deferred Contract Revenue	
Accrued Expenses	
Total Current Liabilities	\$
Long-term Debt, less current maturities included above	\$
Other Long-term Liabilities	\$
Contingencies and Commitments (Note 5)	
Stockholders' Equity:	
Preferred Stock	\$
Series A Junior Participating Preferred Stock	
Stock Purchase Warrants	
Common Stock	
Additional Paid-in Capital	
Retained Earnings	
Total Stockholders' Equity	\$
Accumulated Other Comprehensive Loss	\$
	\$
	=====

The accompanying notes are an integral part of these consolidated condensed financial statements.

CONSOLIDATED CONDENSED STATEMENTS OF INCOME (UNAUDITED)
(In Thousands, Except Share Data)

	THREE MONTHS ENDED JUNE 30,	
	2006	2005
Revenues (Note 9)	\$ 712,462	\$ 378,
Cost of Operations	675,446	353,
Gross Profit	\$ 37,016	\$ 24,
General and Administrative Expenses (Note 6)	28,543	12,
INCOME FROM CONSTRUCTION OPERATIONS (Note 9)	\$ 8,473	\$ 11,
Other Income (Expense), Net	250	(
Interest Expense	(920)	(
Income before Income Taxes	\$ 7,803	\$ 10,
Provision for Income Taxes	(3,242)	(4,
NET INCOME	\$ 4,561	\$ 6,
Less:		
Accrued Dividends on \$21.25 Preferred Stock (Note 8)	(68)	(
Excess of fair value over carrying value upon redemption of \$21.25 Preferred Stock (Note 8)	(253)	(
NET INCOME AVAILABLE FOR COMMON STOCKHOLDERS	\$ 4,240	\$ 6,
BASIC EARNINGS PER COMMON SHARE (Note 7)	\$ 0.16	\$ 0
DILUTED EARNINGS PER COMMON SHARE (Note 7)	\$ 0.16	\$ 0
WEIGHTED AVERAGE COMMON SHARES OUTSTANDING (Note 7):		
BASIC	26,181,751	25,345,
Effect of Dilutive Stock Options, Warrants and Restricted Stock Units Outstanding	502,923	624,
DILUTED	26,684,674	25,970,

The accompanying notes are an integral part of these consolidated condensed financial statements.

PERINI CORPORATION AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENT OF STOCKHOLDERS' EQUITY (UNAUDITED)
FOR THE SIX MONTHS ENDED JUNE 30, 2006
(In Thousands)

	Preferred Stock	Stock Purchase Warrants	Common Stock	Additional Paid-in Capital
Balance - December 31, 2005	\$ 19	\$ 461	\$26,038	\$ 116,223
Net income	-	-	-	-
Preferred stock dividends accrued (\$8.98 per share*)	-	-	-	-
Common Stock options exercised	-	-	100	392
Restricted stock compensation expense	-	-	-	9,190
Issuance of Common Stock, net	-	-	288	(665)
Redemption of Preferred Stock	(19)	-	-	3,543
Balance - June 30, 2006	\$ -	\$ 461	\$26,426	\$ 128,683

*Equivalent to \$0.898 per Depositary Share

The accompanying notes are an integral part of these consolidated condensed financial statements.

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PERINI CORPORATION AND SUBSIDIARIES
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (UNAUDITED)
FOR THE SIX MONTHS ENDED JUNE 30, 2006 AND 2005
(In Thousands)

	SIX MONTHS ENDED JUNE 30, 2006
Cash Flows from Operating Activities:	
Net income	\$ 12,651
Adjustments to reconcile net income to net cash used by operating activities:	
Depreciation and amortization	5,137
Restricted stock compensation expense	9,190
Income tax benefit from stock options exercised	-
Deferred income taxes	9,191
Gain on sale of equipment	(364)
Loss on land held for sale, net	86
Loss on sale of available-for-sale securities	-
Increase in other long-term liabilities	848
Other non-cash items, net	5

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Cash used by changes in components of working capital other than cash, current maturities of long-term debt, deferred tax asset and land held for sale, net	(67,640)
NET CASH USED BY OPERATING ACTIVITIES	\$ (30,896)
Cash Flows from Investing Activities:	
Acquisition of Cherry Hill Construction, Inc., net of cash balance acquired	\$ -
Acquisition of property and equipment	(8,590)
Proceeds from sale of property and equipment	1,347
Proceeds from land held for sale, net	6
Proceeds from sale of available-for-sale securities	-
Investment in other investing activities	-
NET CASH USED BY INVESTING ACTIVITIES	\$ (7,237)
Cash Flows from Financing Activities:	
Proceeds from long-term debt	\$ 2,599
Reduction of long-term debt	(6,856)
Redemption of \$21.25 Preferred Stock, including payment of accrued dividends	(8,843)
Proceeds from exercise of common stock options and stock purchase warrants	492
Issuance of common stock	321
Cash settlement of restricted stock units	(698)
Expenditure for stock registration	-
NET CASH USED BY FINANCING ACTIVITIES	\$ (12,985)
Net Decrease in Cash	\$ (51,118)
Cash at Beginning of Year	139,848
Cash at End of Period	\$ 88,730
Supplemental Disclosure of Cash Paid During the Period For:	
Interest	\$ 2,004
Income taxes	\$ 525
Supplemental Disclosure of Noncash Transactions:	
Common stock issued for services	\$ 7,396
Preferred stock dividends accrued but not paid	\$ -

The accompanying notes are an integral part of these consolidated condensed financial statements.

**PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

(1) Basis of Presentation

The unaudited consolidated condensed financial statements presented herein have been prepared in accordance with the instructions to Form 10-Q and do not include all of the information and note disclosures required by accounting principles generally accepted in the United States of America. These statements should be read in conjunction with the financial statements and notes thereto included in the Company's Form 10-K for the year ended December 31, 2005. In the opinion of management, the accompanying unaudited consolidated condensed financial statements include all adjustments, consisting only of normal recurring adjustments, necessary to present fairly the Company's financial position as of June 30, 2006 and December 31, 2005, results of operations for the three months and six months ended June 30, 2006 and 2005, and cash flows for the six months ended June 30, 2006 and 2005. The results of operations for the six months ended June 30, 2006 may not be indicative of the results that may be expected for the year ending December 31, 2006 because, among other reasons, such results can vary depending on the timing of progress achieved and changes in estimated profitability of projects being reported.

(2) Significant Accounting Policies

The significant accounting policies followed by the Company and its subsidiaries in preparing its consolidated financial statements are set forth in Note (1) to such financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2005. The Company has made no significant change in these policies during 2006 except as described in Note 6 - Stock-Based Compensation regarding the required adoption of SFAS No. 123(R), Share-Based Payment.

In June 2006, the Financial Accounting Standards Board issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48) which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements in accordance with SFAS No. 109, Accounting for Income Taxes. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company is required to adopt FIN 48 as of January 1, 2007 and is in the process of determining the impact, if any, the adoption of FIN 48 will have on its consolidated financial statements and related disclosures.

(3) Cash and Cash Equivalents

Cash equivalents include short-term, highly liquid investments with original maturities of three months or less.

Cash and cash equivalents as reported in the accompanying Consolidated Condensed Balance Sheets consist of amounts held by the Company that are available for general corporate purposes and the Company's proportionate share of amounts held by construction joint ventures that are available only for joint venture-related uses. Joint Venture cash and cash equivalents are not restricted to specific uses within those entities; however, the terms of the joint venture agreements limit the Company's ability to distribute those funds and use them for corporate purposes. Cash held by construction joint ventures is distributed from time to time to the Company and to the other joint venture participants in accordance with their percentage interest after the joint venture partners determine that a cash distribution is prudent. Cash distributions received by the Company from its construction joint ventures are then available for general corporate purposes. At June 30, 2006 and December 31, 2005, cash and cash equivalents consisted of the following (in thousands):

**PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)**

(3) Cash and Cash Equivalents (continued)

	June 30, 2006	Dec. 31, 2005
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Corporate cash and cash equivalents (available for general corporate purposes)	\$ 47,997	\$ 99,747
Company's share of joint venture cash and cash equivalents (available only for joint venture purposes, including future distributions)	40,733	40,101
	-----	-----
	\$ 88,730	\$ 139,848
	=====	=====

(4) Acquisition of Rudolph and Sletten, Inc.

In October 2005, the Company completed the acquisition of 100% of the outstanding capital stock of Rudolph and Sletten, Inc. ("Rudolph & Sletten"), a privately held construction and construction management company based in Redwood City, California, and covering the major California construction markets of Los Angeles, Silicon Valley, San Francisco and Sacramento. The transaction was accounted for using the purchase method of accounting as required by SFAS No. 141, "Business Combinations" including the allocation of the purchase price to the tangible and intangible assets of Rudolph & Sletten which has been finalized.

Since the acquisition was effective as of October 3, 2005, the Company's actual 2006 year to date results include Rudolph & Sletten for the total period. Therefore, the following pro forma financial information is only presented for the comparative three month and six month periods ended June 30, 2005 to show the pro forma results of operations as if Rudolph & Sletten had been acquired effective January 1, 2005 (in thousands, except per share data):

	Three Months Ended June 30, 2005		Six Months Ended June 30, 2005	
	Actual	Pro forma	Actual	P
Revenues	\$ 378,384	\$ 533,000	\$ 749,937	
Gross profit	\$ 24,496	\$ 33,385	\$ 47,168	
Net income	\$ 6,460	\$ 7,302	\$ 12,010	
Basic earnings per common share	\$ 0.24	\$ 0.28	\$ 0.45	
Diluted earnings per common share	\$ 0.24	\$ 0.27	\$ 0.44	

The pro forma results have been prepared for comparative purposes only and include certain adjustments such as (i) increased interest expense on acquisition debt; (ii) increased depreciation expense related to the adjustment of the fixed asset carrying values due to the application of purchase accounting (as described above); (iii) additional amortization expenses related to intangible assets arising from the acquisition; and (iv) to reflect a statutory income tax rate on the pretax income of Rudolph & Sletten as well as on the applicable pro forma income adjustments made. In addition, the pro forma results include an adjustment to reflect the elimination of compensation and payroll burden expense of certain Rudolph & Sletten executives who resigned in accordance with the terms of the stock purchase agreement. The pro forma results are not necessarily indicative either of the results of operations that actually would have resulted had the acquisition been in effect on January 1, 2005 or of future results.

**PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)**

(5) Contingencies and Commitments

(a) Tutor-Saliba-Perini Joint Venture vs. Los Angeles MTA Matter

During 1995, a joint venture, Tutor-Saliba-Perini, or the Joint Venture, in which Perini Corporation, or Perini, is the 40% minority partner and Tutor-Saliba Corporation, or Tutor-Saliba, of Sylmar, California is the 60% managing partner, filed a complaint in the

Superior Court of the State of California for the County of Los Angeles against the Los Angeles County Metropolitan Transportation Authority, or LAMTA, seeking to recover costs for extra work required by LAMTA in connection with the construction of certain tunnel and station projects. In February 1999, LAMTA countered with civil claims under the California False Claims Act against the Joint Venture, Tutor-Saliba and Perini jointly and severally (together, TSP). Ronald N. Tutor, the Chairman and Chief Executive Officer of Perini since March 2000, is also the chief executive officer and the sole stockholder of Tutor-Saliba.

Claims concerning the construction of LAMTA projects were tried in 2001. During the trial, based on the Joint Venture's alleged failure to comply with the Court's discovery orders, the Judge issued terminating sanctions that resulted in a substantial judgment against TSP.

TSP appealed and, on January 25, 2005, the State of California Court of Appeal reversed the trial court's entire judgment and found that the trial court judge had abused his discretion and had violated TSP's due process rights, and had imposed impermissibly overbroad terminating sanctions. The Court of Appeal also directed the trial court to dismiss LAMTA's claims that TSP had violated the Unfair Competition Law ("UCL") because LAMTA lacked standing to bring such a claim, and remanded the Joint Venture's claims against LAMTA for extra work required by LAMTA and LAMTA's counterclaim under the California False Claims Act against TSP to the trial court for further proceedings, including a new trial. LAMTA petitioned the Court of Appeal for rehearing and the California Supreme Court for review. Both petitions were denied and the case was remanded and has been reassigned for a new trial.

In 2006, LAMTA sought to amend its cross-complaint to expand on existing causes of action, to add statutory causes of action, and to add the District Attorney as a party in order to have a plaintiff with standing to assert a UCL claim. The Court ruled that the UCL claim may be added; all other proposed MTA amendments and additions were denied. The Court ordered bifurcated proceedings in an attempt to address the case on a piecemeal basis in the hope that the parties will settle short of a trial on the entire case. The Court also asked the parties to mediate on a contemporaneous track.

The ultimate financial impact of the lawsuit is not yet determinable. Therefore, no provision for loss, if any, has been recorded in the financial statements.

(b) Redondo/Perini Joint Venture vs. Siemens Transportation Matter

This is a binding arbitration proceeding arising out of a contract between the Redondo/Perini Joint Venture, or RPJV, a joint venture in which Perini and Redondo Construction Corp., or Redondo, each have a 50% interest and the Siemens Transportation Partnership, S.E., Puerto Rico, or STP. STP is constructing a public metropolitan passenger rail transportation project for the Commonwealth of Puerto Rico and RPJV is responsible for the design and construction of a portion of the project.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(5) Contingencies and Commitments (continued)

(b) Redondo/Perini Joint Venture vs. Siemens Transportation Matter (continued)

On March 19, 2002, Redondo filed a petition for reorganization under Chapter 11 in U.S. Bankruptcy Court for the District of Puerto Rico. On December 23, 2002, RPJV filed an arbitration demand against STP seeking the recovery of additional costs related to design changes and the late completion of the design. On January 31, 2003, STP filed a counter-demand against RPJV seeking the recovery of damages allegedly related to defects in design and construction and the late completion of RPJV's work along with the repayment for alleged advances previously paid to RPJV.

On October 7, 2004, STP filed suit against Perini in New York State court seeking enforcement against Perini of a Guaranty Agreement that allegedly guarantees the performance and payment obligations of the subject RPJV/Siemens Contract in an amount to be determined at trial, but not less than \$27 million. This action has been stayed pending the arbitration.

On March 14, 2006, the arbitration panel issued a final award on Phase I, awarding RPJV approximately \$16.2 million on its claim and STP approximately \$0.5 million on its claim, for a net award to RPJV of approximately \$15.7 million, payable in thirty days. The arbitrators also deferred decision on approximately \$15.5 million of RPJV's Phase I claims until the conclusion of Phase II. Subsequently, STP filed a Motion to Stay Enforcement of the Phase I arbitration award, together with a petition for an order to

vacate, annul and set aside the award. That motion is pending.

There will be a second phase of the arbitration, which will include claims which existed on or after September 29, 2003. The parties exchanged statements of claim on July 24, 2006. RPJV's claim is \$23,183,341, plus interest. STP's claim is \$17,500,000. Discovery has started, but no hearings have been held. Hearings are scheduled to start in March 2007.

Management has made an estimate of the anticipated total cost recovery on this project and it is included in revenue recorded to date. To the extent new facts become known or the final cost recovery included in the claim settlement varies from this estimate, the impact of the change will be reflected in the financial statements at that time.

(c) Perini/Kiewit/Cashman Joint Venture-Central Artery/Tunnel Project Matter

Perini/Kiewit/Cashman Joint Venture, or PKC, a joint venture in which Perini holds a 56% interest and is the managing partner, is currently pursuing a series of claims for additional contract time and/or compensation against the Massachusetts Highway Department, or MHD, for work performed by PKC on a portion of the Central Artery/Tunnel project in Boston, Massachusetts. During construction, MHD ordered PKC to perform changes to the work and issued related direct cost changes with an estimated value, excluding time delay and inefficiency costs, in excess of \$100 million. In addition, PKC encountered a number of unforeseen conditions during construction that greatly increased PKC's cost of performance.

Certain of PKC's claims have been presented to a Disputes Review Board, or the DRB, which consists of three construction experts chosen by the parties. To date, the DRB has ruled on a binding basis that PKC is entitled to additional compensation for its contract time delay claim in the amount of \$17.4 million. On March 20, 2002, the Superior Court of the Commonwealth of Massachusetts approved PKC's request to confirm the DRB's \$17.4 million award. The MHD appealed the Superior Court decision to the Appeals Court of the Commonwealth of Massachusetts which affirmed the Superior Court's confirmation of the DRB's award on May 30, 2006.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(5) Contingencies and Commitments (continued)

(c) Perini/Kiewit/Cashman Joint Venture-Central Artery/Tunnel Project Matter (continued)

The DRB has also ruled on a binding basis that PKC is entitled to four additional compensation awards, less credits, totaling \$39.8 million for impacts and efficiencies caused by MHD to certain of PKC's work. MHD has filed actions in the Massachusetts Superior Court seeking to vacate these awards, and PKC has answered, seeking to confirm them. The third and fourth actions have not yet been heard. The Superior Court has confirmed the first two of those awards.

Under the Dispute Resolution Rules of the contract, either party may periodically terminate the services of some or all of the DRB members, provided that members who are removed under this provision will remain on the DRB through the completion of any then pending claims. The MHD removed the "Second DRB" members and the "Third DRB" members have been agreed upon and have begun hearing claims. The remaining claims to be decided by the Third DRB on a binding basis have an anticipated value of approximately \$104 million (exclusive of interest). MHD disputes that the remaining claims before the Third DRB may be decided on a binding basis. Hearings are scheduled before the Third DRB throughout the remainder of 2006 and into early 2007.

Management has made an estimate of the total anticipated cost recovery on this project and it is included in revenue recorded to date. To the extent new facts become known or the final cost recovery included in the claim settlement varies from this estimate, the impact of the change will be reflected in the financial statements at that time.

On August 14, 2002, the Massachusetts Attorney General's office, pursuant to its authority under the Massachusetts False Claims Act, served a Civil Investigative Demand ("CID") on Perini and the other joint venture partners. The CID sought the production of certain construction claims documentation in connection with the Central Artery/Tunnel Contract No. C11A1. In September 2004, the Attorney General's office presented a list of items that it believed constitute possible false claims. PKC made a responsive presentation to the Attorney General's office in January 2005. PKC vigorously denies that it submitted any false claims and is cooperating with the Attorney General's office in the ongoing investigation.

(d) Investigation by U.S. Attorney for Eastern District of New York

In 2001, the Company received a grand jury subpoena for documents in connection with an investigation by the U.S. Attorney's Office for the Eastern District of New York. The Company's understanding is that the investigation concerns contracting with disadvantaged, minority, and women-owned businesses in the New York City area construction industry. The Company has cooperated with the U. S. Attorney's Office in the investigation and produced documents pursuant to the subpoena in 2001 and 2002. Beginning in 2001 and on several subsequent occasions, the U.S. Attorney's Office confirmed that neither the Company nor any of its officers or employees was a subject or a target of the investigation. On May 29, 2006, the Company's counsel was advised by the U.S. Attorney's Office that it was reevaluating the Company's status in the investigation. On August 2, 2006, the Company received another subpoena for documents. The Company is continuing to cooperate in the investigation. It is possible the U.S. Attorney's Office could name the Company a subject of the investigation in the future. The Company is unable to evaluate the potential impact, if any, of the investigation at this time.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(6) Stock-Based Compensation

Effective January 1, 2006, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment" ("SFAS No. 123(R)") using the modified prospective application method and, accordingly, prior period amounts have not been restated. SFAS No. 123(R) establishes the accounting treatment for equity instruments exchanged for employee services. Under the provisions of SFAS No. 123(R), share-based compensation is measured at the grant date based on the calculated fair value of the award. The compensation expense is recognized over the employees' requisite service period, generally the vesting period of the award. SFAS No. 123(R) also requires the related excess tax benefit received upon exercise of stock options or vesting of restricted stock, if any, to be reflected, when realized, in the statement of cash flows as a financing activity rather than an operating activity. However, since the Company is in a taxable loss position at June 30, 2006, the excess tax benefits were not realized. Excess tax benefits will be recorded when (i) a deduction reported for tax return purposes for an award of equity instruments exceeds the cumulative compensation cost for the instruments recognized for financial reporting purposes, and (ii) the deduction actually produces a cash benefit.

In November 2005, the Financial Accounting Standards Board issued its Staff Position No. 123(R)-3, "Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards" ("FSP 123(R)-3"). The Company has elected to adopt the alternative transition method provided in FSP 123(R)-3 for calculating the tax effects of stock-based compensation pursuant to SFAS No. 123(R). The alternative transition method includes a simplified method to establish the beginning balance of the additional paid-in capital pool ("APIC Pool") related to the tax effects of employee stock-based compensation, and to determine the subsequent impact on the APIC Pool and the Consolidated Condensed Statements of Cash Flows of the tax effects of employee stock-based compensation awards that are outstanding upon adoption of SFAS No. 123(R).

From January 1, 2004 through December 31, 2005, the Company accounted for stock-based compensation in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation". Therefore, the adoption of the provisions of SFAS No. 123(R) did not have a significant impact on the Company's financial position or results of operations.

In May 2004, the Company's stockholders approved the adoption of the 2004 Stock Option and Incentive Plan which provided that up to 1,000,000 shares of the Company's common stock would be available for the granting of stock-based compensation awards to key executives, employees and directors of the Company. In May 2006, the Company's stockholders approved an amendment to the plan that increased the number of shares of the Company's common stock available for issuance thereunder from 1,000,000 shares to 3,000,000 shares.

The plan allows these stock-based compensation awards to be granted in a variety of forms, including stock options, stock appreciation rights, restricted stock awards, unrestricted stock awards, deferred stock awards and dividend equivalent rights. In 2004, 300,000 restricted stock units were granted under the plan with a grant date fair value of \$4.7 million. As of June 30, 2006, all of these restricted stock units were vested and 300,000 shares of the Company's common stock have been issued. For the six months ended June 30, 2006 and 2005, the Company recognized compensation expense of \$0.6 million and \$2.4 million, respectively, related to these awards and these amounts are included as a component of "General and Administrative Expenses" in the Consolidated Condensed Statements of Income.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(6) Stock-Based Compensation (continued)

On April 5, 2006, the Company's Board of Directors approved the grant of 1,265,000 restricted stock units to certain of its executive officers and employees under the 2004 Stock Option and Incentive Plan. 150,000 restricted stock units vested on June 30, 2006. The remaining restricted stock units generally vest equally on December 31 of 2007, 2008 and 2009. 715,000 of the restricted stock units granted (including the 150,000 restricted stock units that vested on June 30, 2006) are subject only to satisfaction of service requirements; the remaining 550,000 restricted stock units granted are subject to satisfaction of both service requirements and achievement of certain pre-established pretax income performance criteria. Upon vesting, each restricted stock unit will be exchanged for one share of the Company's common stock. The grant date fair value of these restricted stock units is \$39.9 million based on the closing price of the Company's common stock on April 5, 2006. For both the six month and three month periods ended June 30, 2006, the Company recognized compensation expense of \$8.6 million related to these awards and this amount is included as a component of "General and Administrative Expenses" in the Consolidated Condensed Statements of Income. Accordingly, at June 30, 2006, there was \$31.3 million of unrecognized compensation cost related to the non-vested restricted stock units outstanding. That cost is expected to be recognized over a weighted average period of 2.8 years.

A summary of stock-based compensation awards related to the restricted stock units outstanding under the Company's 2004 Stock Option and Incentive Plan for the six months ended June 30, 2006 is as follows:

	Number of Shares	Weighted Average Grant Date Fair Value	Sha Avai to G
Outstanding at January 1, 2006	150,000	\$15.62	7
Approved Plan Amendment	-	-	2,0
Granted	1,265,000	\$31.55	(1,2
Vested and Issued	(300,000)	\$23.58	
Outstanding at June 30, 2006	1,115,000	\$31.55	1,4

The aggregate intrinsic value of the restricted stock units outstanding at June 30, 2006 is approximately \$25.1 million.

In May 2000, the Company's stockholders approved the adoption of the Special Equity Incentive Plan which provides that up to 3,000,000 shares of the Company's common stock will be available for the granting of nonqualified stock options to key executives, employees and directors of the Company. Options are granted at not less than the fair market value on the date of grant, as defined. Options generally expire 10 years from the date of grant. Options outstanding under the Special Equity Incentive Plan are generally exercisable in three equal annual installments, on the date of grant and on the first and second anniversary of the date of grant. As of June 30, 2006, all of the options outstanding were exercisable. A summary of stock option activity related to the Company's Special Equity Incentive Plan is as follows:

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(6) Stock-Based Compensation (continued)

Exercise Price Per Share

	Number of Shares	Range	Weighted Average
Outstanding at January 1, 2006	454,000	\$3.13 - \$4.50	\$4.42
Exercised	(90,000)	\$4.50	\$4.50
Outstanding at June 30, 2006	364,000	\$3.13 - \$4.50	\$4.41

Shares of the Company's authorized but unissued common stock have been reserved for issuance to employees under its 1982 Stock Option Plan. Although the provisions of the 1982 Stock Option Plan expired during 2002, the Company still has 5,000 shares of authorized but unissued common stock reserved for issuance under the Plan applicable to the remaining outstanding options. As of June 30, 2006, all of the 5,000 options outstanding were exercisable at an exercise price of \$5.29 per share.

Options outstanding at June 30, 2006 under the aforementioned plans and related weighted average price and life information follows:

Remaining Life (Years)	Grant Date	Options Outstanding	Options Exercisable	Weighted Average Exercise Price
1	12/10/1998	5,000	5,000	\$5.29
4	3/29/2000	271,500	271,500	\$4.50
4	5/25/2000	45,000	45,000	\$3.74
4	9/12/2000	47,500	47,500	\$4.50
Totals		369,000	369,000	\$4.42

(7) Earnings per Common Share

Basic earnings per common share was computed by dividing net income less the sum of (i) dividends accrued on the \$21.25 Preferred Stock and (ii) the excess of the fair value of the consideration given over the carrying value upon redemption of the \$21.25 Preferred Stock during the period (see Note 8) by the weighted average number of common shares outstanding. Diluted earnings per common share was similarly computed after giving consideration to the dilutive effect of stock options, warrants and restricted stock units outstanding on the weighted average number of common shares outstanding.

There were no options or stock purchase warrants whose exercise price exceeded the average market price of the Common Stock at June 30, 2006 and 2005. The effect of the assumed conversion of the Company's outstanding \$21.25 Preferred Stock into Common Stock was antidilutive for all periods presented.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(8) Dividends

(a) **Common Stock**

There were no cash dividends declared or paid on the Company's outstanding Common Stock during the periods presented in the consolidated condensed financial statements included herein.

(b) \$21.25 Preferred Stock

The Company redeemed all remaining outstanding Depository Shares on May 17, 2006, in accordance with the terms of the \$21.25 Preferred Stock, at a price of \$25.00 per share plus accrued and unpaid dividends to that date, for an aggregate amount of approximately \$8.8 million.

(9) Business Segments

The following tables set forth certain business segment information relating to the Company's operations for the six month and three month periods ended June 30, 2006 and 2005 (in thousands):

Six months ended June 30, 2006

	Reportable Segments			Totals
	Building	Civil	Management Services	
Revenues	\$ 1,070,372	\$ 142,335	\$ 112,518	\$ 1,325,225
Income from Construction Operations	\$ 23,945	\$ 6,149	\$ 6,644	\$ 36,738
Assets	\$ 568,678	\$ 277,300	\$ 38,105	\$ 884,083

Six months ended June 30, 2005

	Reportable Segments			Totals
	Building	Civil	Management Services	
Revenues	\$ 472,439	\$ 114,096	\$ 163,402	\$ 749,937
Income from Construction Operations	\$ 10,934	\$ 4,393	\$ 12,143	\$ 27,470
Assets	\$ 240,785	\$ 272,453	\$ 49,318	\$ 562,556

Three months ended June 30, 2006

	Reportable Segments			Totals
	Building	Civil	Management Services	
Revenues	\$ 586,650	\$ 71,601	\$ 54,211	\$ 712,462
Income from Construction Operations	\$ 14,632	\$ 1,775	\$ 3,246	\$ 19,653

Three months ended June 30, 2005

	Reportable Segments			Totals
	Building	Civil	Management Services	
Revenues	\$ 231,467	\$ 63,379	\$ 83,538	\$ 378,384
Income from Construction Operations	\$ 6,210	\$ 2,912	\$ 5,552	\$ 14,674

* In all periods, consists of corporate general and administrative expenses.

** In all periods, corporate assets consist principally of cash and cash equivalents, net deferred tax asset, land held for sale and other investments available for general corporate purposes.

PERINI CORPORATION AND SUBSIDIARIES
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Continued)

(10) Employee Pension Plans

The Company has a defined benefit pension plan that covers its executive, professional, administrative and clerical employees, subject to certain specified service requirements. The Company also has an unfunded supplemental retirement plan for certain employees whose benefits under the defined benefit plan are reduced because of compensation limitations under federal tax laws. Effective June 1, 2004, all benefit accruals under the Company's pension plan were frozen; however, the current vested benefit will be preserved. In accordance with SFAS No. 132R, Employers' Disclosures About Pensions and Other Post-Retirement Benefits, the pension disclosure presented below includes aggregated amounts for both of the Company's plans. The following table sets forth the net pension cost by component for the three month and six month periods ended June 30, 2006 and 2005 (in thousands):

	Three Months Ended June 30,		Six Months Ended June
	2006	2005	2006
Interest cost on projected benefit obligation	\$ 1,075	\$ 1,071	\$ 2,150
Expected return on plan assets	(1,090)	(962)	(2,179)
Recognized actuarial loss	555	445	1,109
Net Pension Cost	\$ 540	\$ 554	\$ 1,080

The Company contributed \$3.0 million to its defined benefit pension plan on April 6, 2006, and expects to contribute an additional \$3.0 million during the remainder of 2006.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**Overview**

Perini Corporation is a leading construction services company, based on revenues, as ranked by Engineering News-Record, offering diversified general contracting, construction management and design-build services to private clients and public agencies throughout the world. We have provided construction services since 1894 and have established a strong reputation within our markets for executing large, complex projects on time and within budget while adhering to strict quality control measures. We offer general contracting, pre-construction planning and comprehensive project management services, including planning and scheduling the manpower, equipment, materials and subcontractors required for a project. We also offer self-performed construction services including site work, demolition, concrete forming and placement and steel erection.

Our business is conducted through three primary segments: building, civil, and management services. Our building segment focuses on large, complex projects in the hospitality and gaming, sports and entertainment, education, transportation, healthcare, biotech, pharmaceutical and high-tech markets. Our civil segment specializes in public works construction in the eastern United States, primarily in metropolitan New York, including the repair, replacement and reconstruction of infrastructure such as highways, bridges, mass transit systems and wastewater treatment facilities. Our management services segment provides diversified construction, design-build and maintenance services to the U.S. military and government agencies, as well as power producers, surety companies and multi-national corporations in the United States and overseas.

Significant Accounting Policies

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Our significant accounting policies are described in Note 1 of Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2005. Our critical accounting policies are also identified and discussed in Item 7 of said Annual Report on Form 10-K. We have made no significant change in these policies during 2006 except as described below.

Adoption of SFAS No. 123(R), "Share-Based Payment"

Effective January 1, 2006, we adopted the provisions of Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment" ("SFAS No. 123(R)") using the modified prospective application method and, accordingly, prior period amounts have not been restated. SFAS No. 123(R) establishes the accounting treatment for equity instruments exchanged for employee services. Under the provisions of SFAS No. 123(R), share-based compensation is measured at the grant date based on the calculated fair value of the award. The compensation expense is recognized over the employees' requisite service period, generally the vesting period of the award. SFAS No. 123(R) also requires the related excess tax benefit received upon exercise of stock options or vesting of restricted stock, if any, to be reflected, when realized, in the statement of cash flows as a financing activity rather than an operating activity. However, since we are in a taxable loss position at June 30, 2006, the excess tax benefits were not realized. Excess tax benefits will be recorded when (i) a deduction reported for tax return purposes for an award of equity instruments exceeds the cumulative compensation cost for the instruments recognized for financial reporting purposes, and (ii) the deduction actually produces a cash benefit.

In November 2005, the Financial Accounting Standards Board issued its Staff Position No. 123(R)-3, "Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards" ("FSP 123(R)-3"). We have elected to adopt the alternative transition method provided in FSP 123(R)-3 for calculating the tax effects of stock-based compensation pursuant to SFAS No. 123(R). The alternative transition method includes a simplified method to establish the beginning balance of the additional paid-in capital pool ("APIC Pool") related to the tax effects of employee stock-based compensation, and to determine the subsequent impact on the APIC Pool and the Consolidated Condensed Statements of Cash Flows of the tax effects of employee stock-based compensation awards that are outstanding upon adoption of SFAS No. 123(R).

From January 1, 2004 through December 31, 2005, we accounted for stock-based compensation in accordance

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with SFAS No. 123, "Accounting for Stock-Based Compensation". Therefore, the adoption of the provisions of SFAS No. 123(R) did not have a significant impact on our financial position or results of operations.

New Accounting Standard

In June 2006, the Financial Accounting Standards Board issued Financial Interpretation No. 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48") which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements in accordance with SFAS No. 109, "Accounting for Income Taxes". FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. We are required to adopt FIN 48 as of January 1, 2007 and we are in the process of determining the impact, if any, the adoption of FIN 48 will have on our consolidated financial statements and related disclosures.

Recent Developments

Redemption of Preferred Stock

On May 17, 2006, we redeemed all remaining outstanding Depositary Shares at a price of \$25.00 per share plus accrued and unpaid dividends to that date, for an aggregate amount of approximately \$8.8 million. As a result of the redemption, the holders of Depositary Shares were not eligible to elect directors at our 2006 Annual Meeting of Stockholders.

Grant of Restricted Stock Units

On April 5, 2006, our Board of Directors approved the grant of 1,265,000 restricted stock units to certain of our executive officers and employees under our 2004 Stock Option and Incentive Plan. 150,000 of the restricted stock units granted vested on June 30, 2006. The remaining restricted stock units generally vest equally on December 31 of 2007, 2008 and 2009. 715,000 of the restricted stock units granted (including the 150,000 restricted stock units that vested on June 30, 2006) are subject only to satisfaction of service requirements; the remaining 550,000 restricted stock units granted are subject to satisfaction of both service requirements and achievement of certain pre-established pretax income performance criteria. Upon vesting, each restricted stock unit will be exchanged for one share of our common stock. We are accounting for these grants of restricted stock units in accordance with SFAS No. 123(R), "Share-Based Payment", beginning in the second quarter of 2006. The grant date fair value of each of these restricted stock units is \$31.55, the closing price of our common stock on April 5, 2006. We recognized

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an \$8.6 million pretax charge in the second quarter of 2006 for compensation cost related to these restricted stock units. The financial impact of the future recognition of compensation cost related to these restricted stock units is expected to be material to our results of operations for 2006 through 2009. Absent significant forfeitures in the future, we estimate that \$31.3 million of compensation cost related to these restricted stock units will be recognized over a weighted average period of 2.8 years.

Record Backlog of \$9.0 Billion

Our backlog of uncompleted construction work at June 30, 2006 reached an all-time record of \$9.0 billion, a 14% increase from our previous all-time record backlog of \$7.9 billion as of December 31, 2005. The June 30, 2006 backlog includes new contract awards added during the second quarter of 2006 totaling \$1.8 billion, including the addition of a total of approximately \$1.1 billion of additional work at the MGM Project CityCenter and The Cosmopolitan Resort and Casino in Las Vegas. In addition, we added to backlog during the second quarter of 2006 \$179 million of school construction work in Florida, \$37 million in new task orders for work in Iraq, and approximately \$400 million of various new awards at Rudolph and Sletten, most notably the \$296 million El Camino Hospital in Mountain View, California.

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	Backlog at December 31, 2005	New Business Awarded	Revenue Recognized	J
	(In millions)			
Building	\$ 7,180.4	\$ 2,365.7	\$ (1,070.4)	
Civil	423.0	13.1	(142.3)	
Management Services	294.4	58.8	(112.5)	
Total	\$ 7,897.8	\$ 2,437.6	\$ (1,325.2)	

Results of Operations

Comparison of the Six Months Ended June 30, 2006 with the Six Months Ended June 30, 2005

Revenues increased by \$575.3 million, gross profit increased by \$22.2 million, income from construction operations increased by \$3.6 million, and net income increased by \$0.7 million (or 5.8%) in 2006. These increases primarily reflect the addition of Rudolph & Sletten, which we acquired in October 2005. The operating results for the six months ended June 30, 2006 were negatively impacted by an \$8.6 million charge (or \$0.20 per diluted share) related to stock-based compensation expense resulting from restricted stock units granted in April 2006, and the write-off of \$1.5 million of expenses associated with our decision not to proceed with our debt offering in May 2006. Basic earnings per common share were \$0.47 for the six months ended June 30, 2006, compared to \$0.45 for the six months ended June 30, 2005. Diluted earnings per common share were \$0.46 for the six months ended June 30, 2006, compared to \$0.44 for the six months ended June 30, 2005.

	Revenues for the Six Months Ended June 30,		Increase (Decrease)	%
	2006	2005		
	(In millions)			
Building	\$ 1,070.4	\$ 472.4	\$ 598.0	126.6 %
Civil	142.3	114.1	28.2	24.7 %
Management Services	112.5	163.4	(50.9)	(31.2) %
Total	\$ 1,325.2	\$ 749.9	\$ 575.3	76.7 %

Overall revenues increased by \$575.3 million (or 76.7%), from \$749.9 million in 2005 to \$1,325.2 million in 2006. This increase was due primarily to an increase in building construction revenues of \$598.0 million (or 126.6%), from \$472.4 million in 2005 to \$1,070.4 million in 2006, due to the addition of Rudolph & Sletten, and to an increased volume of work in the hospitality and gaming market as a result of the significant new contract awards received in the latter half of 2005. Without the addition of Rudolph & Sletten, building construction revenues would have increased by \$222.2 million (or 47.0%) in 2006. Civil construction revenues increased by \$28.2 million (or 24.7%), from \$114.1 million in 2005 to \$142.3 million in 2006, due primarily to the higher backlog of civil construction work entering 2006 compared to 2005. Partly offsetting these increases was a decrease in management services revenues of \$50.9 million (or 31.2%), from \$163.4 million in 2005 to \$112.5

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million in 2006, due primarily to a decreased volume of work in Afghanistan.

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	Income from Construction Operations for the Six Months Ended June 30,		Increase (Decrease) In Income	% Change
	2006	2005		
		(In millions)		
Building	\$ 23.9	\$ 10.9	\$ 13.0	119.3 %
Civil	6.2	4.4	1.8	40.9 %
Management Services	6.6	12.2	(5.6)	(45.9) %
Subtotal	\$ 36.7	\$ 27.5	\$ 9.2	33.5 %
Less: Corporate	(13.8)	(6.6)	(7.2)	(109.1) %
Total	\$ 22.9	\$ 20.9	\$ 2.0	9.6 %

Income from construction operations (excluding corporate) increased by \$9.2 million (or 33.5%), from \$27.5 million in 2005 to \$36.7 million in 2006. Building construction income from operations increased by \$13.0 million (or 119.3%), from \$10.9 million in 2005 to \$23.9 million in 2006, due primarily to the increased revenues discussed above. Without the addition of Rudolph & Sletten, building construction income from operations would have increased by \$5.4 million (or 49.5%) due primarily to the increased volume of work in the hospitality and gaming market as a result of the significant new contract awards received in the latter half of 2005. Building construction income from operations was negatively impacted by a \$1.3 million charge related to stock-based compensation expense resulting from certain restricted stock units granted in April 2006. Civil construction income from operations increased by \$1.8 million (or 40.9%), from \$4.4 million in 2005 to \$6.2 million in 2006, due primarily to the increase in revenues discussed above, as well as an improved profit margin at Perini Civil. Civil construction income from operations was negatively impacted by a \$0.5 million charge related to stock-based compensation expense resulting from certain restricted stock units granted in April 2006. Management services income from operations decreased by \$5.6 million (or 45.9%), from \$12.2 million in 2005 to \$6.6 million in 2006, due primarily to the decrease in revenues discussed above. In addition, management services experienced a decrease in gross profit margin in 2006, largely due to profit adjustments recognized upon the completion and close-out various overseas projects in 2005 and 2006. Overall income from construction operations was negatively impacted by a \$7.2 million increase in corporate general and administrative expenses, from \$6.6 million in 2005 to \$13.8 million in 2006, due primarily to a \$5.5 million net increase in corporate stock-based compensation expense resulting from the amortization of certain restricted stock units granted in April 2006 and December 2004, as well as the write-off of approximately \$1.5 million of expenses related to our decision not to proceed with our debt offering in the second quarter of 2006.

Other income (expense) increased by \$1.2 million, from an expense of \$0.5 million in 2005 to income of \$0.7 million in 2006, due primarily to an increase in interest income as a result of an increase in cash available for short-term investment due largely to the cash and investments obtained in the acquisition of Rudolph & Sletten.

Interest expense increased by \$1.1 million, from \$0.7 million in 2005 to \$1.8 million in 2006, due primarily to increased borrowings related to the \$30 million term loan received as part of the credit agreement in October 2005, which we used to refinance a portion of the purchase price for the Rudolph & Sletten acquisition.

The provision for income taxes increased by \$1.4 million, from \$7.7 million in 2005 to \$9.1 million in 2006, due primarily to the increase in pretax income in 2006. The effective tax rate for 2006 of 41.8% exceeds the effective tax rate of 39.1% for 2005 due primarily to the estimated impact of certain executive officer compensation not deductible for tax purposes.

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Comparison of the Second Quarter of 2006 with the Second Quarter of 2005

Revenues increased by \$334.1 million and gross profit increased by \$12.5 million, due primarily to the addition of Rudolph & Sletten, which we acquired in October 2005, and to an increased volume of work in the hospitality and gaming market as a result of the significant new contract awards received in the latter half of 2005. Income from construction operations decreased by \$3.1 million, and net income decreased by \$1.9

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million (or 29.2%) in 2006. These decreases primarily reflect the impact of an \$8.6 million charge related to stock-based compensation expense resulting from certain restricted stock units granted in April 2006, and the write-off of \$1.5 million of expenses associated with our decision not to proceed with our debt offering in May 2006. Basic earnings per common share were \$0.16 for the second quarter of 2006, compared to \$0.24 for the second quarter of 2005. Diluted earnings per common share were \$0.16 for the second quarter of 2006, compared to \$0.24 for the second quarter of 2005.

	Revenues for the Three Months Ended June 30,		Increase (Decrease)	%
	2006	2005		
	(In millions)			
Building	\$ 586.7	\$ 231.5	\$ 355.2	153.4 %
Civil	71.6	63.4	8.2	12.9 %
Management Services	54.2	83.5	(29.3)	(35.1) %
Total	\$ 712.5	\$ 378.4	\$ 334.1	88.3 %

Overall revenues increased by \$334.1 million (or 88.3%), from \$378.4 million in 2005 to \$712.5 million in 2006. This increase was due primarily to an increase in building construction revenues of \$355.2 million (or 153.4%), from \$231.5 million in 2005 to \$586.7 million in 2006, due to the addition of Rudolph & Sletten, and to an increased volume of work in the hospitality and gaming market as a result of the significant new contract awards received in the latter half of 2005. Without the addition of Rudolph & Sletten, building construction revenues would have increased by \$154.5 million (or 66.7%) in 2006. Civil construction revenues increased by \$8.2 million (or 12.9%), from \$63.4 million in 2005 to \$71.6 million in 2006, due primarily to the higher backlog of civil construction work entering 2006 compared to 2005. Partly offsetting these increases was a decrease in management services revenues of \$29.3 million (or 35.1%), from \$83.5 million in 2005 to \$54.2 million in 2006, due primarily to a decreased volume of work in Afghanistan.

	Income from Construction Operations for the Three Months Ended June 30,		Increase (Decrease) In Income	Ch
	2006	2005		
	(In millions)			
Building	\$ 14.6	\$ 6.2	\$ 8.4	13
Civil	1.8	2.9	(1.1)	(3)
Management Services	3.3	5.6	(2.3)	(4)
Subtotal	\$ 19.7	\$ 14.7	\$ 5.0	3
Less: Corporate	(11.2)	(3.1)	(8.1)	(26)
Total	\$ 8.5	\$ 11.6	\$ (3.1)	(2)

Income from construction operations (excluding corporate) increased by \$5.0 million (or 34.0%), from \$14.7 million in 2005 to \$19.7 million in 2006. Building construction income from operations increased by \$8.4 million

(or 135.5%), from \$6.2 million in 2005 to \$14.6 million in 2006, due primarily to the increased revenues discussed above. Without the addition of Rudolph & Sletten, building construction income from operations would have increased by \$3.5 million (or 56.5%) due primarily to the increased volume of work in the hospitality and gaming market as a result of the significant new contract awards received in the latter half of 2005. Building construction income from operations was negatively impacted by a \$1.3 million charge related to stock-based compensation expense resulting from certain restricted stock units granted in April 2006. Although civil construction revenues increased as discussed above, civil construction income from operations decreased by \$1.1 million (or 37.9%), from \$2.9 million in 2005 to \$1.8 million in 2006, due primarily to downward profit adjustments on several projects in the mid-Atlantic and southeast regions. In addition, civil construction income from operations was negatively impacted by a \$0.5 million charge related to stock-based compensation expense resulting from certain restricted

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stock units granted in April 2006. Management services income from operations decreased by \$2.3 million (or 41.1%), from \$5.6 million in 2005 to \$3.3 million in 2006, due primarily to the decrease in revenues discussed above. Overall income from construction operations was negatively impacted by an \$8.1 million increase in corporate general and administrative expenses, from \$3.1 million in 2005 to \$11.2 million in 2006, due primarily to a \$6.1 million net increase in corporate stock-based compensation expense resulting from the amortization of certain restricted stock awards granted in April 2006 and December 2004, as well as the write-off of approximately \$1.5 million of expenses related to our decision not to proceed with our debt offering in the second quarter of 2006.

Other income (expense) increased by \$0.7 million, from an expense of \$0.4 million in 2005 to income of \$0.3 million in 2006, due primarily to an increase in interest income as a result of an increase in cash available for short-term investment due largely to the cash and investments obtained in the acquisition of Rudolph & Sletten.

Interest expense increased by \$0.6 million, from \$0.3 million in 2005 to \$0.9 million in 2006, due primarily to increased borrowings related to the \$30 million term loan received as part of the credit agreement in October 2005, which we used to refinance a portion of the purchase price for the Rudolph & Sletten acquisition.

The provision for income taxes decreased by \$1.1 million, from \$4.4 million in 2005 to \$3.3 million in 2006, due primarily to the decrease in pretax income in 2006.

Liquidity and Capital Resources

Cash and Working Capital

We have an Amended and Restated Credit Agreement with Bank of America, N.A. and TD Banknorth (the "Credit Agreement"). The Credit Agreement provides for a secured revolving credit facility (the "Revolving Facility") of up to \$50 million which is scheduled to expire on June 30, 2008. At June 30, 2006, we had \$42.5 million available to borrow under the Revolving Facility.

In addition, the Credit Agreement provides for a \$30 million secured term loan (the "Term Loan"), which was used to refinance a portion of the purchase price for the Rudolph and Sletten acquisition. The Term Loan amortizes in equal quarterly principal payments of \$1.5 million commencing December 31, 2005 and continuing through October 14, 2010. The amount of the Term Loan outstanding at June 30, 2006 is \$25.5 million.

Interest accrues on borrowings under the Credit Agreement at an annual rate equal to, at our option, either (1) adjusted LIBOR plus 200 basis points or (2) the prime rate. Outstanding letters of credit under the Credit Agreement are subject to a per annum fee equal to 150 basis points. We are also required to pay administrative fees, commitment fees, letter of credit issuance and administration fees and certain expenses, and to provide certain indemnities, all of which we believe are customary for financings of this type.

The Credit Agreement requires us to meet certain financial covenants at the end of each fiscal quarter, including:

- a minimum working capital ratio of current assets over current liabilities of at least 1.20 to 1.00;

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- a minimum tangible net worth of at least \$150 million plus, commencing with our fiscal quarter ended December 31, 2005, 50% of our consolidated net income for each consecutive two fiscal quarters ended on June 30 and December 31 of each year;
 - a minimum fixed charge coverage ratio of consolidated earnings before interest, taxes, depreciation and amortization, less capital expenditures over covered charges (which includes cash interest expense and tax payments, scheduled principal payments and current period dividends on our outstanding preferred stock) of at least 1.50 to 1.00 for four consecutive fiscal quarters;
 - a minimum net income of at least \$1.00 for each fiscal quarter; and
 - minimum operating profit levels of at least \$35 million in the aggregate (exclusive of the \$40.4 million WMATA charge recorded in the fourth quarter of 2005) for each of the four consecutive quarter periods ending March 31, 2006, June 30, 2006, September 30, 2006 and December 31, 2006, and at least \$40 million in the aggregate for the four consecutive quarter period ending March 31, 2007 and for each period of four consecutive fiscal quarters ending thereafter.

The Credit Agreement also includes operating covenants which we believe are customary for financings of this type, including restrictions on indebtedness, liens, investments, restricted payments, mergers and the purchase and sale of assets outside of the normal course of business. The

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Credit Agreement also provides for events of default which we believe are customary for financings of this type, with corresponding grace periods.

Our obligations outstanding under the Credit Agreement are guaranteed by substantially all of our current and future subsidiaries, and are secured by substantially all of our and our subsidiaries' assets, including a pledge of all of the capital stock of our domestic subsidiaries.

Cash and cash equivalents as reported in the accompanying consolidated condensed financial statements consist of amounts held by us as well as our proportionate share of amounts held by construction joint ventures. Cash held by us is available for general corporate purposes while cash held by construction joint ventures is available only for joint venture-related uses. Joint venture cash and cash equivalents are not restricted to specific uses within those entities; however, the terms of the joint venture agreements limit our ability to distribute those funds and use them for corporate purposes. Cash held by construction joint ventures is distributed from time to time to us and to the other joint venture participants in accordance with our respective percentage interest after the joint venture partners determine that a cash distribution is prudent. Cash distributions received by us from our construction joint ventures are then available for general corporate purposes. At June 30, 2006 and December 31, 2005, cash held by us and available for general corporate purposes was \$48.0 million and \$99.7 million, respectively, and our proportionate share of cash held by joint ventures and available only for joint venture-related uses was \$40.7 million and \$40.1 million, respectively.

A summary of cash flows for each of the three month and six month periods ended June 30, 2006 and 2005 is set forth below:

	Six Months Ended June 30,	
	2006	2005
	(In millions)	
Cash flows from:		
Operating activities	\$ (30.9)	\$ (18.3)
Investing activities	(7.3)	(20.7)
Financing activities	(13.0)	(2.7)
Net decrease in cash	\$ (51.2)	\$ (41.7)
Cash at beginning of year	139.9	136.3
Cash at end of period	\$ 88.7	\$ 94.6

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During the first six months of 2006, we used \$51.2 million of cash on hand to fund \$30.9 million in cash flow used by operating activities, principally to pay the \$40.4 million WMATA judgment recorded in the fourth quarter of 2005; \$7.3 million to fund cash flow used by investing activities, principally to fund the acquisition of construction equipment; and \$13.0 million to fund cash flow used by financing activities, primarily to redeem the remaining outstanding shares of our \$21.25 Preferred Stock, and to pay down debt, including \$3.0 million for the Term Loan portion of our Credit Agreement, as well as to pay down debt assumed in conjunction with the acquisition of Cherry Hill.

Working capital increased from \$153.3 million at the end of 2005 to \$161.9 million at June 30, 2006. The current ratio increased from 1.23x at December 31, 2005 to 1.24x at June 30, 2006.

Long-term Debt

Long-term debt at June 30, 2006 was \$35.6 million, a decrease of \$4.3 million from December 31, 2005, due to reductions in our Term Loan and in mortgage debt and equipment financing debt assumed in conjunction with the Cherry Hill acquisition. Accordingly, the long-term debt to equity ratio decreased from .22x at December 31, 2005 to .18x at June 30, 2006.

Dividends

There were no cash dividends declared or paid on our outstanding Common Stock during the periods presented herein.

We redeemed all remaining outstanding Depositary Shares on May 17, 2006, in accordance with the terms of our \$21.25 Preferred Stock, at a price of \$25.00 per share plus accrued and unpaid dividends to that date, for an aggregate amount of approximately \$8.8 million.

Forward-looking Statements

The statements contained in this Management's Discussion and Analysis of the Consolidated Condensed Financial Statements and other sections of this Form 10-Q that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, including without limitation, statements regarding our expectations, hopes, beliefs, intentions or strategies regarding the future. These forward-looking statements are based on our current expectations and beliefs concerning future developments and their potential effects on us. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by such forward-looking statements. These risks and uncertainties include, but are not limited to, our ability to convert backlog into revenue; our ability to successfully complete construction projects; the potential delay, suspension, termination or reduction in scope of a construction project; the continuing validity of the underlying assumptions and estimates of total forecasted project revenues, costs and profits and project schedules; the outcomes of pending or future litigation, arbitration or other dispute resolution proceedings; the availability of borrowed funds on terms acceptable to us; the ability to retain certain members of management; the ability to obtain surety bonds to secure our performance under certain construction contracts; possible labor disputes or work stoppages within the construction industry; changes in federal and state appropriations for infrastructure projects; possible changes or developments in worldwide or domestic political, social, economic, business, industry, market and regulatory conditions or circumstances; and actions taken or not taken by third parties including our customers, suppliers, business partners, and competitors and legislative, regulatory, judicial and other governmental authorities and officials; and other risks and uncertainties discussed under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2005 filed with the Securities and Exchange Commission on March 10, 2006. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There has been no material change in the Company's exposure to market risk from that described in the Company's Annual Report on Form 10-K for the year ended December 31, 2005, Item 7A., since December 31, 2005.

Item 4. Controls and Procedures

As required by Rule 13a-15(b) under the Securities Exchange Act of 1934, as of the end of the period covered by this report, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. In designing and evaluating our disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily was required to apply its judgment in evaluating and implementing possible controls and procedures. The effectiveness of our disclosure controls and procedures is necessarily limited by the staff and other resources available to us and, although we have designed our disclosure controls and procedures to address the geographic diversity of our operations, this diversity inherently may limit the effectiveness of those controls and procedures. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective, in that they provide reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

There was no change in our internal control over financial reporting that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. In making its assessment of changes in internal control over financial reporting as of June 30, 2006, management has excluded Rudolph and Sletten, Inc. ("Rudolph & Sletten"), as permitted, because this company was acquired in October 2005. The assets and revenues of Rudolph & Sletten as of and for the six months ended June 30, 2006 represent approximately 22.3% and 29.7%, respectively, of our consolidated assets and revenues as of and for the six months ended June 30, 2006. As part of our integration of Rudolph & Sletten, we are in the process of incorporating our controls and procedures into the operations of Rudolph & Sletten.

In connection with these rules, we will continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

Part II. - Other Information

Item 1. Legal Proceedings

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Redondo/Perini Joint Venture vs. Siemens Transportation Matter

This is a binding arbitration proceeding arising out of a contract between the Redondo/Perini or RPJV, a joint venture in which Perini and Redondo Construction Corp., or Redondo, each have an equal interest and the Siemens Transportation Partnership, S.E., Puerto Rico, or STP. STP is conducting a metropolitan passenger rail transportation project for the Commonwealth of Puerto Rico and is responsible for the design and construction of a portion of the project.

On March 19, 2002, Redondo filed a petition for reorganization under Chapter 11 in U.S. Bankruptcy Court in the District of Puerto Rico. On December 23, 2002, RPJV filed an arbitration demand against Redondo for recovery of additional costs related to design changes and the late completion of the design. In 2003, STP filed a counter-demand against RPJV seeking the recovery of damages allegedly incurred in design and construction and the late completion of RPJV's work along with the repayment of advances previously paid to RPJV.

On October 7, 2004, STP filed suit against Perini in New York State court seeking enforcement of a Guaranty Agreement that allegedly guarantees the performance and payment obligations under the RPJV/Siemens Contract in an amount to be determined at trial, but not less than \$27 million. The suit has been stayed pending the arbitration.

On March 14, 2006, the arbitration panel issued a final award on Phase I, awarding RPJV approximately \$15.5 million on its claim and STP approximately \$0.5 million on its claim, for a net award to RPJV of approximately \$15.7 million, payable in thirty days. The arbitrators also deferred decision on approximately \$15.5 million of RPJV's Phase I claims until the conclusion of Phase II. STP filed a Motion to Stay Enforcement of the Phase I arbitration award, together with a petition to vacate, annul and set aside the award. That motion is pending.

There will be a second phase of the arbitration, which will include claims which existed as of September 29, 2003. The parties exchanged statements of claim on July 24, 2006. RPJV's claim is \$23,183,341, plus interest. STP's claim is \$17,500,000. Discovery has started, but no hearings have been held. Hearings are scheduled to start in March 2007.

Management has made an estimate of the anticipated total cost recovery on this project and compared it to the revenue recorded to date. To the extent new facts become known or the final cost recovery claim settlement varies from this estimate, the impact of the change will be reflected in future financial statements at that time.

Investigation by U.S. Attorney for Eastern District of New York

In 2001, the Company received a grand jury subpoena for documents in connection with an investigation by the U.S. Attorney's Office for the Eastern District of New York. The Company's understanding of the investigation concerns contracting with disadvantaged, minority, and women-owned business enterprises in the New York City area construction industry. The Company has cooperated with the U. S. Attorney's Office in the investigation and has produced documents pursuant to the subpoena in 2001 and 2002. Beginning on several subsequent occasions, the U.S. Attorney's Office confirmed that neither the Company nor any of its officers or employees was a subject or a target of the investigation. On May 29, 2006, the Company's counsel was advised by the U.S. Attorney's Office that it was reevaluating the Company's cooperation in the investigation. On August 2, 2006, the Company received another subpoena for documents, continuing to cooperate in the investigation. It is possible the U.S. Attorney's Office will name the Company a subject of the investigation in the future. The Company is unable to evaluate the impact, if any, of the investigation at this time.

Part II. - Other Information (continued)

Item 1A. Risk Factors

Information regarding risk factors affecting the Company's business are discussed in the Company's Report on Form 10-K for the year ended December 31, 2005. There have been no material changes in risk factors during 2006.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

- (a) None
- (b) Not applicable
- (c) Not applicable

Item 3. Defaults Upon Senior Securities

- (a) None
- (b) None

Item 4. Submission of Matters to a Vote of Security Holders

- (a) The Company's Annual Meeting of Stockholders was held on May 18, 2006.
- (b) Not applicable
- (c) Results of voting at the 2006 Annual Meeting of Stockholders were as follows:
 - (1) Each of the following persons was elected by the holders of Common Stock as a Class Director to hold office for a three-year term expiring in 200 Field: Sequence; Typ

3. The DE Trust, unlike the Delaware Corporation which has a fixed number of shares authorized, will be authorized to issue an unlimited number of shares.

4. Stockholders will be deemed to have approved, to the extent necessary, any actions required to terminate the Company.

Stockholders of the Company are not being asked to vote separately on these matters. Voting "FOR" the proposal constitutes stockholder approval of the actions described above. More information on these matters is discussed under "Summary Comparison of Governing Documents and State Law" below.

Why is the Board recommending approval of the Agreement?

The Board has determined that investment companies formed as Delaware statutory trusts have certain advantages over investment companies organized as Delaware corporations. As a result of these advantages, the Delaware statutory trust organizational form has been increasingly used by registered investment companies.

In unanimously approving the Agreement and recommending that stockholders of the Company also approve the Agreement, the Board was provided with and evaluated information it reasonably believed necessary to consider the proposed Reorganization. The Board determined that (1) the interests of the Company's stockholders would not be diluted as a result of the Reorganization and (2) the Reorganization would be in the best interests of the Company and

its stockholders. Key factors considered by the Board include:

In recent years, many registered investment companies have reorganized as Delaware statutory trusts. The Board believes that the Delaware statutory trust form of organization provides more flexibility to the Company in terms of its administration, which potentially could lead to greater operating efficiencies and lower expenses for stockholders, greater certainty regarding limiting their liability for the obligations of the DE Trust or its Trustees, and greater flexibility in structuring stockholder voting rights and stockholder meetings.

The DE Trust may be able to realize greater operating efficiencies because the Reorganization would permit the DE Trust to operate under uniform, modern and flexible governing documents that would streamline the governance process and could reduce costs associated with governance and compliance monitoring.

The Company will pay less taxes as a Delaware statutory trust. The Company is subject to Delaware corporate franchise taxes of \$ 90,000 per year and since the Company's commencement in 2013, the Company has paid approximately \$300,000 in Delaware corporate franchise taxes. Under current law, Delaware statutory trusts do not owe an annual fee for franchise tax or other purposes. Therefore, the Company will expect to save approximately \$90,000 annually by reorganizing as a Delaware statutory trust. These anticipated savings are based on the authorized capital of the Company during its last fiscal year. Of course, the one-time costs of reorganizing the corporation as a Delaware statutory trust will offset the Company's tax savings initially.

The investment objective, investment strategies and policies and investment restrictions of the DE Trust will be identical to those of the Company in effect immediately prior to the Reorganization.

There is no anticipated material adverse effect on the Company's annual operating expenses and stockholder fees and services as a result of the Reorganization.

As a condition precedent to the Reorganization, the Company's counsel, Pepper Hamilton LLP, will provide an opinion that there will be no direct federal income tax consequences of the Reorganization to Company stockholders.

What effect will the Reorganization have on the Company and its stockholders?

The Reorganization will not result in any material change in the investment objectives or principal investment strategies of the Company. The investment manager and its investment committee and other service providers will remain the same. The services provided by those service providers will be the same as those currently being provided to the Company.

Immediately after the Reorganization, stockholders of the Company will own shares of the DE Trust that are equal in number and in value to the shares of the Company they held immediately prior to the Closing Date. For example, if you currently own 100 shares of Common Stock of the Company, then immediately after the Closing Date you would own 100 Common Shares of beneficial interest of the DE Trust having the same net asset value as your 100 Company shares. For all practical purposes, your financial investment in the Company would not change after the Closing Date.

As a result of the Reorganization, stockholders of the Company, which is a Delaware corporation, will become shareholders of the DE Trust, which is a Delaware statutory trust. For a comparison of certain rights of stockholders/shareholders of these entities, please see “*Summary Comparison of Governing Documents and State Law*”, which is qualified by reference to the DE Trust’s Agreement and Declaration of Trust, a form of which is attached to this Proxy Statement as Appendix B.

Will there be any sales load, commission, or other transactional fee in connection with the Reorganization?

No. The full value of your shares of the Company will be exchanged for shares of the DE Trust without any sales load, commission, or other transactional fee being imposed.

What will be the federal income tax consequences of the Reorganization?

As a condition to consummation of the Reorganization, the Company will receive an opinion from Pepper Hamilton LLP substantially to the effect that neither the Company nor its stockholders will recognize any gain or loss as a direct result of the Reorganization. As a general matter, the holding period for, and the aggregate tax basis in, the DE Trust’s shares a stockholder receives pursuant to the Reorganization will include the holding period for, and will be the same as the aggregate tax basis in, the Company shares the stockholder holds immediately prior to the Reorganization (provided the stockholder holds the shares as capital assets on the Closing Date). Also, the DE Trust’s holding period for, and tax basis in, each asset the Company transfers to it will include the Company’s holding period for, and be the same as the DE Trust’s tax basis in, that asset immediately prior to the Reorganization.

Who is bearing the expenses related to the Reorganization?

The Company will bear the expenses associated with the Reorganization.

SUMMARY OF THE AGREEMENT

The terms and conditions under which the Reorganization would be completed are contained in the Agreement. The following summary of material terms of the Agreement is qualified by reference to the Agreement itself, the form of which is attached to this Proxy Statement as Appendix A.

The Agreement provides that the DE Trust will acquire all of the assets of the Company in exchange solely for shares of the DE Trust and the DE Trust's assumption of all of the Company's liabilities. The Agreement further provides that promptly after the Closing Date, the Company will dissolve its corporate status.

Under the terms of the Agreement: i) the net asset value per share of beneficial interest of the DE Trust will be the same as the immediately preceding net asset value per share of the common stock of the Company; and, ii) each certificate representing shares of the Company will represent the same number of shares of the DE Trust.

The delivery of shares will be accomplished by way of accounts established for each stockholder by the DE Trust. The DE Trust will not issue certificates representing the DE Trust shares issued in the Reorganization and a stockholder need not deliver their Company share certificates. However, stockholders have the right to deliver their share certificates of the Company in exchange for share certificates of the DE Trust, if the stockholder so desires.

The completion of the Reorganization also is subject to various conditions, including completion of all necessary filings with the Securities and Exchange Commission ("SEC") as necessary to consummate the Reorganization; delivery of a legal opinion regarding the federal tax consequences of the Reorganization; and other customary corporate and securities matters. Subject to the satisfaction of those conditions, the Reorganization will take place on the Closing Date or later as the parties may mutually agree. The Agreement provides that the Board, in its judgment, may waive compliance with any of the conditions set forth therein for its benefit, if such waiver will not have a material adverse effect on the Company's stockholders.

The Reorganization is intended to qualify as a “reorganization” within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended, and thus would not directly give rise to the recognition of income, gain or loss for federal income tax purposes to the Company, the DE Trust or the stockholders of the Company or the DE Trust.

The Agreement may be terminated, and the Reorganization may be abandoned, at any time prior to its consummation, before or after approval by the Company stockholders, by the Board if, in the judgment of the Board, the facts and circumstances make proceeding with the Agreement inadvisable.

SUMMARY COMPARISON OF GOVERNING DOCUMENTS AND STATE LAW

The following is a discussion of certain principal differences between the governing documents of the Company (also referred to for purposes of adding clarity to this discussion as the “DE Corporation”) and the Delaware statutory trust into which it is proposed that it will be reorganized, and the state law governing the DE Corporation and the DE Trust. The following is not a complete description of the governing documents or state laws. Further information about the Company’s current organizational structure is contained in the Company’s prospectus and governing documents and in Delaware law.

Organization and Capital Structure

The Company is organized as a Delaware Corporation under the Delaware General Corporation Law (“DGCL”). The DE Corporation’s operations are governed by its Certificate of Incorporation (the “Certificate”) and its By-laws (the “Corp. By-laws”). The business and affairs of the DE Corporation are managed under the supervision of a board of directors. The Certificate authorizes a fixed number of shares, which may be increased or decreased by an amendment to its Certificate, approved by a majority of its Board and a majority of votes cast by stockholders. The shares of common stock of the Company have a par value of \$0.001 per share. The Certificate provides for the Board (without any further vote or action by stockholders) to provide for the issuance of shares of one or more classes or series of preferred stock. As of the date of this Proxy Statement, no preferred stock is outstanding.

The DE Trust is a Delaware statutory trust (a “DST”). A DST is an unincorporated association organized under the Delaware Statutory Trust Act (the “Delaware Act”). As a DST, the DE Trust’s operations are governed by its Declaration of Trust (the “Declaration”) and its By-laws (the “Trust By-laws”), and its business and affairs are managed under the supervision of a board of trustees. The DE Trust’s shares of beneficial interest are issued without par value and the Declaration authorizes the issuance of an unlimited number of shares.

Governing Law

The DGCL is a corporate statute with stringent requirements imposed upon corporations organized in Delaware. Under the DGCL, certain fund transactions, such as mergers, certain reorganizations and liquidations, are subject to mandatory shareholder votes. The DGCL also have certain record date, notice, quorum and adjournment provisions. Additionally, the DGCL requires that a Delaware corporation hold an annual meeting of shareholders.

The Delaware Act allows for a trust to be governed by its governing documents, but also provides specified default provisions. Moreover, to the extent provisions in the DE Trust's Declaration and Trust By-laws are addressed by rules and principles established under Delaware corporate law and the laws governing other Delaware business entities (such as limited partnerships and limited liability companies), the Delaware courts may look to such other laws to help interpret provisions of the Declaration and Trust By-laws. Applying this body of law to the operation of the DE Trust should prove beneficial because these laws are extensively developed and business-oriented. These legal advantages make more certain the resolution of legal controversies and help to reduce legal costs resulting from uncertainty in the law.

Meetings of Shareholders and Voting Rights

The DE Corporation is required to hold an annual meeting of stockholders each year, at which time they shall elect, by plurality vote, a Class of the Board of Directors and transact such other business as may properly be brought before the meeting. Special meetings of stockholders may only be called by the DE Corporation's Board of Directors, Chairman or its Chief Executive Officer. The Corp. By-laws provide that the holders of a majority of the stock shall constitute a quorum at all meetings of the stockholders. Subject to any requirements of law or the Certificate, in matters other than the election of Directors, stockholders may approve a proposal by a majority of votes cast. Directors are elected by a plurality of votes cast.

The Certificate provides that each holder of Common Stock shall have one vote for each share of stock having voting power, and shall have the power to vote on the election of directors and such other matters submitted to a vote of stockholders of the DE Corporation. The Certificate also requires that notice of each meeting of stockholders shall be given not less than 10 days nor more than 60 days before the date of the meeting.

The Declaration requires the DE Trust to hold annual shareholder meetings. A special meeting of shareholders may be called at any time by a majority of the DE Trust's Board, the Chairman of the Board or the Chief Executive Officer.

The Declaration requires notice to meetings of shareholders to each shareholder of record entitled to vote thereat at least 10 days and not more than 120 days before the commencement of the meeting or otherwise in compliance with applicable law. Only the business stated in the notice of the meeting shall be considered at such meeting.

The Declaration provides that holders of a majority of the shares entitled to vote on any matter at a meeting present in person or by proxy shall constitute a quorum at such meeting of the shareholders for purposes of conducting business on such matter. The Declaration provides that each full share of the DE Trust is entitled to one vote and each fractional share is entitled to a fractional vote. The Declaration provides shareholders shall have no power to vote on any matter except matters on which a vote of shareholders is required by applicable law (such as the 1940 Act), the Declaration (such as the merger, sale of assets, or liquidation of the DE Trust, and the conversion of shares of the DE Trust to "redeemable securities) or resolution of the Trustees.

Liability of Shareholders

Stockholders of the DE Corporation generally do not have personal liability for the DE Corporation's obligations.

The Delaware Statutory Trust Act provides that shareholders of a Delaware statutory trust shall be entitled to the same limitations of liability extended to shareholders of private for profit corporations such as the DE Corporation. Consistent with the Delaware Act, the Declaration provides that (i) no shareholder of the DE Trust shall be subject in such capacity to any personal liability whatsoever to any person in connection with DE Trust or the acts, obligations or affairs of the DE Trust; and (ii) shareholders shall have the same limitation of personal liability as is extended to stockholders of a private corporation for profit incorporated under the Delaware General Corporation Law.

Dividends and Distributions

The DE Corporation's stockholders are entitled to share ratably when, as and if declared by the Board of Directors, out of the assets of the Corporation legally available therefor, dividends payable either in cash, in property or in shares of capital stock.

Under the Declaration, the Trustees shall from time to time distribute ratably among the shareholders of any class of shares in accordance with the number of outstanding full and fractional shares, such proportion of the net profits, surplus (including paid-in surplus), capital, or assets held by the Trustees as they may deem proper or as may otherwise be determined in accordance with the Declaration. Dividends and distributions may be paid in cash or property or shares. The Board of Trustees may retain such amounts as they may deem necessary to pay the debts or expenses of the DE Trust or to meet obligations of the DE Trust, or as they otherwise may deem desirable to use in the conduct of its affairs.

Election of Trustees; Terms; Removal

Both the Certificate of the DE Corporation and the Declaration of the DE Trust provide for the election of Directors or Trustees, as the case may be, by a plurality of votes cast by stockholders/shareholders entitled to vote thereon. The Board of each of the DE Corporation and the DE Trust is divided into three classes, each of which holds office for a three year term. The term of office of directors/trustees are staggered so that one class shall expire at each annual meeting, and in all cases as to each director or trustee when such director's/trustee's successor shall be elected and shall qualify or upon such director's or trustee's earlier resignation, removal from office, death or incapacity. Under both the governing documents of the DE Corporation and the DE Trust, directors or trustees, as the case may be may be removed for cause only, and not without cause, and only by action taken by a majority of the other Directors or Trustees followed by the holders of at least sixty-six and two thirds percent (66 2/3%) of the shares then entitled to vote in an election of such director or trustee. Neither the DE Corporation nor the DE Trust provide cumulative voting rights for the election of directors/trustees.

Liability of Trustees and Officers; Indemnification

The Certificate provides that the Directors will not be liable to the DE Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL. The Corp. By-laws provide that directors, officers, employees and agents, as well as persons serving as a director, officer, partner, trustee, member, manager, employee or agent of another enterprise at the DE Corporation's request, will be indemnified, and may have their expenses of defense advanced, in each case to the full extent permitted under the DGCL.

Neither the Corp. By-laws or the Certificate permit indemnification for matters for which limitation or indemnification would be prohibited by the 1940 Act or any valid rule, regulation or order of the SEC thereunder.

Under the Declaration, no Trustee or officer of the DE Trust shall be subject in such capacity to any personal liability whatsoever to any person, save only liability to the DE Trust or its shareholders arising from bad faith, willful misfeasance, gross negligence or reckless disregard for his duty to such person; and, subject to the foregoing exception, all such persons shall look solely to the DE Trust property for satisfaction of claims of any nature arising in connection with the affairs of the DE Trust. The Declaration also provides for the indemnification of each person who at any time serves as a Trustee or officer of the DE Trust (each such person being an "indemnitee") against any liabilities and expenses incurred by such indemnitee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or investigative body in which he may be or may have been involved as a party or otherwise or with which he may be or may have been threatened, while acting as a Trustee or officer of the DE Trust by reason of his having acted in any such capacity, except with respect to certain disabling conduct including (i) willful misfeasance, (ii) bad faith, (iii) gross negligence, or (iv) reckless disregard of the duties involved in the conduct of his position.

Neither the Declaration or Trust By-laws or permit indemnification for matters for which limitation or indemnification would be prohibited by the 1940 Act or any valid rule, regulation or order of the SEC thereunder.

Preemptive, Dissenter's and Other Rights

The Certificate provides that no holder of common stock shall have preemptive, redemption or conversion rights, or any sinking fund rights, except in each case pursuant to a written agreement between the Company and a holder of common stock.

The Declaration provides that the shares do not entitle the holder to redemption, preference, preemptive, appraisal, conversion or exchange rights.

Amendments to Organizational Documents

The DGCL generally provides that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or by-laws, unless a corporation's certificate of incorporation or by-laws requires a greater percentage. Under the Certificate and the Declaration, the affirmative vote of the holders of at least 66 2/3% of the shares of stock entitled to vote will be required to amend or repeal certain provisions of the Certificate, Corp. By-laws, Declaration and Trust By-laws including provisions with respect to the limitation of liability and indemnification of the directors and officers and certain changes to the By-Laws. In addition, the Certificate and Declaration permit the Board of Directors and Board of Trustees to amend or repeal the Corp. By-laws or Trust By-laws by a majority vote of the Board of Directors or Board of Trustees.

Inspection Rights

With respect to the DE Corporation, the DGCL provides that any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose, and to make copies and extracts from the corporation's stock ledger, a list of its stockholders, and its other books and records.

The Declaration provides that the Trustees shall from time to time determine whether and to what extent, and at what times and places, and under what conditions and regulations the accounts and books of the DE Trust or any of them shall be open to the inspection of the shareholders; and no shareholder shall have any right to inspect any account or book or document of the DE Trust except as conferred by law or otherwise by the Trustees or by resolution of the shareholders.

Dissolution and Termination

The DGCL provides that the Directors may dissolve the DE Corporation with the approval of a resolution by the majority of the Board at any meeting called for that purpose. The approval of such resolution shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution, and the dissolution shall be approved if the resolution is adopted by the holders of a majority of the outstanding stock entitled to vote thereon. The DGCL further provides that dissolution of the DE Corporation may also be authorized without action of the Directors if all the stockholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of State.

Under the Declaration, the DE Trust may be dissolved upon approval of not less than a majority of the Trustees. The Declaration provides that when the DE Trust has dissolved the Trustees shall, among other things, proceed to wind up the affairs of the DE Trust, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business. After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining DE Trust property, in cash or in kind or partly each, among the shareholders according to their respective rights.

Derivative Actions

The DE Corporation's Certificate does not specifically address derivative actions. However, the DGCL provides that in any derivative suit instituted by a stockholder of a corporation, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which such stockholder complains or that such stockholder's stock thereafter devolved upon such stockholder by operation of law.

Under the Delaware Act, a shareholder may bring a derivative action if trustees with authority to do so have refused to bring the action or if a demand upon the trustees to bring the action is not likely to succeed. The Delaware Act provides that a shareholder may bring a derivative action only if the shareholder is a shareholder at the time the action is brought and (1) was a shareholder at the time of the transaction at issue, or (2) acquired the status of shareholder by operation of law or the DE Trust's governing instrument from a person who was a shareholder at the time of the transaction at issue. Under the Delaware Act, a shareholder's right to bring a derivative action may also be subject to additional standards and restrictions set forth in the DE Trust's governing instruments.

The Required Vote.

A majority of the Company's outstanding shares entitled to vote shall constitute a quorum for the consideration of this Proposal 2. In the event that a quorum is not present, or in the event that a quorum is present but sufficient votes to approve this proposal are not received, the chairman of the Annual Meeting may adjourn the Annual Meeting without notice other than announcement at the Annual Meeting. If a quorum is present, the affirmative vote of a majority of the Company's outstanding shares entitled to vote at the Meeting is sufficient for the approval of Proposal 2.

Abstentions and broker non-votes with respect to Proposal 2 will not be counted for or against Proposal 2, but will be counted for purposes of determining whether a quorum is present.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR THE APPROVAL OF THE AGREEMENT AND PLAN OF REORGANIZATION.

* * *

SUBMISSION OF STOCKHOLDER PROPOSALS

All proposals by stockholders of the Company that are intended to be presented at the Company's next annual meeting of stockholders to be held in 2019 must be received by the Company for consideration for inclusion in the Company's proxy statement relating to the meeting no later than 5:00 p.m. E.T., on December 31, 2018 and must satisfy the requirements of the federal securities laws including Rule 14a-8 under the 1934 Act.

Stockholders who do not wish to submit a proposal for inclusion in the Company's proxy statement and form of proxy for the 2019 annual meeting of stockholders in accordance with Rule 14a-8 under the 1934 Act may submit a proposal for consideration at the 2019 annual meeting of stockholders in accordance with the By-laws of the Company. The

Company’s By-laws currently require stockholders wishing to nominate Directors or propose other business to be brought before the Company’s 2019 annual meeting of stockholders to provide timely notice of the proposal in writing to the Secretary of the Company and, in the case of such other business, such other business must otherwise be a proper matter for action by the stockholders. To be considered timely, any such notice must be delivered to the principal executive office of StoneCastle Financial Corp. at 152 West 57th Street, 35th Floor New York, NY 10019 not earlier than February 12, 2019, nor later than 5:00 p.m., E.T., on March 14, 2019. If such proposals are not “timely,” then proxies solicited by the Board for next year’s annual meeting may confer discretionary authority to such proxies to vote on such proposals at their discretion. Any such notice by a stockholder must set forth all information required by the Company’s By-laws with respect to each nominee or other matter the stockholder proposes to bring before an annual meeting.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Tait, Weller & Baker LLP (“Tait Weller”) has been selected to serve as the Company’s independent registered public accounting firm for the Company’s fiscal year ending December 31, 2018. The Company knows of no direct financial or material indirect financial interest of Tait Weller in the Company. A representative of Tait Weller will not be present at the Annual Meeting, but will be available by telephone to respond to appropriate questions and will have an opportunity to make a statement, if the representative desires.

Set forth in the table below are audit fees and audit related fees billed to the Company by Tait Weller for professional services provided to the Company as the independent accounting firm for the fiscal years ended December 31, 2016 and 2017, respectively. All of the “audit-related fees” listed below for the fiscal year ended December 31, 2016 were paid to the Company’s prior independent accounting firm, representing fees for consents related to a Company filing in 2016.

	Audit Fees*	Audit-Related Fees*	Tax Fees**	All Other Fees***
2016	\$ 45,000	\$ 13,000	\$ 3,000	\$ 0
2017	\$ 45,000	\$ 0	\$ 3,000	\$ 0

* “Audit-Related Fees” include services related to consents, comfort letter and bring down letters in conjunction with the N-2 shelf filing in 2016.

** “Tax Fees” are those fees related to Tait Weller’s tax consulting services, including primarily the review of the Company’s income tax returns.

*** “All Other Fees” include the aggregate fees billed for products and services provided by Tait Weller, other than the reported services.

The Company's Audit Committee Charter requires that the Audit Committee pre-approve all audit and non-audit services to be provided by Tait Weller to the Company, and all non-audit services to be provided by Tait Weller to the Company's Advisor and any entity controlling, controlled by or under common control with the Company's Advisor ("Affiliates") that provides on-going services to the Company, if the engagement relates directly to the operations and financial reporting of the Company. Alternatively, the Audit Committee also may delegate pre-approval to one of its members subject to subsequent reporting to the Audit Committee. All of the audit and non-audit services described above for which Tait Weller billed the Company fees for the fiscal year ended December 31, 2017 were pre-approved by the Audit Committee as required.

Except for the Tax fees disclosed above, there were no non-audit fees billed by Tait Weller for services rendered to the Company and rendered to the Advisor or its affiliates that provide ongoing services to the Company for the fiscal year of the Company ended December 31, 2017.

ADDITIONAL INFORMATION

Investment Advisor and Administrator

StoneCastle Asset Management LLC serves as the Company's investment advisor ("Investment Advisor"). The principal executive office of the Advisor is 152 West 57th Street, 35th Floor, New York, NY 10019. The Investment Advisor is a Delaware LLC and is an investment adviser registered under the Investment Advisers Act of 1940.

The Bank of New York Mellon, located at 4400 Computer Drive, Westborough, Massachusetts 01581, serves as

administrator to the Company.

The Bank of New York Mellon, located at 2 Hanson Place, Brooklyn, New York 11217, serves as custodian to the Company.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the 1934 Act and Section 30(h) of the 1940 Act require the Company's Directors and executive officers, certain persons affiliated with the Company and persons who beneficially own more than 10% of a registered class of the Company's securities to file reports of ownership and changes of ownership with the SEC, NASDAQOMX and the Company. Directors, officers and greater-than-10% stockholders are required by SEC regulations to furnish the Company with copies of such forms they file. To the Company's knowledge, based solely on review of the copies of such reports furnished to the Company during the fiscal year ended December 31, 2017, all Section 16(a) filing requirements applicable to the such reporting persons were complied with.

Broker Non-Vote and Abstentions

Shares represented by properly executed proxies with respect to which a vote is withheld, or for which a broker does not vote, will be treated as Shares that are present and entitled to vote for purposes of determining a Quorum, but will not constitute a vote "FOR" a proposal and will have the effect of a vote against the election of the nominees named in this Proxy Statement.

Information About Attending the Meeting

Attendance at the Annual Meeting is limited to stockholders (or their authorized representatives) as of the Record Date. All attendees should pre-register and obtain an admission ticket. Pre-registration is intended to facilitate entry through security at the Annual Meeting. Valid, government-issued photographic identification is required to enter the meeting. Cameras, audio and video recorders and similar electronic recording devices will not be allowed in the meeting room. We will also request that all cellular phones, smartphones, tablets, pagers and laptops be turned off.

If you would like to attend the Annual Meeting, please follow the instructions below to pre-register by June 5, 2018.

Pre-Registration Instructions

If you are a registered stockholder (your shares are held in your name), you may pre-register and obtain an admission ticket by contacting us and providing your name as it appears on your stock ownership records and your mailing address. If a family member is attending with you, please indicate that when you pre-register.

If you are a beneficial owner (your shares are held through a broker or bank) you may pre-register and obtain an admission ticket by contacting us and providing your name and mailing address, and evidence of your stock ownership as of the Record Date. A copy of your brokerage or bank statement will suffice as evidence of ownership, or you can obtain a letter from your broker or bank. If a family member is attending with you, please indicate that when you pre-register.

If you are a stockholder as of the Record Date and intend to appoint an authorized representative to attend the meeting on your behalf, you may pre-register and obtain an admission ticket by submitting a request to us and providing: your name and mailing address, the name and mailing address of your authorized representative, evidence of stock ownership as of the Record Date, and a signed authorization appointing such individual to be your authorized representative at the meeting.

To pre-register for the meeting and obtain an admission ticket, you can write to us at StoneCastle Financial Corp., Attn. Investor Relations, 152 West 57th Street, 35th Floor, New York, NY 10019, email us at IR@stonecastle-financial.com, or call us at (212)-354-6500.

OTHER MATTERS TO COME BEFORE THE ANNUAL MEETING

The Company does not intend to present any other business at the Annual Meeting, nor is the Company aware that any stockholder is entitled to do so. If, however, any other matters are properly brought before the Annual Meeting, the persons named in the accompanying form of proxy will vote thereon in accordance with their discretion.

VOTING RESULTS

The Company will advise its stockholders of the voting results of the matters voted upon at the Annual Meeting in its next Semi-Annual Report to stockholders.

NOTICE TO BANKS, BROKER/DEALERS AND VOTING TRUSTEES AND THEIR NOMINEES

Please advise the Company whether other persons are the beneficial owners of Shares for which proxies are being solicited from you, and, if so, the number of copies of the proxy statement and other soliciting material you wish to receive in order to supply copies to the beneficial owners of Shares.

This Proxy Statement has been prepared for stockholders of the Company. The Company will mail one Proxy Statement to each stockholder address upon request. If you would like to obtain an additional paper copy of the Proxy Statement, please contact Broadridge at 1-800-579-1639 or write to StoneCastle Financial Corp. at 152 West 57th Street, 35th Floor, New York, NY 10019.

DELIVERY OF PROXY MATERIALS

Please note that only one annual or semi-annual report or Proxy Statement or Notice of Internet Availability of Proxy Materials may be delivered to two or more stockholders of the Company who share an address, unless the Company has received instructions to the contrary. To request a separate copy of an annual report or semi-annual report or this Proxy Statement or Notice of Internet Availability of Proxy Materials, or for instructions on how to request a separate copy of these documents or for instructions on how to request a single copy if multiple copies of these documents are received, stockholders should contact the Company at 1-347-887-0399 or write to StoneCastle Financial Corp. at 152 West 57th Street, 35th Floor, New York, NY 10019.

IT IS IMPORTANT THAT YOUR PROXY CARD BE COMPLETED PROMPTLY. EVEN IF YOU EXPECT TO ATTEND THE ANNUAL MEETING, YOU ARE REQUESTED TO COMPLETE, SIGN AND DATE THE PROXY CARD AS SOON AS POSSIBLE.

By Order of the Board of Directors

RACHEL SCHATTEN
Secretary of the Company

April 30, 2018

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APPENDIX A

**FORM OF AGREEMENT AND PLAN OF REORGANIZATION
BETWEEN
STONECASTLE FINANCIAL CORP.
AND
STONECASTLE FINANCIAL COMPANY**

This Agreement and Plan of Reorganization (“Agreement”) is made as of this ___ day of _____, 2018, by and between StoneCastle Financial Company, a Delaware statutory trust (“Trust”), and StoneCastle Financial Corp., a Delaware corporation (“Corporation”) (the Trust and the Corporation are hereinafter collectively referred to as the “parties”).

In consideration of the mutual promises contained herein, and intending to be legally bound, the parties hereto agree as follows:

1. PLAN OF REORGANIZATION.

a. Upon satisfaction of the conditions precedent described in Section 3 hereof, the Corporation will convey, transfer and deliver to the Trust at the closing provided for in Section 2 (hereinafter referred to as the “Closing”) all of the Corporation’s then-existing assets. In consideration thereof, the Trust agrees at the Closing (i) to assume and pay when due all obligations and liabilities of the Corporation, existing on or after the Effective Date of the Reorganization (as defined in Section 2 hereof) whether absolute, accrued, contingent or otherwise, including all fees and expenses in connection with the Agreement, which fees and expenses shall, in turn, include, without limitation, costs of legal advice, accounting, printing, mailing, proxy solicitation and transfer taxes, if any, such obligations and liabilities of the Corporation to become the obligations and liabilities of the Trust; and (ii) to deliver, in accordance with paragraph (b) of this Section 1, full and fractional shares of beneficial interest, without par value, of the Trust, equal in number to the number of full and fractional shares of common stock, \$.001 par value per share, of the Corporation outstanding immediately prior to the Effective Date of the Reorganization. The reorganization contemplated hereby is intended to qualify as a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (“Code”). The Corporation shall distribute to its stockholders the shares of the Trust in accordance with this Agreement and the resolutions of the Board of Directors of the Corporation authorizing the transactions contemplated by this Agreement.

b. In order to effect the delivery of shares described in Section 1(a)(ii) hereof, the Trust will establish an open account for each stockholder of the Corporation and, on the Effective Date of the Reorganization, will credit to such account full and fractional shares of beneficial interest, without par value, of the Trust equal to the number of full and

fractional shares such stockholder holds in the Corporation at the close of regular trading on the New York Stock Exchange, Inc. ("NYSE") on the business day immediately preceding the Effective Date of the Reorganization; fractional shares of the Trust will be carried to the fourth decimal place. At the start of regular trading on the NYSE on the Effective Date of the Reorganization, the net asset value per share of shares of the Trust shall be deemed to be the same as the net asset value per share of the common stock of the Corporation at the close of regular trading on the NYSE on the business day immediately preceding the Effective Date of the Reorganization. On the Effective Date of the Reorganization, each certificate representing shares of the Corporation will be deemed to represent the same number of shares of the Trust. Simultaneously with the crediting of the shares of the Trust to the stockholders of record of the Corporation, the shares of common stock of the Corporation held by such stockholder shall be cancelled. Each stockholder of the Corporation will have the right to deliver their share certificates of the Corporation in exchange for share certificates of the Trust. However, a stockholder need not deliver such certificates to the Trust unless the stockholder so desires.

- c. As soon as practicable after the Effective Date of the Reorganization, the Corporation shall take all necessary steps under the laws of the State of Delaware to effect a complete dissolution of the Corporation.

- d. The expenses of entering into and carrying out the Agreement will be borne by the Corporation.

2. CLOSING AND EFFECTIVE DATE OF THE REORGANIZATION.

The Closing shall consist of (i) the conveyance, transfer and delivery of the Corporation's assets to the Trust, in exchange for the assumption and payment, when due, by the Trust of the Corporation's obligations and liabilities; and (ii) the issuance and delivery of the Trust's shares in accordance with Section 1(b), together with related acts necessary to consummate such transactions. The Closing shall occur either on (a) the business day immediately following the later of the receipt of all

necessary regulatory approvals and the final adjournment of the meeting of stockholders of the Corporation at which this Agreement is considered and approved, or (b) such later date as the parties may mutually agree (“Effective Date of the Reorganization”).

3. CONDITIONS PRECEDENT.

The obligations of the Corporation and the Trust to effectuate the transactions hereunder shall be subject to the satisfaction of each of the following conditions:

- a. Such authority and orders from the U.S. Securities and Exchange Commission (the “Commission”) and state securities commissions and approvals from NASDAQ Global Select Market (“NASDAQ”) as may be necessary to permit the parties to carry out the transactions contemplated by this Agreement shall have been received;

- b. (i) an amendment to the Corporation’s Notification of Registration on Form N-8A (“Form N-8A”) filed pursuant to Section 8(a) of the Investment Company Act of 1940, as amended (“1940 Act”), containing such amendments to the Form N-8A as are determined by the trustees of the Trust (each, a “Trustee”) to be necessary and appropriate as a result of the transactions contemplated by this Agreement, shall have been filed with the Commission; (ii) the Trust shall have expressly adopted as its own such Form N-8A, as so amended, for purposes of the 1940 Act; (iii) a registration statement on Form 8-A (“8-A Registration Statement”) under the Securities Exchange Act of 1934, as amended, shall have been filed with the Commission and NASDAQ by the Trust; (iv) a listing application shall have been filed with NASDAQ by the Trust; and (v) the 8-A Registration Statement filed with the Commission relating to the Trust shall have become effective, and no stop-order suspending the effectiveness of the 8-A Registration Statement shall have been issued, and no proceeding for that purpose shall have been initiated or threatened by the Commission (other than any such stop-order, proceeding or threatened proceeding which shall have been withdrawn or terminated);

- c. Each party shall have received an opinion of Pepper Hamilton LLP to the effect that, assuming the reorganization contemplated hereby is carried out in accordance with this Agreement, the laws of the State of Delaware, and in accordance with customary representations provided by the parties in a certificate(s) delivered to Pepper Hamilton LLP, the reorganization contemplated by this Agreement qualifies as a “reorganization” under Section 368 of the Code, and thus will not give rise to the recognition of income, gain or loss for federal income tax purposes to the Corporation, the Trust or the stockholders of the Corporation or the Trust;

- d. The shares of the Trust are eligible for offering to the public in those states of the United States and jurisdictions in which the shares of the Corporation are currently eligible for offering to the public so as to permit the issuance and delivery by the Trust of the shares contemplated by this Agreement to be consummated;

- e. This Agreement and the transactions contemplated hereby shall have been duly adopted and approved by the appropriate action of the Board of Directors of the Corporation and the stockholders of the Corporation;
- f. The stockholders of the Corporation shall have voted to direct the Corporation to vote, and the Corporation shall have voted, as sole stockholder of the Trust, to:
- i. Elect as Trustees of the Trust the following individuals: Nominees to serve as Class I Trustees until the 2020 Annual Meeting of Stockholders—Mr. George Shilowitz and Ms. Clara Miller; Nominees to serve as Class II Trustees until the 2021 Annual Meeting of Stockholders— Messrs. Emil Henry and Joshua Siegel; and Nominee to serve as Class III Trustees until the 2019 Annual Meeting of Stockholders—Mr. Alan Ginsburg; and
- ii. Approve a Management Agreement between StoneCastle Asset Management LLC (“SAM”) and the Trust, which is substantially identical to the then-current Management Agreement between SAM and the Corporation;
- g. The Trustees of the Trust shall have duly adopted and approved this Agreement and the transactions contemplated hereby and shall have taken the following actions:
- i. Approval of the Management Agreement described in paragraph (h)(2) of this Section 3 hereof for the Trust;
- ii. Approval of the assignment of the following agreements or the approval of substantially identical agreements:

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(1) Transfer Agency and Services Agreement, by and between the Corporation and Computershare Trust Company, N.A., dated as of September 9, 2013.

(2) Fund Administration and Accounting Agreement, by and between the Corporation and The Bank of New York Mellon, dated as of October 1, 2013.

(3) Custody Agreement, by and between the Corporation and The Bank of New York Mellon, dated as of November 5, 2013.

(4) Fee Waiver Agreement, by and between the Corporation and the Advisor, dated as of dated October 1, 2014.

iii. Selection of Tait, Weller & Baker, LLP as the Trust's independent auditors for the fiscal year ending December 31, 2018;

iv. Authorization of the issuance by the Trust, prior to the Effective Date of the Reorganization, of one share of beneficial interest of the Trust to the Corporation in consideration for the payment of \$1.00 for the purpose of enabling the Corporation to vote on the matters referred to in paragraph (f) of this Section 3 hereof;

v. Submission of the matters referred to in paragraph (f) of this Section 3 to the Corporation as sole stockholder of the Trust; and

vi. Authorization of the issuance and delivery by the Trust of its shares on the Effective Date of the Reorganization and the assumption by the Trust of the obligations and liabilities of the Corporation in exchange for the assets of the Corporation pursuant to the terms and provisions of this Agreement.

h. At any time prior to the Closing, any of the foregoing conditions may be waived or amended, or any additional terms and conditions may be fixed, by the Board of Directors of the Corporation, if, in the judgment of such Board, such waiver, amendment, term or condition will not affect in a materially adverse way the benefits intended to be accorded the stockholders of the Corporation under this Agreement.

(10) Employee Pension Plans

4. DISSOLUTION OF THE FUND.

Promptly following the Closing, the officers of the Corporation shall take all steps necessary under the laws of the State of Delaware to dissolve its corporate status, including publication of any necessary notices to creditors, receipt of any necessary pre-dissolution clearances from the State of Delaware, and filing for record with the State of Delaware a Certificate of Dissolution.

5. TERMINATION.

The Board of Directors of the Corporation may terminate this Agreement and abandon the reorganization contemplated hereby, notwithstanding approval thereof by the stockholders of the Corporation, at any time prior to the Effective Date of the Reorganization if, in the judgment of such Board, the facts and circumstances make proceeding with this Agreement inadvisable.

6. ENTIRE AGREEMENT.

This Agreement embodies the entire agreement between the parties hereto and there are no agreements, understandings, restrictions or warranties among the parties hereto other than those set forth herein or herein provided for.

7. FURTHER ASSURANCES.

The Corporation and the Trust shall take such further action as may be necessary or desirable and proper to consummate the transactions contemplated hereby.

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8. COUNTERPARTS.

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

9. GOVERNING LAW.

This Agreement and the transactions contemplated hereby shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Trust and the Corporation have each caused this Agreement and Plan of Reorganization to be executed on its behalf by its Chairman, President or a Vice President and attested by its Secretary or an Assistant Secretary, all as of the day and year first-above written.

**STONECASTLE
FINANCIAL
CORP.
(a Delaware
corporation)**

**Name:
Title:**

**STONECASTLE
FINANCIAL
COMPANY (a
Delaware
statutory trust)**

**Name:
Title:**

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Appendix B

STONECASTLE FINANCIAL COMPANY

AGREEMENT AND DECLARATION OF TRUST

AGREEMENT AND DECLARATION OF TRUST made as of [DAY] day of [MONTH], 2018, by the Trustees hereunder, and by the holders of shares of beneficial interest issued hereunder as hereinafter provided.

WHEREAS, this Trust has been formed to carry on business as set forth more particularly hereinafter;

WHEREAS, this Trust is authorized to issue an unlimited number of its shares of beneficial interest all in accordance with the provisions hereinafter set forth;

WHEREAS, the Trustees have agreed to manage all property coming into their hands as Trustees of a Delaware statutory trust in accordance with the provisions hereinafter set forth; and

WHEREAS, the parties hereto intend that the Trust created by this Declaration and the Certificate of Trust filed with the Secretary of State of the State of Delaware on [DATE] shall constitute a statutory trust under the Delaware Statutory Trust Act and that this Declaration shall constitute the governing instrument of such statutory trust.

NOW, THEREFORE, the Trustees hereby declare that they will hold all cash, securities, and other assets which they may from time to time acquire in any manner as Trustees hereunder IN TRUST to manage and dispose of the same upon the following terms and conditions for the benefit of the holders from time to time of shares of beneficial interest in this Trust as hereinafter set forth.

Article I

The Trust

1.1. Name. This Trust shall be known as “STONECASTLE FINANCIAL COMPANY” and the Trustees shall conduct the business of the Trust under that name or any other name or names as they may from time to time determine.

1.2. Definitions. As used in this Declaration, the following terms shall have the following meanings:

The “1933 Act” refers to the Securities Act of 1933 and the rules and regulations promulgated thereunder and applicable exemptions therefrom covering the Trust and its affiliated persons, as amended from time to time.

The “1940 Act” refers to the Investment Company Act of 1940 and the rules and regulations promulgated thereunder and applicable exemptions granted therefrom, as amended from time to time.

The terms “Affiliated Person”, “Assignment”, “Commission”, “Interested Person” and “Principal Underwriter” shall have the meanings given them in the 1940 Act.

“By-Laws” shall mean the By-Laws of the Trust as amended from time to time by the Trustees.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Commission” shall mean the Securities and Exchange Commission.

“Declaration” shall mean this Agreement and Declaration of Trust, as amended, supplemented or amended and restated from time to time.

“Delaware Statutory Trust Statute” shall mean the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§3801, et. seq., as such Act may be amended from time to time.

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“Delaware General Corporation Law” means the Delaware General Corporation Law, 8 Del. C. 100, et. seq., as amended from time to time.

“Fundamental Policies” shall mean the investment policies and restrictions as set forth from time to time in any Prospectus or contained in any current Registration Statement of the Trust filed with the Commission and designated as fundamental policies therein, as they may be amended from time to time in accordance with the requirements of the 1940 Act.

“Majority Shareholder Vote” shall mean a vote of “a majority of the outstanding voting securities” (as such term is defined in the 1940 Act) of the Trust with each class and series of Shares voting together as a single class, except to the extent otherwise required by the 1940 Act or this Declaration with respect to any one or more classes or series of Shares, in which case the applicable proportion of such classes or series of Shares voting as a separate class or series, as the case may be, also will be required.

“Person” shall mean and include natural persons, corporations, partnerships, trusts, limited liability companies, associations, joint ventures and other entities, whether or not legal entities, and governments and agencies and political subdivisions thereof.

“Prospectus” shall mean the Prospectus of the Trust, if any, as in effect from time to time under the 1933 Act.

“Shareholders” shall mean as of any particular time the holders of record of outstanding Shares of the Trust, at such time.

“Shares” shall mean the transferable units of beneficial interest into which the beneficial interest in the Trust shall be divided from time to time and includes fractions of Shares as well as whole Shares. In addition, Shares also means any preferred shares or preferred units of beneficial interest which may be issued from time to time, as described herein. All references to Shares shall be deemed to be Shares of any or all series or classes as the context may require.

“Trust” shall mean the trust established by this Declaration, as amended from time to time, inclusive of each such amendment.

“Trust Property” shall mean as of any particular time any and all property, real or personal, tangible or intangible, which at such time is owned or held by or for the account of the Trust or the Trustees in such capacity.

“Trustees” shall mean the signatories to this Declaration, so long as they shall continue in office in accordance with the terms hereof, and all other persons who at the time in question have been duly elected or appointed and have qualified as Trustees in accordance with the provisions hereof and are then in office.

Article II

Trustees

2.1. Number and Qualification. Prior to the public offering of Shares there may be a sole Trustee. Thereafter, the number of Trustees shall be fixed from time to time by a written instrument signed, or by resolution approved at a duly constituted meeting, by a majority of the Trustees then in office, provided, however, that the number of Trustees shall in no event be less than one (1). The Board of Trustees is expressly authorized to establish, increase or reduce (but not below one) the number of Trustees in accordance with the Trust’s By-Laws without the consent of the shareholders and to allocate such number of Trustees among the classes as evenly as practicable. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term. An individual nominated as a Trustee shall be at least 21 years of age and not older than 80 years of age at the time of nomination and not under legal disability. Trustees need not own Shares and may succeed themselves in office.

2.2. Term and Election. The Board of Trustees shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of Trustees constituting the entire Board of Trustees. Within the limits above specified, the number of the Trustees in each class shall be determined by resolution of the Board of Trustees. The term of office of the first class shall expire at the annual meeting of Shareholders held in the fiscal year ended December 31, 2020 or special meeting in lieu thereof. The term of office of the second

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class shall expire at the annual meeting of Shareholders held in the fiscal year ended December 31, 2021 or special meeting in lieu thereof. The term of office of the third class shall expire at the annual meeting of Shareholders held in the fiscal year ended December 31, 2019 or special meeting in lieu thereof. Upon expiration of the term of office of each class as set forth above, the number of Trustees in such class, as determined by the Board of Trustees, shall be elected for a term expiring on the date of the third annual meeting of Shareholders or special meeting in lieu thereof following such expiration to succeed the Trustees whose terms of office expire. The Trustees shall be elected at an annual meeting of the Shareholders or special meeting in lieu thereof called for that purpose, except as provided in Section 2.3 of this Article, and each Trustee elected shall hold office until his or her successor shall have been elected and shall have qualified or until his or her earlier death, resignation, removal, bankruptcy, adjudicated incompetence or other incapacity to perform the duties of the office of a Trustee. Subject to the rights of the holders of any series of preferred shares of the Company, Trustees shall be elected by a plurality of the votes cast at a meeting of shareholders by the shareholders entitled to vote in the election.

2.3. Resignation and Removal. Any of the Trustees may resign their trust (without need for prior or subsequent accounting) by an instrument in writing signed by such Trustee and delivered or mailed to the Trustees or the Chairman, if any, the Chief Executive Officer or the Secretary and such resignation shall be effective upon such delivery, or at a later date according to the terms of the instrument. Any of the Trustees may be removed from office at any time, but only for cause, at a meeting called for that purpose, by the affirmative vote of the holders of a majority of the Shares then outstanding and entitled to vote in the election of Trustees, voting together as a single class. Upon the resignation or removal of a Trustee, each such resigning or removed Trustee shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of such resigning or removed Trustee. Upon the incapacity or death of any Trustee, such Trustee's legal representative shall execute and deliver on such Trustee's behalf such documents as the remaining Trustees shall require as provided in the preceding sentence. The affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of the Shares entitled to vote generally in the election of directors, voting together as a single class shall be required to amend in any respect or repeal this Section 2.3.

2.4. Vacancies. Subject to the applicable requirements of the 1940 Act, and the rights of the holders of any series of preferred shares, and unless the Board of Trustees otherwise determines, all vacancies on the Board of Trustees and newly created Trusteeships resulting from any increase in the authorized number of Trustees shall be filled exclusively by the vote of a majority of the Trustees then in office, even if less than a quorum or by a sole remaining Trustee, and shall not be filled by the shareholders. Any Trustee so appointed shall serve for the remainder of the full term of the Trusteeship in which such vacancy occurred, or of the class of Trusteeship in which such new Trusteeship was created. No vacancy shall operate to annul this Declaration or to revoke any existing agency created pursuant to the terms of this Declaration. Whenever a vacancy in the number of Trustees shall occur, until such vacancy is filled as provided herein, the Trustees in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration.

2.5. Meetings. Meetings of the Trustees shall be held from time to time upon the call of the Chairman, if any, or the Chief Executive Officer or any two Trustees. Regular meetings of the Trustees may be held without call or notice

at a time and place fixed by the By-Laws or by resolution of the Trustees. Notice of any other meeting shall be given by the Secretary and shall be delivered to the Trustees orally or in writing not less than 24 hours before the meeting, but may be waived in writing by any Trustee either before or after such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened. Any time there is more than one Trustee, a quorum for all meetings of the Trustees shall be a majority of the Trustees. Unless provided otherwise in this Declaration and except as required under the 1940 Act, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (a quorum being present) or without a meeting by written consent of a majority of the Trustees.

Any committee of the Trustees, including an executive committee, if any, may act with or without a meeting. A quorum for all meetings of any such committee shall be a majority of the members thereof. Unless provided otherwise in this Declaration, any action of any such committee may be taken at a meeting by vote of a majority of the members present (a quorum being present) or without a meeting by written consent of a majority of the members.

With respect to actions of the Trustees and any committee of the Trustees, Trustees who are Interested Persons in any action to be taken may be counted for quorum purposes under this Section and shall be entitled to vote to the extent not prohibited by the 1940 Act. For any committee of the Trustees comprised of one Trustee, a quorum shall be one.

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All or any one or more Trustees may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other; participation in a meeting pursuant to any such communications system shall constitute presence in person at such meeting except as otherwise provided by the 1940 Act.

2.6. Trustee Action by Written Consent. Except as otherwise required by the 1940 Act, any action which may be taken by Trustees by vote may be taken without a meeting if that number of the Trustees, or members of a committee, as the case may be, required for approval of such action at a meeting of the Trustees or of such committee consent to the action in writing and the written consents are filed with the records of the meetings of Trustees. Such consent shall be treated for all purposes as a vote taken at a meeting of Trustees.

2.7. Officers and Chairman. The Trustees shall elect a Chairman, a Chief Executive Officer, a Chief Financial Officer, a President, and a Secretary who shall serve at the pleasure of the Trustees or until their successors are elected. The Trustees may elect or appoint or may authorize the Chairman or Chief Executive Officer to appoint such other officers or agents with such other titles and powers as the Trustees may deem to be advisable. A Chairman shall, and the Chief Executive Officer, Chief Financial Officer, President, and Secretary may, but need not, be a Trustee.

Article III

Powers and Duties of Trustees

3.1. General. The Trustees shall owe to the Trust and its Shareholders the same fiduciary duties as owed by directors of corporations to such corporations and their stockholders under the Delaware General Corporation Law. The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and business in their own right, but with such powers of delegation as may be permitted by this Declaration. The Trustees shall have the power to engage in any activity not prohibited by Delaware law. The Trustees may perform such acts as in their sole discretion are proper for conducting the business of the Trust. The enumeration of any specific power herein shall not be construed as limiting the aforesaid power. Such powers of the Trustees may be exercised without order of or resort to any court.

3.2. Investments. The Trustees shall have power, subject to the Fundamental Policies in effect from time to time with respect to the Trust to:

(a) manage, conduct, operate and carry on the business of an investment company;

(b) subscribe for, invest in, reinvest in, purchase or otherwise acquire, hold, pledge, sell, assign, transfer, exchange, distribute or otherwise deal in or dispose of any and all sorts of property, tangible or intangible, including but not limited to securities of any type whatsoever, whether equity or non-equity, of any issuer, evidences of indebtedness of any person and any other rights, interests, instruments or property of any sort and to exercise any and all rights, powers and privileges of ownership or interest in respect of any and all such investments of every kind and description, including, without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more Persons to exercise any of said rights, powers and privileges in respect of any of said investments. The Trustees shall not be limited by any law limiting the investments which may be made by fiduciaries.

3.3. Legal Title. Legal title to all the Trust Property shall be vested in the Trustees as joint tenants except that the Trustees shall have power to cause legal title to any Trust Property to be held by or in the name of one or more of the Trustees, or in the name of the Trust, or in the name of any other Person as nominee, custodian or pledgee, on such terms as the Trustees may determine, provided that the interest of the Trust therein is appropriately protected.

The right, title and interest of the Trustees in the Trust Property shall vest automatically in each person who may hereafter become a Trustee upon his due election and qualification. Upon the ceasing of any person to be a Trustee for any reason, such person shall automatically cease to have any right, title or interest in any of the Trust Property, and the right, title and interest of such Trustee in the Trust Property shall vest automatically in the remaining Trustees. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

3.4. Issuance and Repurchase of Shares. The Trustees shall have the power to issue, sell, repurchase, redeem, retire, cancel, acquire, hold, resell, reissue, dispose of, transfer, and otherwise deal in, Shares, including Shares in

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fractional denominations, and, subject to the more detailed provisions set forth in Articles VIII and IX, to apply to any such repurchase, redemption, retirement, cancellation or acquisition of Shares any funds or property whether capital or surplus or otherwise, to the full extent now or hereafter permitted corporations formed under the Delaware General Corporation Law.

3.5. Borrow Money or Utilize Leverage. Subject to the Fundamental Policies in effect from time to time with respect to the Trust, the Trustees shall have the power to borrow money or otherwise obtain credit or utilize leverage to the maximum extent permitted by law, regulation or order and to secure the same by mortgaging, pledging or otherwise subjecting as security the assets of the Trust, including the lending of portfolio securities, and to endorse, guarantee, or undertake the performance of any obligation, contract or engagement of any other person, firm, association or corporation.

3.6. Delegation: Committees. The Trustees shall have the power, consistent with their continuing exclusive authority over the management of the Trust and the Trust Property, to delegate from time to time to such of their number or to officers, employees or agents of the Trust the doing of such things, including any matters set forth in this Declaration, and the execution of such instruments either in the name of the Trust or the names of the Trustees or otherwise as the Trustees may deem expedient. The Trustees may designate one or more committees which shall have all or such lesser portion of the authority of the entire Board of Trustees as the Trustees shall determine from time to time except to the extent action by the entire Board of Trustees or particular Trustees is required by the 1940 Act.

3.7. Collection and Payment. The Trustees shall have power to collect all property due to the Trust; to pay all claims, including taxes, against the Trust Property or the Trust, the Trustees or any officer, employee or agent of the Trust; to prosecute, defend, compromise or abandon any claims relating to the Trust Property or the Trust, or the Trustees or any officer, employee or agent of the Trust; to foreclose any security interest securing any obligations, by virtue of which any property is owed to the Trust; and to enter into releases, agreements and other instruments. Except to the extent required for a corporation formed under the Delaware General Corporation Law, the Shareholders shall have no power to vote as to whether or not a court action, legal proceeding or claim should or should not be brought or maintained derivatively or as a class action on behalf of the Trust or the Shareholders.

3.8. Expenses. The Trustees shall have power to incur and pay out of the assets or income of the Trust any expenses which in the opinion of the Trustees are necessary or appropriate to carry out any of the purposes of this Declaration, and the business of the Trust, and to pay reasonable compensation from the funds of the Trust to themselves as Trustees. The Trustees shall fix the compensation of all officers, employees and Trustees. The Trustees may pay themselves such compensation for special services, including legal, underwriting, syndicating and brokerage services, as they in good faith may deem reasonable and reimbursement for expenses reasonably incurred by themselves on behalf of the Trust. The Trustees shall have the power, as frequently as they may determine, to cause each Shareholder to pay directly, in advance or arrears, for charges of distribution, of the custodian or transfer, Shareholder servicing or similar agent, a pro rata amount as defined from time to time by the Trustees, by setting off such charges due from such Shareholder from declared but unpaid dividends or distributions owed such Shareholder

and/or by reducing the number of shares in the account of such Shareholder by that number of full and/or fractional Shares which represents the outstanding amount of such charges due from such Shareholder.

3.9. By-Laws. The Board of Trustees is expressly empowered to adopt, amend or repeal the By-laws of the Trust. Such By-Laws shall be binding on the Trust and the Shareholders unless inconsistent with the provisions of this Declaration. The shareholders shall have the right to adopt, amend or repeal the By-Laws of the Trust by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding Shares entitled to vote generally in the election of directors, voting together as a single class. The affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding Shares entitled to vote generally in the election of Trustees, voting together as a single class, shall be required to amend in any respect or repeal this Section 3.9

3.10. Miscellaneous Powers. The Trustees shall have the power to: (a) employ or contract with such Persons as the Trustees may deem desirable for the transaction of the business of the Trust; (b) enter into joint ventures, partnerships and any other combinations or associations; (c) purchase, and pay for out of Trust Property, insurance policies insuring the Shareholders, Trustees, officers, employees, agents, investment advisors, distributors, selected dealers or independent contractors of the Trust against all claims arising by reason of holding any such position or by reason of any action taken or omitted by any such Person in such capacity, whether or not constituting negligence, or whether or not the Trust would have the power to indemnify such Person against such liability; (d) establish pension, profit-sharing, share purchase, and other retirement, incentive and benefit plans for any Trustees, officers, employees and agents of the Trust; (e) make donations,

irrespective of benefit to the Trust, for charitable, religious, educational, scientific, civic or similar purposes; (f) to the extent permitted by law, indemnify any Person with whom the Trust has dealings, including without limitation any advisor, administrator, manager, transfer agent, custodian, distributor or selected dealer, or any other person as the Trustees may see fit to such extent as the Trustees shall determine; (g) guarantee indebtedness or contractual obligations of others; (h) determine and change the fiscal year of the Trust and the method in which its accounts shall be kept; and (i) adopt a seal for the Trust but the absence of such seal shall not impair the validity of any instrument executed on behalf of the Trust.

3.11. Further Powers. The Trustees shall have the power to conduct the business of the Trust and carry on its operations in any and all of its branches and maintain offices both within and without the State of Delaware, in any and all states of the United States of America, in the District of Columbia, and in any and all commonwealths, territories, dependencies, colonies, possessions, agencies or instrumentalities of the United States of America and of foreign governments, and to do all such other things and execute all such instruments as they deem necessary, proper or desirable in order to promote the interests of the Trust although such things are not herein specifically mentioned. Any determination as to what is in the interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of a grant of power to the Trustees. The Trustees will not be required to obtain any court order to deal with the Trust Property.

Article IV

Advisory, Management and Distribution Arrangements

4.1. Advisory and Management Arrangements. Subject to the requirements of applicable law as in effect from time to time, the Trustees may in their discretion from time to time enter into advisory, administration or management contracts (including, in each case, one or more sub-advisory, sub-administration or sub-management contracts) whereby the other party to any such contract shall undertake to furnish such advisory, administrative and management services with respect to the Trust as the Trustees shall from time to time consider desirable and all upon such terms and conditions as the Trustees may in their discretion determine. Notwithstanding any provisions of this Declaration, the Trustees may authorize any advisor, administrator or manager (subject to such general or specific instructions as the Trustees may from time to time adopt) to exercise any of the powers of the Trustees, including to effect investment transactions with respect to the assets on behalf of the Trust to the full extent of the power of the Trustees to effect such transactions or may authorize any officer, employee or Trustee to effect such transactions pursuant to recommendations of any such advisor, administrator or manager (and all without further action by the Trustees). Any such investment transaction shall be deemed to have been authorized by all of the Trustees.

4.2. Distribution Arrangements. Subject to compliance with the 1940 Act, the Trustees may retain underwriters and/or placement agents to sell Shares and other securities of the Trust. The Trustees may in their discretion from time

to time enter into one or more contracts, providing for the sale of securities of the Trust, whereby the Trust may either agree to sell such securities to the other party to the contract or appoint such other party its sales agent for such securities. In either case, the contract shall be on such terms and conditions as the Trustees may in their discretion determine not inconsistent with the provisions of this Article IV or the By-Laws; and such contract may also provide for the repurchase or sale of securities of the Trust by such other party as principal or as agent of the Trust and may provide that such other party may enter into selected dealer agreements with registered securities dealers and brokers and servicing and similar agreements with persons who are not registered securities dealers to further the purposes of the distribution or repurchase of the securities of the Trust.

4.3. Parties to Contract. Any contract of the character described in Sections 4.1 and 4.2 of this Article IV or in Article VII hereof may be entered into with any Person, although one or more of the Trustees, officers or employees of the Trust may be an officer, director, trustee, shareholder, or member of such other party to the contract, and no such contract shall be invalidated or rendered voidable by reason of the existence of any such relationship, nor shall any Person holding such relationship be liable merely by reason of such relationship for any loss or expense to the Trust under or by reason of said contract or accountable for any profit realized directly or indirectly therefrom, provided that the contract when entered into was reasonable and fair and not inconsistent with the provisions of this Article IV or the By-Laws. The same Person may be the other party to contracts entered into pursuant to Sections 4.1 and 4.2 above or Article VII, and any individual may be financially interested or otherwise affiliated with Persons who are parties to any or all of the contracts mentioned in this Section 4.3.

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Article V

Limitations of Liability and Indemnification

5.1. No Personal Liability of Shareholders, Trustees, etc. No Shareholder of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust. Shareholders shall have the same limitation of personal liability as is extended to stockholders of a private corporation for profit incorporated under the Delaware General Corporation Law. No Trustee or officer of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person, save only liability to the Trust or its Shareholders arising from bad faith, willful misfeasance, gross negligence or reckless disregard for his duty to such Person; and, subject to the foregoing exception, all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Shareholder, Trustee or officer, as such, of the Trust, is made a party to any suit or proceeding to enforce any such liability, subject to the foregoing exception, he shall not, on account thereof, be held to any personal liability. Any repeal or modification of this Section 5.1 shall not adversely affect any right or protection of a Trustee or officer of the Trust existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

5.2. Mandatory Indemnification.

(a) The Trust hereby agrees to indemnify each person who at any time serves as a Trustee or officer of the Trust (each such person being an “indemnitee”) against any liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and reasonable counsel fees reasonably incurred by such indemnitee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or investigative body in which he may be or may have been involved as a party or otherwise or with which he may be or may have been threatened, while acting in any capacity set forth in this Article V by reason of his having acted in any such capacity, except with respect to any matter as to which he shall not have acted in good faith in the reasonable belief that his action was in the best interest of the Trust or, in the case of any criminal proceeding, as to which he shall have had reasonable cause to believe that the conduct was unlawful, provided, however, that no indemnitee shall be indemnified hereunder against any liability to any person or any expense of such indemnitee arising by reason of (i) willful misfeasance, (ii) bad faith, (iii) gross negligence, or (iv) reckless disregard of the duties involved in the conduct of his position (the conduct referred to in such clauses (i) through (iv) being sometimes referred to herein as “disabling conduct”). Notwithstanding the foregoing, with respect to any action, suit or other proceeding voluntarily prosecuted by any indemnitee as plaintiff, indemnification shall be mandatory only if the prosecution of such action, suit or other proceeding by such indemnitee was authorized by a majority of the Trustees. The rights to indemnification set forth in this Declaration shall continue as to a person who has ceased to be a Trustee or officer of the Trust and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. No amendment or restatement of this Declaration or repeal of any of its provisions shall limit or eliminate any of the benefits provided to any person who at any time is or was a Trustee or officer of the Trust or otherwise entitled to indemnification hereunder in respect of any act or omission that occurred prior to such

amendment, restatement or repeal.

(b) Notwithstanding the foregoing, no indemnification shall be made hereunder unless there has been a determination: by a final decision on the merits by a court or other body of competent jurisdiction before whom the issue of entitlement to indemnification hereunder was brought that such indemnitee is entitled to indemnification hereunder or; in the absence of such a decision, by (1) a majority vote of a quorum of those Trustees who are neither ‘Interested Persons of the Trust nor parties to the proceeding (‘Disinterested Non-Party Trustees’), that the indemnitee is entitled to indemnification hereunder, or (2) if such quorum is not obtainable or even if obtainable, if such majority so directs, independent legal counsel in a written opinion concludes that the indemnitee should be entitled to indemnification hereunder. All determinations to make advance payments in connection with the expense of defending any proceeding shall be authorized and made in accordance with the immediately succeeding paragraph (c) below.

(c) The Trust shall make advance payments in connection with the expenses of defending any action with respect to which indemnification might be sought hereunder if the Trust receives a written affirmation by the indemnitee of the indemnitee’s good faith belief that the standards of conduct necessary for indemnification have been met and a written undertaking to reimburse the Trust unless it is subsequently determined that the indemnitee is entitled to such indemnification and if a majority of the Trustees determine that the applicable standards of conduct necessary for indemnification appear to have been met. In addition, at least one of the following conditions must be met: (i) the indemnitee shall provide adequate security for his undertaking, (ii) the Trust shall be insured against losses arising by reason of any lawful

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advances, or (iii) a majority of a quorum of the Disinterested Non-Party Trustees, or if a majority vote of such quorum so direct, independent legal counsel in a written opinion, shall conclude, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is substantial reason to believe that the indemnitee ultimately will be found entitled to indemnification.

(d) The rights accruing to any indemnitee under these provisions shall not exclude any other right to which he or she may be lawfully entitled.

(e) Subject to any limitations provided by the 1940 Act and this Declaration, the Trust shall have the power and authority to indemnify and provide for the advance payment of expenses to employees, agents and other Persons providing services to the Trust or serving in any capacity at the request of the Trust to the full extent corporations organized under the Delaware General Corporation Law may indemnify or provide for the advance payment of expenses for such Persons, provided that such indemnification has been approved by a majority of the Trustees.

5.3. No Bond Required of Trustees. No Trustee shall, as such, be obligated to give any bond or other security for the performance of any of his duties hereunder.

5.4. No Duty of Investigation; No Notice in Trust Instruments, etc. No purchaser, lender, transfer agent or other person dealing with the Trustees or with any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by said officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of the Trustees or of said officer, employee or agent. Every obligation, contract, undertaking, instrument, certificate, Share, other security of the Trust, and every other act or thing whatsoever executed in connection with the Trust shall be conclusively taken to have been executed or done by the executors thereof only in their capacity as Trustees under this Declaration or in their capacity as officers, employees or agents of the Trust. The Trustees may maintain insurance for the protection of the Trust Property, the Shareholders, Trustees, officers, employees and agents in such amount as the Trustees shall deem adequate to cover possible liability, and such other insurance as the Trustees in their sole judgment shall deem advisable or is required by the 1940 Act.

5.5. Reliance on Experts, etc. Each Trustee and officer or employee of the Trust shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Trust, upon an opinion of counsel, or upon reports made to the Trust by any of the Trust's officers or employees or by any advisor, administrator, manager, distributor, selected dealer, accountant, appraiser or other expert or consultant selected with reasonable care by the Trustees, officers or employees of the Trust, regardless of whether such counsel or other person may also be a Trustee.

Article VI

Shares of Beneficial Interest

6.1. Beneficial Interest. The interest of the beneficiaries hereunder shall be divided into an unlimited number of transferable shares of beneficial interest, no par value per share. All Shares issued in accordance with the terms hereof, including, without limitation, Shares issued in connection with a dividend in Shares or a split of Shares, shall be fully paid and, except as provided in the last sentence of Section 3.8, nonassessable when the consideration determined by the Trustees (if any) therefor shall have been received by the Trust.

6.2. Other Securities. The Trustees may, subject to the Fundamental Policies and the requirements of the 1940 Act, authorize and issue such other securities of the Trust as they determine to be necessary, desirable or appropriate, having such terms, rights, preferences, privileges, limitations and restrictions as the Trustees see fit, including preferred interests, debt securities or other senior securities. To the extent that the Trustees authorize and issue preferred shares of any class or series, they are hereby authorized and empowered to amend or supplement this Declaration as they deem necessary or appropriate, including to comply with the requirements of the 1940 Act or requirements imposed by a rating agency or other Persons, all without the approval of Shareholders. Any such supplement or amendment shall be filed as is necessary. The Trustees are also authorized to take such actions and retain such persons as they see fit to offer and sell such securities.

6.3. Classes and Series. The Trustees shall have the authority, without the approval of the holders of any Shares of the Trust, to classify and reclassify issued and unissued Shares into one or more classes and one or more series of any or all of such classes, each of which classes and series thereof shall have such designations, powers, preferences, voting, conversion and other rights, limitations, qualifications and terms and conditions as the Trustees shall determine from time to

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time with respect to each such class or series; provided, however, that no reclassification of any issued and outstanding Shares and no modifications of any of the designations, powers, preferences, voting, conversion or other rights, limitations, qualifications and terms and conditions of any issued and outstanding Shares may be made by the Trustees without the affirmative vote of the holders of Shares specified in Section 11.3(b) to the extent required thereby. The initial class of Shares of the Trust shall be designated as "Common Shares", subject to redesignation as aforesaid. To the extent expressly determined by the Trustees as aforesaid, all consideration received by the Trust for the issue or sale of Shares of a class, together with all income, earnings, profits and proceeds thereof, including any proceeds derived from the sale, exchange or liquidation thereof, and any funds or payments derived from any reinvestment of such proceeds in whatever form the same may be, shall irrevocably belong to such class subject only to the rights of the creditors, and all liabilities allocable to such class shall be charged thereto.

6.4. Rights of Shareholders. The Shares shall be personal property giving only the rights in this Declaration specifically set forth.

The ownership of the Trust Property of every description and the right to conduct any business herein before described are vested exclusively in the Trustees, and the Shareholders shall have no interest therein other than the beneficial interest conferred by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or, subject to the right of the Trustees to charge certain expenses directly to Shareholders, as provided in the last sentence of Section 3.8, suffer an assessment of any kind by virtue of their ownership of Shares. The Shares shall not entitle the holder to preference, preemptive, appraisal, conversion or exchange rights (except as specified in this Section 6.4, in Section 11.4 or as specified by the Trustees when creating the Shares, as in preferred shares).

6.5. Trust Only. It is the intention of the Trustees to create only the relationship of Trustee and beneficiary between the Trustees and each Shareholder from time to time. It is not the intention of the Trustees to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust. Nothing in this Declaration shall be construed to make the Shareholders, either by themselves or with the Trustees, partners or members of a joint stock association.

6.6. Issuance of Shares. The Trustees, in their discretion, may from time to time without vote of the Shareholders issue Shares including preferred shares that may have been established pursuant to Section 6.2, in addition to the then issued and outstanding Shares and Shares held in the treasury, to such party or parties and for such amount and type of consideration, including cash or property, at such time or times, and on such terms as the Trustees may determine, and may in such manner acquire other assets (including the acquisition of assets subject to, and in connection with the assumption of, liabilities) and businesses. The Trustees may from time to time divide or combine the Shares into a greater or lesser number without thereby changing the proportionate beneficial interest in such Shares. Issuances and redemptions of Shares may be made in whole Shares and/or 1/1,000ths of a Share or multiples thereof as the Trustees may determine.

6.7. Register of Shares. A register shall be kept at the offices of the Trust or any transfer agent duly appointed by the Trustees under the direction of the Trustees which shall contain the names and addresses of the Shareholders and the number of Shares held by them respectively and a record of all transfers thereof. Separate registers shall be established and maintained for each class or series of Shares. Each such register shall be conclusive as to who are the holders of the Shares of the applicable class or series of Shares and who shall be entitled to receive dividends or distributions or otherwise to exercise or enjoy the rights of Shareholders. No Shareholder shall be entitled to receive payment of any dividend or distribution, nor to have notice given to him as herein provided, until he has given his address to a transfer agent or such other officer or agent of the Trustees as shall keep the register for entry thereon. It is not contemplated that certificates will be issued for the Shares; however, the Trustees, in their discretion, may authorize the issuance of share certificates and promulgate appropriate fees therefore and rules and regulations as to their use.

6.8. Transfer Agent and Registrar. The Trustees shall have power to employ a transfer agent or transfer agents, and a registrar or registrars, with respect to the Shares. The transfer agent or transfer agents may keep the applicable register and record therein, the original issues and transfers, if any, of the said Shares. Any such transfer agents and/or registrars shall perform the duties usually performed by transfer agents and registrars of certificates of stock in a corporation, as modified by the Trustees.

6.9. Transfer of Shares. Shares shall be transferable on the records of the Trust only by the record holder thereof or by its agent thereto duly authorized in writing, upon delivery to the Trustees or a transfer agent of the Trust of a duly executed instrument of transfer, together with such evidence of the genuineness of each such execution and authorization

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and of other matters (including compliance with any securities laws and contractual restrictions) as may reasonably be required. Upon such delivery the transfer shall be recorded on the applicable register of the Trust. Until such record is made, the Shareholder of record shall be deemed to be the holder of such Shares for all purposes hereof and neither the Trustees nor any transfer agent or registrar nor any officer, employee or agent of the Trust shall be affected by any notice of the proposed transfer. Any person becoming entitled to any Shares in consequence of the death, bankruptcy, or incompetence of any Shareholder, or otherwise by operation of law, shall be recorded on the applicable register of Shares as the holder of such Shares upon production of the proper evidence thereof to the Trustees or a transfer agent of the Trust, but until such record is made, the Shareholder of record shall be deemed to be the holder of such for all purposes hereof, and neither the Trustees nor any transfer agent or registrar nor any officer or agent of the Trust shall be affected by any notice of such death, bankruptcy or incompetence, or other operation of law.

6.10. Notices. Any and all notices to which any Shareholder hereunder may be entitled and any and all communications shall be deemed duly served or given if mailed, postage prepaid, addressed to any Shareholder of record at his last known address as recorded on the applicable register of the Trust.

Article VII

Custodians

7.1. Appointment and Duties. The Trustees shall at all times employ a custodian or custodians, meeting the qualifications for custodians for portfolio securities of investment companies contained in the 1940 Act, as custodian with respect to the assets of the Trust. Any custodian shall have authority as agent of the Trust as determined by the custodian agreement or agreements, but subject to such restrictions, limitations and other requirements, if any, as may be contained in the By-Laws of the Trust and the 1940 Act, including without limitation authority:

- (a) to hold the securities owned by the Trust and deliver the same upon written order;
- (b) to receive any receipt for any moneys due to the Trust and deposit the same in its own banking department (if a bank) or elsewhere as the Trustees may direct;
- (c) to disburse such funds upon orders or vouchers;

(d) if authorized by the Trustees, to keep the books and accounts of the Trust and furnish clerical and accounting services; and

(e) if authorized to do so by the Trustees, to compute the net income or net asset value of the Trust; all upon such basis of compensation as may be agreed upon between the Trustees and the custodian.

The Trustees may also authorize each custodian to employ one or more sub-custodians from time to time to perform such of the acts and services of the custodian and upon such terms and conditions, as may be agreed upon between the custodian and such sub-custodian and approved by the Trustees, provided that in every case such sub-custodian shall meet the qualifications for custodians contained in the 1940 Act.

7.2. Central Certificate System. Subject to such rules, regulations and orders as the Commission may adopt, the Trustees may direct the custodian to deposit all or any part of the securities owned by the Trust in a system for the central handling of securities established by a national securities exchange or a national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other Person as may be permitted by the Commission, or otherwise in accordance with the 1940 Act, pursuant to which system all securities of any particular class of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities, provided that all such deposits shall be subject to withdrawal only upon the order of the Trust.

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Article VIII

Redemption

8.1. Redemptions. The Shares of the Trust are not redeemable by the holders.

8.2. Disclosure of Holding. The holders of Shares or other securities of the Trust shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of Shares or other securities of the Trust as the Trustees deem necessary to comply with the provisions of the Code, the 1940 or other applicable laws or regulations, or to comply with the requirements of any other taxing or regulatory authority.

Article IX

Determination of Net Asset Value; Net Income; Distributions

9.1. Net Asset Value. The net asset value of each outstanding Share of the Trust shall be determined at such time or times on such days as the Trustees may determine, in accordance with the 1940 Act. The method of determination of net asset value shall be determined by the Trustees and shall be as set forth in the Prospectus or as may otherwise be determined by the Trustees. The power and duty to make the net asset value calculations may be delegated by the Trustees and shall be as generally set forth in the Prospectus or as may otherwise be determined by the Trustees.

9.2. Distributions to Shareholders.

(a) The Trustees shall from time to time distribute ratably among the Shareholders of any class of Shares, or any series of any such class, in accordance with the number of outstanding full and fractional Shares of such class or any series of such class, such proportion of the net profits, surplus (including paid-in surplus), capital, or assets held by the Trustees as they may deem proper or as may otherwise be determined in accordance with this Declaration. Any such distribution may be made in cash or property (including without limitation any type of obligations of the Trust or any assets thereof) or Shares of any class or series or any combination thereof, and the Trustees may distribute ratably among the Shareholders of any class of shares or series of any such class, in accordance with the number of outstanding full and fractional Shares of such class or any series of such class, additional Shares of any class or series in such manner, at such times, and on such terms as the Trustees may deem proper or as may otherwise be determined in accordance with this Declaration.

(b) Distributions pursuant to this Section 9.2 may be among the Shareholders of record of the applicable class or series of Shares at the time of declaring a distribution or among the Shareholders of record at such later date as the Trustees shall determine and specify.

(c) The Trustees may always retain from the net profits such amount as they may deem necessary to pay the debts or expenses of the Trust or to meet obligations of the Trust, or as they otherwise may deem desirable to use in the conduct of its affairs or to retain for future requirements or extensions of the business.

(d) Inasmuch as the computation of net income and gains for Federal income tax purposes may vary from the computation thereof on the books, the above provisions shall be interpreted to give the Trustees the power in their discretion to distribute for any fiscal year as ordinary dividends and as capital gains distributions, respectively, additional amounts sufficient to enable the Trust to avoid or reduce liability for taxes.

9.3. Power to Modify Foregoing Procedures. Notwithstanding any of the foregoing provisions of this Article IX, the Trustees may prescribe, in their absolute discretion except as may be required by the 1940 Act, such other bases and times for determining the per share asset value of the Trust's Shares or net income, or the declaration and payment of dividends and distributions as they may deem necessary or desirable for any reason, including to enable the Trust to comply with any provision of the 1940 Act, or any securities exchange or association registered under the Securities Exchange Act of 1934, or any order of exemption issued by the Commission, all as in effect now or hereafter amended or modified.

Article X

Shareholders

10.1. Meetings of Shareholders. The Trust shall hold annual meetings of the Shareholders (provided that the Trust's initial annual meeting of Shareholders may occur up to one year after the completion of its initial fiscal year). A

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special meeting of Shareholders may be called at any time only by the Chairman of the Board, or the Chief Executive Officer or by a resolution adopted by a majority of the Board of Trustees. Any shareholder meeting, including a Special Meeting, shall be held within or without the State of Delaware on such day and at such time as the Trustees shall designate.

10.2. Voting. Shareholders shall have no power to vote on any matter except matters on which a vote of Shareholders is required by applicable law including the 1940 Act, this Declaration or resolution of the Trustees. This Declaration expressly provides that no matter for which voting is required by the Delaware Statutory Trust Statute in the absence of the contrary provision in the Declaration shall require any vote. Except as otherwise provided herein, any matter required to be submitted to Shareholders and affecting one or more classes or series of Shares shall require approval by the required vote of all the affected classes and series of Shares voting together as a single class; provided, however, that as to any matter with respect to which a separate vote of any class or series of Shares is required by the 1940 Act, such requirement as to a separate vote by that class or series of Shares shall apply in addition to a vote of all the affected classes and series voting together as a single class. Shareholders of a particular class or series of Shares shall not be entitled to vote on any matter that affects only one or more other classes or series of Shares. There shall be no cumulative voting in the election or removal of Trustees.

10.3. Notice of Meeting and Record Date. Notice of all meetings of Shareholders, stating the time, place and purposes of the meeting, shall be given by the Trustees by mail to each Shareholder of record entitled to vote thereat at its registered address, mailed at least 10 days and not more than 120 days before the commencement of the meeting or otherwise in compliance with applicable law. Only the business stated in the notice of the meeting shall be considered at such meeting. Any adjourned meeting may be held as adjourned one or more times without further notice not later than 120 days after the record date. For the purposes of determining the Shareholders who are entitled to notice of and to vote at any meeting the Trustees may, without closing the transfer books, fix a date not more than 120 nor less than 10 days prior to the date of such meeting of Shareholders as a record date for the determination of the Persons to be treated as Shareholders of record for such purposes.

10.4. Quorum and Required Vote.

(a) The holders of a majority of the Shares entitled to vote on any matter at a meeting present in person or by proxy shall constitute a quorum at such meeting of the Shareholders for purposes of conducting business on such matter. The absence from any meeting, in person or by proxy, of a quorum of Shareholders for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if there shall be present thereat, in person or by proxy, a quorum of Shareholders in respect of such other matters.

(b) Subject to any provision of applicable law, this Declaration or a resolution of the Trustees specifying a greater or a lesser vote requirement for the transaction of any item of business at any meeting of Shareholders, (i) the affirmative vote of a majority of the Shares present in person or represented by proxy and entitled to vote on the subject matter shall be the act of the Shareholders with respect to such matter, and (ii) where a separate vote of one or more classes or series of Shares is required on any matter, the affirmative vote of a majority of the Shares of such class or series of Shares present in person or represented by proxy at the meeting shall be the act of the Shareholders of such class or series with respect to such matter.

10.5. Proxies, etc. At any meeting of Shareholders, any holder of Shares entitled to vote thereat may vote by properly executed proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Secretary, or with such other officer or agent of the Trust as the Secretary may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of a majority of the Trustees, proxies may be solicited in the name of one or more Trustees or one or more of the officers or employees of the Trust. No proxy shall be valid after the expiration of three years from the date thereof, unless otherwise provided in the proxy. Only Shareholders of record shall be entitled to vote. Each full Share shall be entitled to one vote and fractional Shares shall be entitled to a vote of such fraction. When any Share is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Share, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Share. A proxy purporting to be executed by or on behalf of a Shareholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. If the holder of any such Share is a minor or a person of unsound mind, and subject to guardianship or to the legal control of any other person as regards the charge or management of such Share, he may vote by his guardian or such other person appointed or having such control, and such vote may be given in person or by proxy.

10.6. Reports. The Trustees shall cause to be prepared at least annually and more frequently to the extent and in the form required by law, regulation or any exchange on which Trust Shares are listed a report of operations containing financial statements of the Trust prepared in conformity with generally accepted accounting principles and applicable law.

10.7. Inspection of Records. The Trustees shall from time to time determine whether and to what extent, and at what times and places, and under what conditions and regulations the accounts and books of the Trust or any of them shall be open to the inspection of the Shareholders; and no Shareholder shall have any right to inspect any account or book or document of the Trust except as conferred by law or otherwise by the Trustees or by resolution of the Shareholders.

10.8. No Shareholder Action by Written Consent. Notwithstanding anything contained in this Declaration of Trust to the contrary, upon and following the closing of the initial public offering of the Shares, any action required or permitted to be taken by the Shareholders must be effected at a duly called annual or special meeting of such holders and may not be effected by written consent of the Shareholders.

Article XI

Duration; Termination of Trust; Amendment; Mergers, Etc.

11.1. Duration. Subject to possible termination in accordance with the provisions of Section 11.2 hereof, the Trust created hereby shall have perpetual existence.

11.2. Termination.

(a) The Trust may be dissolved only upon approval of not less than a majority of the Trustees. Upon the dissolution of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, merge where the Trust is not the survivor, transfer or otherwise dispose of all or any part of the remaining Trust Property to one or more Persons at public or private sale for consideration which may consist in whole or in part in cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; provided that any sale, conveyance, assignment, exchange, merger in which the Trust is not the survivor, transfer or other disposition of all or substantially all the Trust Property of the Trust shall require approval of the principal terms of the transaction and the nature and amount of the consideration by Shareholders with the same vote as required to open-end the Trust.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining Trust Property, in cash or in kind or partly each, among the Shareholders according to their respective rights.

(b) After the winding up and termination of the Trust and distribution to the Shareholders as herein provided, a majority of the Trustees or an authorized officer of the Trust shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination and shall execute and file a certificate of cancellation with the Secretary of State of the State of Delaware. Upon termination of the Trust, the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the rights and interests of all Shareholders shall thereupon cease.

(c) The Trustees may, to the extent they deem appropriate, adopt a plan of liquidation at any time preceding the anticipated termination date, which plan of liquidation may set forth the terms and conditions for implementing the termination of the Trust's existence under this Article XI. Shareholders of the Trust shall not be entitled to vote on the adoption of any such plan or the termination of the Trust's existence under this Article XI.

11.3. Amendment Procedure.

(a) Except as provided in subsection (b) of this Section 11.3, this Declaration may be amended, after a majority of the Trustees have approved a resolution therefor, by the affirmative vote required by Section 10.4 of

this Declaration. The Trustees may also amend this Declaration without any vote of Shareholders of any class or series to divide the Shares of the Trust into one or more classes or additional classes, or one or more series of any such class or classes, to determine the rights, powers, preferences, limitations and restrictions of any class or series of Shares, to change the name of the Trust or any class or series of Shares, to make any change that does not adversely affect the relative rights or preferences of any Shareholder, as they may deem necessary, or to conform this Declaration to the requirements of the 1940 Act or any other applicable federal laws or regulations including pursuant to Section 6.2 or the requirements of the regulated investment company provisions of the Code, but the Trustees shall not be liable for failing to do so.

(b) No amendment may be made to Section 2.1, Section 2.2, Section 2.3, Section 3.9, Section 5.1, Section 5.2, Section 11.2(a), this Section 11.3, Section 11.4, or Section 11.6 of this Declaration and no amendment may be made to this Declaration which would change any rights with respect to any Shares of the Trust by reducing the amount payable thereon upon liquidation of the Trust or by diminishing or eliminating any voting rights pertaining thereto (except that this provision shall not limit the ability of the Trustees to authorize, and to cause the Trust to issue, other securities pursuant to Section 6.2), except after a majority of the Trustees have approved a resolution therefor, by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the Shares of each affected class or series outstanding, voting as separate classes or series. Nothing contained in this Declaration shall permit the amendment of this Declaration to impair the exemption from personal liability of the Shareholders, Trustees, officers, employees and agents of the Trust or to permit assessments upon Shareholders.

(c) An amendment duly adopted by the requisite vote of the Board of Trustees and, if required, the Shareholders as aforesaid, shall become effective at the time of such adoption or at such other time as may be designated by the Board of Trustees or Shareholders, as the case may be. A certification in recordable form signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Trustees and, if required, the Shareholders as aforesaid, or a copy of the Declaration, as amended, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment when lodged among the records of the Trust or at such other time designated by the Board.

Notwithstanding any other provision hereof, until such time as a Registration Statement under the 1933 Act, covering the first public offering of Shares of the Trust shall have become effective, this Declaration may be terminated or amended in any respect by the affirmative vote of a majority of the Trustees or by an instrument signed by a majority of the Trustees.

11.4. Merger, Consolidation and Sale of Assets. The Trust may merge or consolidate with any other corporation, association, trust or other organization or may sell, lease or exchange all or substantially all of the Trust Property or the property, including its good will, upon such terms and conditions and for such consideration when and as authorized by the Board of Trustees and approved by a Majority Shareholder Vote and any such merger, consolidation, sale, lease or exchange shall be determined for all purposes to have been accomplished under and pursuant to the statutes of the State of Delaware.

11.5. Subsidiaries. Without approval by Shareholders, the Trustees may cause to be organized or assist in organizing one or more corporations, trusts, partnerships, associations or other organizations to take over any or all of the Trust Property or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, convey and transfer all or a portion of the Trust Property to any such corporation, trust, limited liability company, association or organization in exchange for the shares or securities thereof, or otherwise, and to lend money to, subscribe for the shares or securities of, and enter into any contracts with any such corporation, trust, limited liability company, partnership, association or organization, or any corporation, partnership, trust, limited liability company, association or organization in which the Trust holds or is about to acquire shares or any other interests.

11.6. Conversion. Notwithstanding any other provisions of this Declaration or the By-Laws of the Trust, the approval of a majority of the Trustees then in office followed by the approval by a Majority Shareholder Vote of each affected class or series outstanding, voting as separate classes or series, shall be required to approve, adopt or authorize an amendment to this Declaration that makes the Shares a “redeemable security” as that term is defined in the 1940 Act. Upon the adoption of a proposal to convert the Trust from a “closed-end company” to an “open-end company” as those terms are defined by the 1940 Act and the necessary amendments to this Declaration to permit such a conversion of the Trust’s outstanding Shares entitled to vote, the Trust shall, upon complying with any requirements of the 1940 Act and state law, become an “open-end” investment company. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the Shares otherwise required by law, or any agreement between the Trust and any national securities exchange.

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Article XII

Miscellaneous

12.1. Filing.

(a) This Declaration and any amendment or supplement hereto shall be filed in such places as may be required or as the Trustees deem appropriate. Each amendment or supplement shall be accompanied by a certificate signed and acknowledged by a Trustee stating that such action was duly taken in a manner provided herein, and shall, upon insertion in the Trust's minute book, be conclusive evidence of all amendments contained therein. A restated Declaration, containing the original Declaration and all amendments and supplements theretofore made, may be executed from time to time by a majority of the Trustees and shall, upon insertion in the Trust's minute book, be conclusive evidence of all amendments and supplements contained therein and may thereafter be referred to in lieu of the original Declaration and the various amendments and supplements thereto.

(b) The Trustees hereby authorize and direct a Certificate of Trust, in the form attached hereto as Exhibit A, to be executed and filed with the Office of the Secretary of State of the State of Delaware in accordance with the Delaware Statutory Trust Act.

12.2. Resident Agent. The Trust shall maintain a resident agent in the State of Delaware, which agent shall initially be _____. The Trustees may designate a successor resident agent, provided, however, that such appointment shall not become effective until written notice thereof is delivered to the office of the Secretary of the State.

12.3. Governing Law. This Declaration is executed by the Trustees and delivered in the State of Delaware and with reference to the laws thereof, and the rights of all parties and the validity and construction of every provision hereof shall be subject to and construed according to laws of said State and reference shall be specifically made to the Delaware General Corporation Law as to the construction of matters not specifically covered herein or as to which an ambiguity exists, although such law shall not be viewed as limiting the powers otherwise granted to the Trustees hereunder and any ambiguity shall be viewed in favor of such powers. All disputes arising under this Declaration shall be brought in the Delaware Court of Chancery unless otherwise required by the 1940 Act.

12.4. Counterparts. This Declaration may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and such counterparts, together, shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

12.5. Reliance by Third Parties. Any certificate executed by an individual who, according to the records of the Trust, or of any recording office in which this Declaration may be recorded, appears to be a Trustee hereunder, certifying to: (a) the number or identity of Trustees or Shareholders, (b) the name of the Trust, (c) the due authorization of the execution of any instrument or writing, (d) the form of any vote passed at a meeting of Trustees or Shareholders, (e) the fact that the number of Trustees or Shareholders present at any meeting or executing any written instrument satisfies the requirements of this Declaration, (f) the form of any By-Laws adopted by or the identity of any officers elected by the Trustees, or (g) the existence of any fact or facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Trustees and their successors.

12.6. Provisions in Conflict with Law or Regulation.

(a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any of such provisions is in conflict with the 1940 Act, the regulated investment company provisions of the Internal Revenue Code or with other applicable laws and regulations, the conflicting provision shall be deemed never to have constituted a part of this Declaration; provided, however, that such determination shall not affect any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted prior to such determination.

(b) If any provision of this Declaration shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction or any other provision of this Declaration in any jurisdiction.

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IN WITNESS WHEREOF, the undersigned has caused these presents to be executed as of the day and year first above written.

[Name]
Sole Trustee

[Signature Page to Agreement and Declaration of Trust]

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